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Presidential Documents

Title 3—

The President

Proclamation 10602 of July 25, 2023

Establishment of the Emmett Till and Mamie Till-Mobley National Monument

By the President of the United States of America

A Proclamation

The brutal lynching of Emmett Till in Mississippi in 1955 and the subsequent courage of his mother, Mamie Till-Mobley, to ensure his death would not be in vain helped bring broad national attention to the injustices and inequality that Black people experienced during the Jim Crow era across the United States and, in particular, the South. The story—one that is shaped by the fight for civil rights and the historic movement called the Great Migration, during which millions of Black people moved out of the South—is rooted in the specific places where Emmett Till lived and traveled in his too-short life: Chicago, where Mamie Till-Mobley came with her family for better opportunities and then mourned her son at the Roberts Temple Church of God in Christ; and the Mississippi Delta, where Emmett Till was murdered in an act of racial violence while visiting relatives, where the recovery of his body is memorialized at Graball Landing, and where his assailants were wrongfully acquitted at the Tallahatchie County Second District Courthouse. These places contain historic objects that illuminate the complicated fabric of our Nation and the injustice and inequality that Black people continue to experience today. They are places where we can learn about and reflect on the specific, painful events that ended Emmett Till's life and the larger history of Black oppression, resistance, and resilience, which ultimately culminated in a movement that bent our Nation's laws toward justice.

The Roberts Temple Church of God in Christ, the Tallahatchie County Second District Courthouse, Graball Landing, and the objects located at those sites have historic importance that arises from the roles that Emmett Till and Mamie Till-Mobley played in the birth and early evolution of the Civil Rights Movement. Mamie Till-Mobley was born Mamie Elizabeth Carthan near Webb, Mississippi, in 1921. When Mamie was 2 years old, her family moved to the suburb of Summit on the southwest side of Chicago, Illinois, where her father found work at the Argo Corn Products Refining Company.

The Carthan family was one of many Black families who left rural southern States and moved to urban industrial centers in northern, midwestern, and western States to escape racial violence and to pursue greater economic and educational opportunities.

On July 25, 1941, Mamie gave birth to Emmett Louis Till at Cook County Hospital in Chicago. She raised Emmett among his grandparents and extended family who lived nearby.

In August 1955, when Emmett was 14 years old and on summer break from school, he convinced his mother to let him visit their extended family who lived in the Mississippi Delta. Along with his granduncle Moses Wright and 16-year-old cousin Wheeler Parker, Jr., Emmett boarded Illinois Central's *City of New Orleans* train for the nearly 12-hour ride to Mississippi. Moses Wright's oldest son, 16-year-old Maurice, met the trio at the station in Grenada, Mississippi, and they made the last 30 miles of the journey in the family's pickup truck to stay at the Wrights' home outside rural Money, Mississippi.

On the evening of Wednesday, August 24, 1955, Emmett joined his cousins—Maurice Wright, Wheeler Parker, Jr., and 12-year-old Simeon Wright—and several of their friends to buy candy at Bryant's Grocery and Meat Market country store in Money.

Carolyn Bryant, the white store clerk, claimed Emmett made inappropriate advances toward her—a claim disputed by Emmett's cousins and friends. According to Till's cousin Wheeler Parker, Jr., 14-year-old Emmett whistled at Bryant outside the store, which violated the unwritten laws of segregated society in the Mississippi Delta. The group quickly loaded back into their vehicle and fled.

At about 2:00 a.m. on Sunday, August 28, 1955, the Wright family was awakened by two armed white men, identified by Moses Wright as store owner Roy Bryant, husband of Carolyn Bryant, and his half-brother, J.W. Milam. Moses Wright testified that the two men were armed with a gun and a flashlight and were looking for the ''boy that done the talking down at Money.'' The two white men directed Emmett Till to get dressed, abducted him from the Wright home, and drove away with him. Moses Wright notified the county sheriff. Within 48 hours after the abduction, J.W. Milam and Roy Bryant were arrested on kidnapping charges, and the news of Emmett Till's abduction began to hit newspapers locally and in Chicago.

On Wednesday, August 31, 1955, Emmett Till's body was pulled from the Tallahatchie River near Graball Landing in Tallahatchie County. Moses Wright confirmed that the badly beaten body was that of his grandnephew, Emmett Till.

Emmett Till suffered a brutal murder. His body was found with barbed wire tied around his neck and attached to a 70-pound cotton gin fan. A 2005 autopsy, prompted by the reopening of the investigation by the Federal Bureau of Investigation, revealed fractures of both of Emmett's wrists, a fracture of his left femur, multiple fractures of his skull, and a gunshot wound to the head.

Almost immediately after Emmett's badly beaten body was recovered, the county sheriff directed that he be buried quickly. His body was prepared at the Tutwiler Funeral Home and a grave was being dug at the local Church of God in Christ cemetery in Money when Mamie Till-Mobley contacted her Mississippi family, interrupting the burial process and insisting that her son's body be returned to Chicago.

Mamie Till-Mobley met her son's body at the train station in Chicago and confirmed his identity. Defying orders from the Tutwiler Funeral Home to keep the casket sealed, Mamie Till-Mobley decided to hold an open-casket funeral. When the funeral director asked if he should retouch Emmett's distorted face to make him more presentable, Mamie Till-Mobley responded, ''Let the world see what I've seen.''

The funeral service for Emmett Till began Saturday, September 3, 1955, at the Roberts Temple Church of God in Christ in Bronzeville, a historically Black neighborhood on Chicago's South Side. The church was the first that Mamie Till-Mobley's mother attended when she moved to Chicago, and it formed a central part of the family's life and community. Roberts Temple played a prominent role in Chicago's Black community: it was considered the ''Mother Church'' in Northern Illinois for the influential Church of God in Christ denomination and served as a hub for social, spiritual, and economic activities. The church grew considerably during the Great Migration.

When Mamie Till-Mobley arrived at the funeral service, the church's 1,800 seats were overflowing, and an estimated 5,000 additional mourners gathered along the adjacent sidewalks, streets, church property, and surrounding blocks. Due to the overwhelming turnout, Mamie delayed Emmett's burial to allow more time for mourners to pay their respects. Press estimates of the crowd ranged from 10,000 on the first day to as many as 125,000 people over the 3 days before Emmett's burial on Tuesday, September 6,

1955. Today, the Roberts Temple Church of God in Christ still stands as a prominent feature on State Street, as it did in 1955.

The trial for the murder of Emmett Till began just weeks after his lynching, on September 19, 1955, at the Tallahatchie County Second District Courthouse in Sumner, Mississippi. Between 50 and 70 reporters attended, representing southern newspapers such as the Greenville *Delta Democrat-Times* and the Charleston *Mississippi Sun*, as well as national media including the *New York Times*, *Newsweek*, and the *Nation*. The segregated courtroom, which has been painstakingly restored to its appearance during the trial, required Black reporters to sit behind a railing and at a table separate from white reporters. Photos from the period show a packed courtroom with a crowd gathering outside open windows to hear the trial. The *New York Times* described ''an atmosphere of controlled hostility'' in the stifling heat of the 250-person courtroom. One night during the trial, a cross was burned in front of the hotel where the jurors were sequestered.

Throughout the trial, the town of Mound Bayou, located more than 30 miles and 2 counties away from the courthouse, served as a safe haven for Mamie Till-Mobley, Black reporters, and members of the NAACP who arrived in Mississippi. The State of Mississippi was segregated, including Mound Bayou, which was an all-Black town founded in 1887 by and for Black people. Hosting Mamie Till-Mobley and the NAACP at his home in Mound Bayou, Dr. T.R.M. Howard provided tight security with a checkpoint and round-the-clock guards to protect the trial attendees. On September 23, 1955, after a 5-day trial, an all-white jury acquitted Roy Bryant and J.W. Milam of Emmett Till's murder after just over an hour of deliberation.

In January 1956, following their acquittal, Bryant and Milam gave a paid interview to *Look* magazine in which they confessed to the murder, further underscoring the miscarriage of justice. Eyewitness accounts that additional people were involved in the kidnapping, torture, and murder of Emmett Till were omitted from the magazine article and never pursued by officials.

The Graball Landing river site, located just outside Glendora, Mississippi, is the area along the Tallahatchie River where many believe Emmett Till's body was recovered, although changes in river flows and erosion since 1955 make it difficult to determine the site with precision. Located where the Black Bayou meets the Tallahatchie River, Graball Landing is a natural break in the vegetation along the riverbank that served as a steamboat landing until 1894 and thereafter as a local fishing site. In the years that followed Emmett Till's murder, Graball Landing became the site of a community-led memorial. In 2008, the Emmett Till Memorial Commission erected a memorial sign at Graball Landing. Within 6 months, the sign was torn down by vandals and thrown into the river. When a replacement memorial sign was erected, it was not long until the sign was riddled with bullet holes. A third memorial sign was dedicated in 2018, and about a month later, it too was scarred by gunfire. The current memorial sign at Graball Landing was dedicated on October 19, 2019—it is over an inch thick, weighs more than 500 pounds, and is bulletproof.

Emmett Till's torture and killing was one of at least three other racially motivated murders in Mississippi during the summer of 1955. Emmett was also among the thousands of Black people killed by lynching in the United States over the 100 years following the Civil War. If Emmett Till had been buried in Mississippi, his story might have been entombed along with him. His mother's acts of resistance and bravery in demanding her son's body be returned to Chicago and in holding an open-casket service helped ensure Emmett's death was not a statistic, but a spark to galvanize the Civil Rights Movement in America. Months afterward, in December 1955, Rosa Parks refused to surrender her bus seat to a white man. She later explained, ''I thought of Emmett Till and I couldn't go back.''

The Reverend Dr. Martin Luther King, Jr., too, would cite Emmett Till in his sermons. He later recollected: ''Emmett Till, a mere boy, unqualified to vote, but seemingly used as a victim to terrorize Negro citizens and

keep them from the polls. While the blame for the grisly mutilation of Till has been placed upon two cruel men, the ultimate responsibility for this and other tragic events must rest with the American people themselves. It rests with all of us, black and white, who call ourselves civilized men. For democracy demands responsibility, courage, and the will-to-freedom from all men.''

For the remainder of her life, well into her 80s, Mamie Till-Mobley furthered the memory of her son Emmett through her work as an educator and activist, carrying a message of healing, reconciliation, forgiveness, and hope.

Conserving the Roberts Temple Church of God in Christ, the Tallahatchie County Second District Courthouse, and Graball Landing will ensure that the historical value of these sites will remain for the benefit of all Americans, providing opportunities to learn about Emmett Till's life and death and the historical and cultural context interwoven with his story. Conserving these places and the resources they contain will also honor the bravery of Mamie Till-Mobley and other Americans like her who, in the face of unimaginable injustice, have helped lead us toward a more equal and perfect Union.

WHEREAS, section 320301 of title 54, United States Code (the ''Antiquities Act''), authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Federal Government to be national monuments, and to reserve as a part thereof parcels of land, the limits of which shall be confined to the smallest area compatible with the proper care and management of the objects to be protected; and

WHEREAS, Graball Landing has long been recognized as the location where Emmett Till's body was recovered from the Tallahatchie River and, more recently, as a memorial site to inform and educate the public about Emmett Till's murder; and

WHEREAS, the memorial signs placed at Graball Landing to inform the public about Emmett Till's murder have their own important role in civil rights history, including through their repeated defacement and replacement, and thus are themselves significant cultural and historic objects; and

WHEREAS, the Roberts Temple Church of God in Christ marks the location of a historic event when tens of thousands of people came together, overflowing from the church into the surrounding sidewalks and streets, to mourn the murder of a 14-year-old boy and honor the strength of his mother and, in recognition of this, the church was designated as a Chicago Landmark by the City of Chicago Commission on Chicago Landmarks on March 29, 2006; and

WHEREAS, the Tallahatchie County Second District Courthouse is nationally significant based on its association with the history of Jim Crow, the dawn of the Civil Rights Movement, and the site of the Emmett Till murder trial in September 1955; and was designated as a Mississippi Landmark on February 28, 1990, and added to the National Register of Historic Places on March 6, 2007; and

WHEREAS, James Walker Sturdivant has donated to the Federal Government for the purpose of establishing a unit of the National Park System fee interest in approximately 4.31 acres of land in the area known as Graball Landing adjacent to the Tallahatchie River; and

WHEREAS, the Roberts Temple Church of God in Christ, with the support of the National Trust for Historic Preservation, has donated to the Federal Government for the purpose of establishing a unit of the National Park System a Conservation Easement consisting of approximately 0.27 acres over 2 parcels, which includes the historic Roberts Temple Church of God in Christ (Church Building); a Preservation and Use Easement consisting of a lot of approximately 0.09 acres over the property immediately adjacent

to the Church Building; and fee interest in approximately 0.55 acres of land currently used as the church parking lot—all of which encompass land where crowds gathered in September 1955; and

WHEREAS, Tallahatchie County has donated to the National Park Foundation fee interest in the Tallahatchie County Second District Courthouse and the associated Emmett Till Interpretive Center building across the street, totaling approximately 0.48 acres; and

WHEREAS, the National Park Foundation has relinquished and conveyed all of these lands and interests in lands associated with the Tallahatchie County Second District Courthouse and the Emmett Till Interpretive Center building to the Federal Government for the purpose of establishing a unit of the National Park System; and

WHEREAS, the designation of a national monument to be administered by the National Park Service would recognize the historic significance of the Roberts Temple Church of God in Christ, the Tallahatchie County Second District Courthouse, and Graball Landing, particularly the events that transpired at these locations related to the life and death of Emmett Till, his mother Mamie Till-Mobley, and the Civil Rights Movement, and would provide a national platform for preserving and interpreting this important history; and

WHEREAS, it is in the public interest to preserve and protect the objects of historic interest associated with the story of Emmett Till and Mamie Till-Mobley and the birth of the American Civil Rights Movement in Illinois and Mississippi;

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by the authority vested in me by section 320301 of title 54, United States Code, hereby proclaim, set apart, and reserve as the Emmett Till and Mamie Till-Mobley National Monument (monument), the objects identified above and all lands and interests in lands owned or controlled by the Government of the United States within the boundaries described on the accompanying maps entitled ''Emmett Till and Mamie Till-Mobley National Monument Boundary,'' which are attached to and form a part of this proclamation, for the purpose of protecting those objects. The reserved Federal lands and interests in lands within the monument's boundaries encompass approximately 5.7 acres, which is the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, leasing, or other disposition under the public land laws, including withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing. The establishment of this monument is subject to valid existing rights, including the July 21, 2023, deed for parcel 20–03–106–036 in Chicago with reserved rights for parking. Lands and interests in lands within the monument's boundaries not owned or controlled by the United States shall be reserved as part of the monument, and objects identified above that are situated upon those lands and interests in lands shall be part of the monument, upon acquisition of ownership or control by the United States.

The Secretary of the Interior shall manage the monument through the National Park Service, pursuant to applicable legal authorities and consistent with the purposes and provisions of this proclamation. For the purpose of preserving, interpreting, and enhancing the public understanding and appreciation of the monument, the Secretary of the Interior, through the National Park Service, shall prepare a management plan for the monument. The management plan shall ensure that the monument fulfills the following purposes for the benefit of present and future generations: (1) to preserve the historic and cultural resources within the boundaries of the monument; (2) to interpret the story of Emmett Till and Mamie Till-Mobley and its significance to the fight against racism and the dismantling of Jim Crow;

and (3) to commemorate the birth of the Civil Rights Movement. The National Park Service shall develop the management plan in consultation with local communities, organizations, and the general public in the regions of the monument to set forth the desired relationship of the monument to and support for other sites evaluated in the Mississippi Civil Rights Special Resources Study such as the Glendora Cotton Gin (currently known as the Emmett Till Historic Intrepid Center), Mound Bayou, and the Tutwiler Funeral Home, as well as sites in Chicago such as the Emmett Till Boyhood Home.

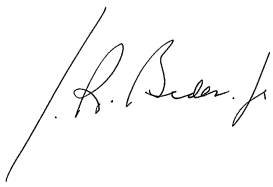
The National Park Service shall consult with appropriate Federal, State, and local agencies and nongovernmental organizations in planning for interpretation and visitor access and services at the monument.

The National Park Service is directed, as appropriate, to use applicable authorities to seek to enter into agreements with other entities to address common interests and promote management efficiencies, including the provision of visitor services, interpretation and education, establishment and care of museum collections, and preservation of historic objects. These entities may include, in Illinois, the Roberts Temple Church of God in Christ, the Bronzeville-Black Metropolis National Heritage Area, and the Emmett Till and Mamie Till-Mobley Institute; and, in Mississippi, the Emmett Till Historic Intrepid Center, the County of Tallahatchie, the Mississippi Delta National Heritage Area, and the Emmett Till Interpretive Center.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of July, 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-eighth.



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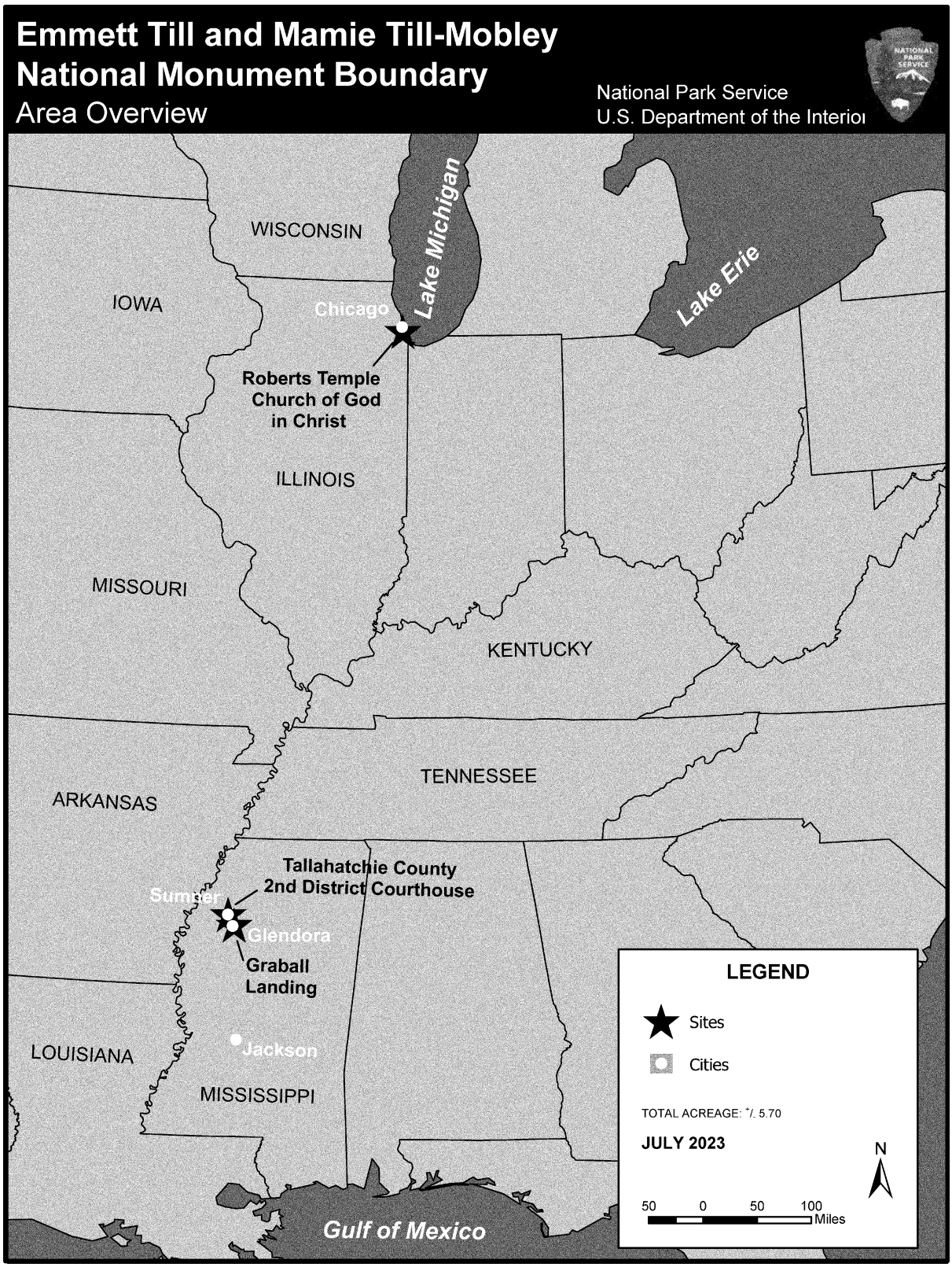
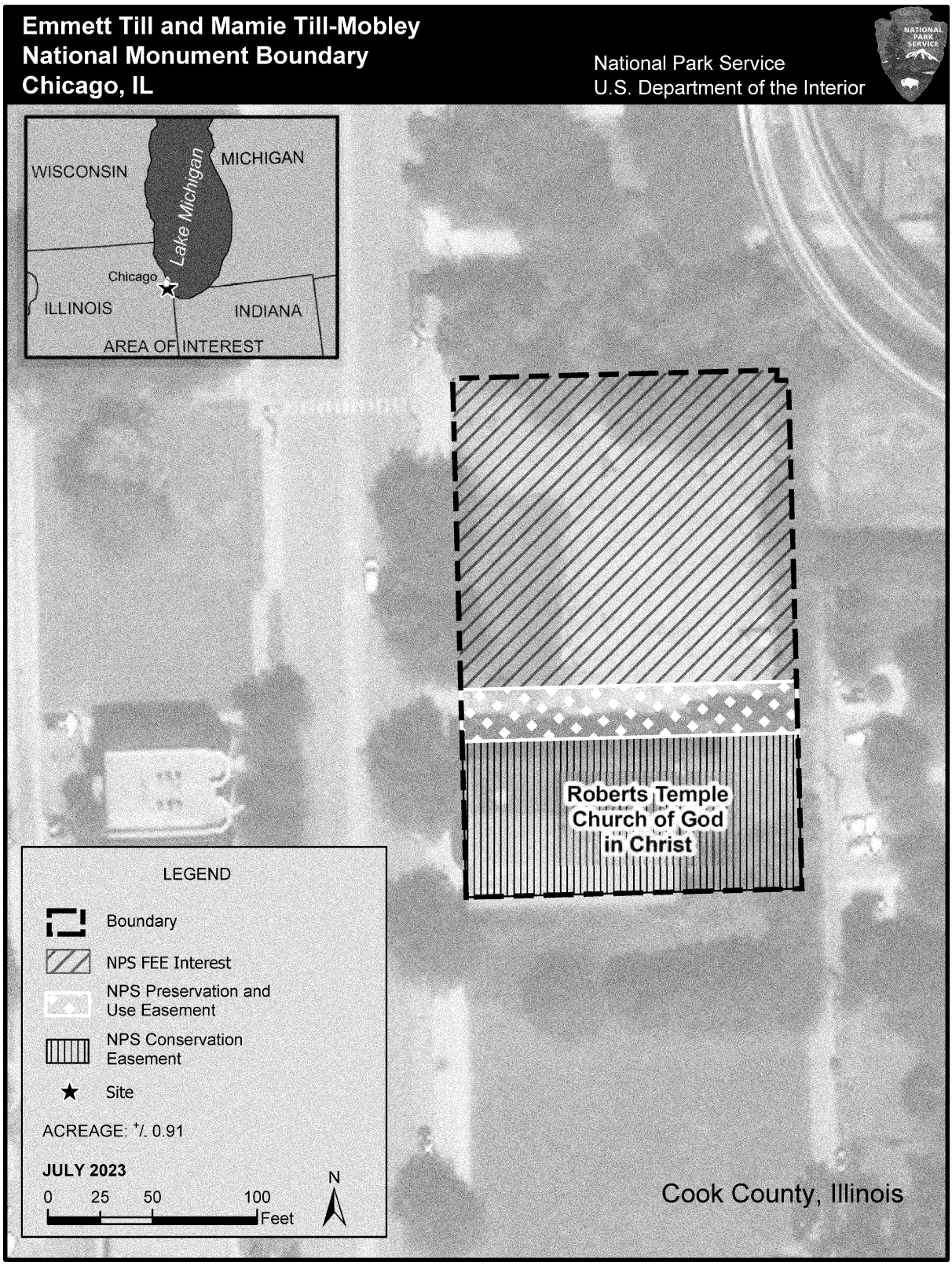
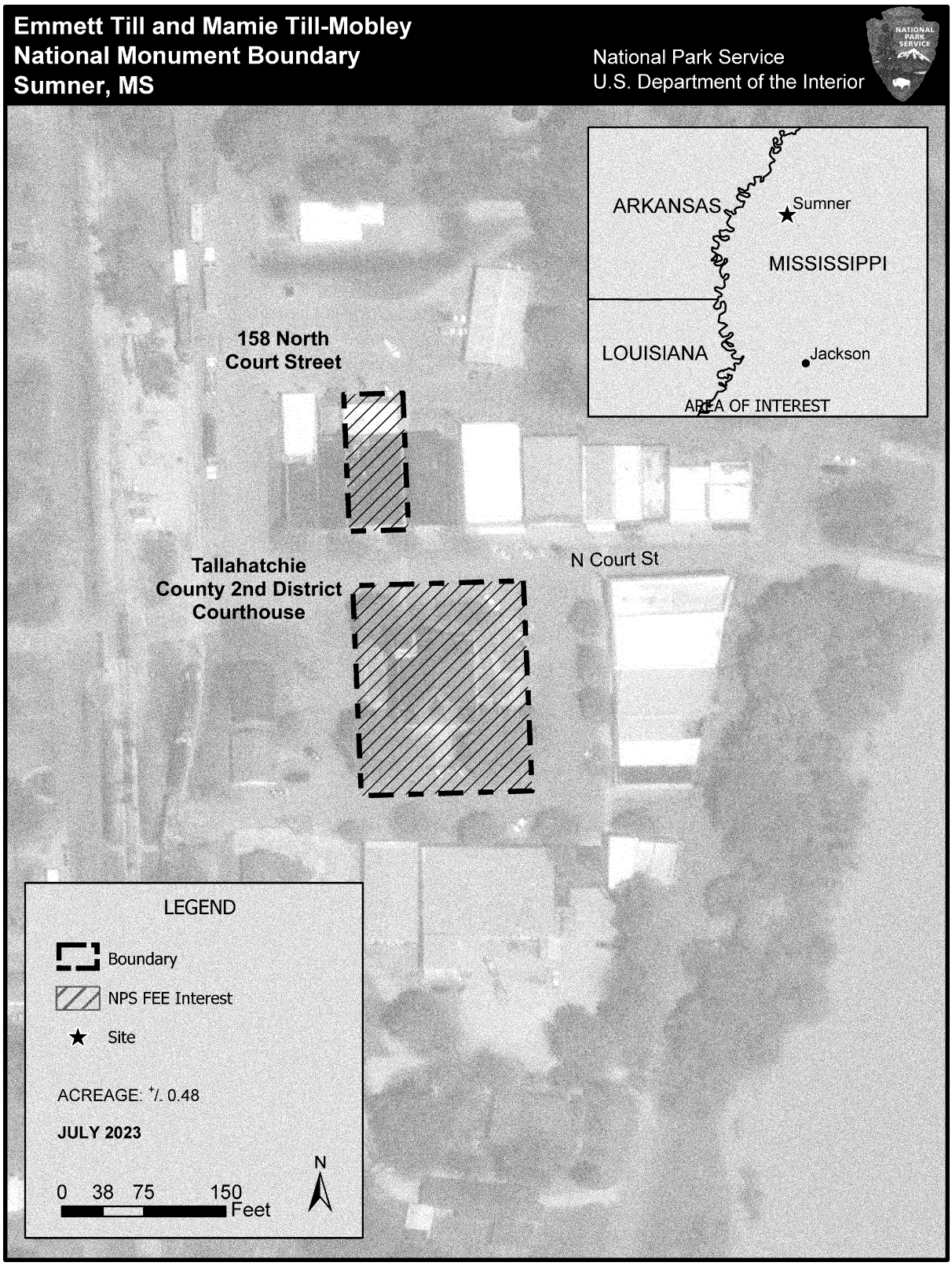
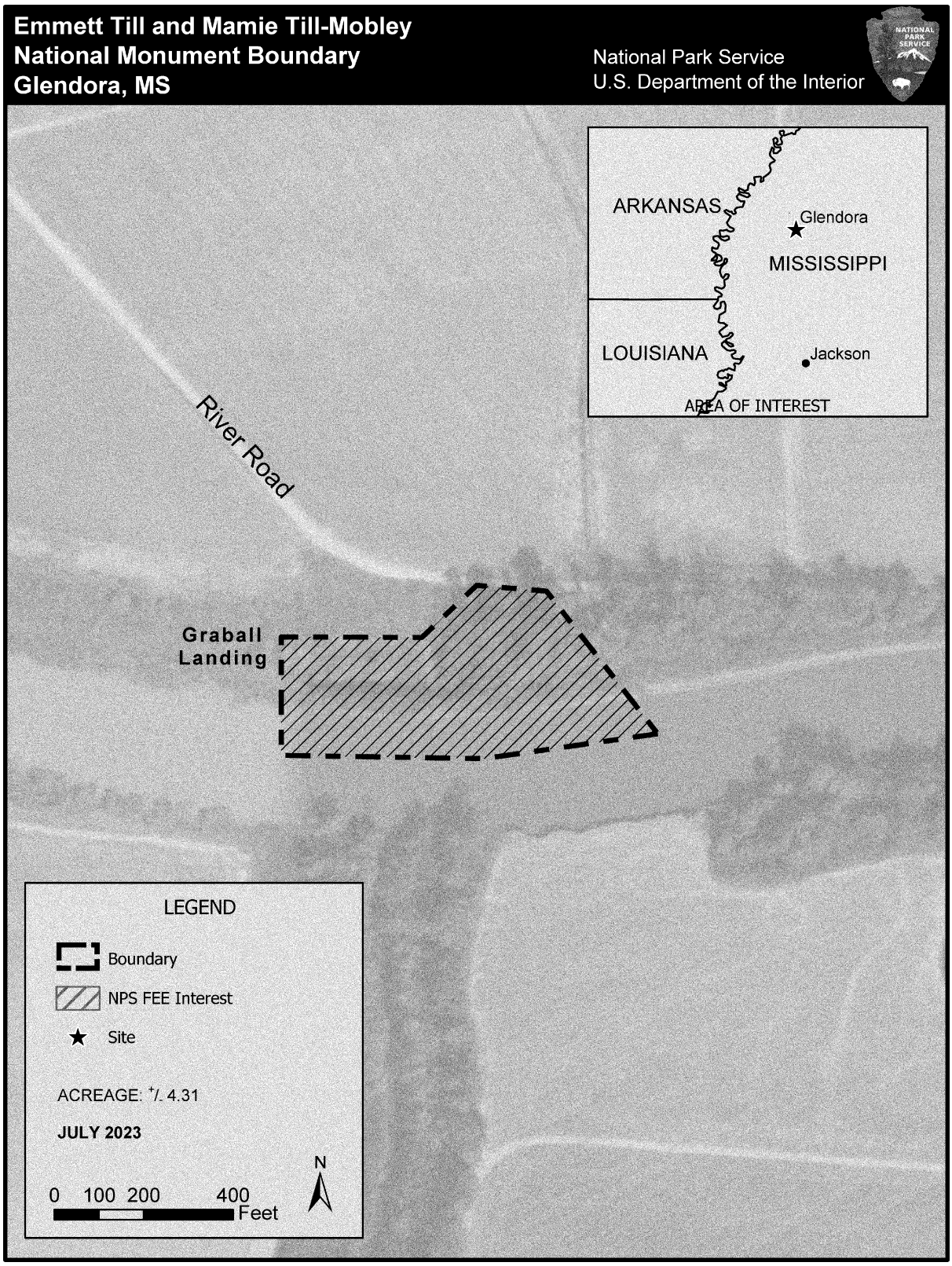

Emmett Till and Mamie Till-Mobley
National Monument Boundary
Area Overview
National Park Service
U.S. Department of the Interior
WISCONSIN
IOWA
Chicago
Lake Michigan
Lake Erie
Roberts Temple
Church of God
in Christ
ILLINOIS
MISSOURI
KENTUCKY
TENNESSEE
ARKANSAS
Tallahatchie County
2nd District Courthouse
Sumner
Glendora
Graball
Landing
Jackson
LOUISIANA
MISSISSIPPI
Gulf of Mexico
LEGEND
Sites
Cities
TOTAL ACREAGE: +/- 5.70
JULY 2023
N
50 0 50 100
Miles


Emmett Till and Mamie Till-Mobley
National Monument Boundary
Chicago, IL
National Park Service
U.S. Department of the Interior
WISCONSIN
MICHIGAN
Lake Michigan
Chicago
ILLINOIS
INDIANA
AREA OF INTEREST
Roberts Temple
Church of God
in Christ
LEGEND
Boundary
NPS FEE Interest
NPS Preservation and
Use Easement
NPS Conservation
Easement
Site
ACREAGE: +/- 0.91
JULY 2023
0 25 50 100
Feet
N
Cook County, Illinois


Emmett Till and Mamie Till-Mobley
National Monument Boundary
Sumner, MS
National Park Service
U.S. Department of the Interior
ARKANSAS
Sumner
MISSISSIPPI
LOUISIANA
Jackson
AREA OF INTEREST
158 North
Court Street
N Court St
Tallahatchie
County 2nd District
Courthouse
LEGEND
Boundary
NPS FEE Interest
Site
ACREAGE: +/- 0.48
JULY 2023
0 38 75 150
Feet
N



[FR Doc. 2023–16211

Filed 7–27–23; 8:45 am]

Billing code 4310–10–C

Presidential Documents

Proclamation 10603 of July 25, 2023

Anniversary of the Americans with Disabilities Act, 2023

By the President of the United States of America

A Proclamation

Thirty-three years ago, the Congress passed the Americans with Disabilities Act (ADA)—one of the most important civil rights laws in our history. Its tireless champion, Senator Tom Harkin of Iowa, celebrated with a speech on the United States Senate floor in American Sign Language. His remarks were not only a tribute to his brother, who was deaf, but a message to the millions of Americans with disabilities that, in this country, everyone is equal and deserves to be treated with dignity and respect. I was proud to co-sponsor that landmark law back then, and I am proud to celebrate its lasting legacy with a renewed push for opportunity and justice today.

It is hard for younger generations to imagine a world without the ADA, but before it existed, if you were disabled, stores could turn you away and employers could refuse to hire you. Transit was largely inaccessible. America simply was not built for all Americans, but courageous activists pushed to change that. In 1973, the Congress passed the landmark Rehabilitation Act, banning discrimination by any federally funded entity. Then, 17 years later, a bipartisan group of legislators persevered in passing the ADA, banning discrimination against people with disabilities in most areas of public life, from the workplace and public schools to public transit and telecommunications.

The ADA has had a profound impact, but we still have much more work to do. Disabled Americans are still three times less likely to have a job; and when they do, they often earn less for doing the same work. Voting locations, transit, and public spaces are too often inaccessible. And we need to continue building a culture that not only protects disability rights but also celebrates disability pride.

My Administration has worked hard to build on the ADA's foundation. Soon after I came into office, I signed an Executive Order advancing opportunities for people with disabilities in the Federal workforce; and we are helping State and local governments, employers, and nonprofits tap Federal funds to hire more Americans with disabilities as well. We ended the use of unjust sub-minimum wages in Federal contracts, and the Department of Labor is working around the clock to protect the rights of disabled workers. The Department of Justice and Department of Health and Human Services also developed guidance for emergency responders to better protect the rights of people with disabilities. And to ensure that every American has the opportunity to exercise their fundamental right to vote, I signed an Executive Order directing agencies to make voter registration and information about voting resources more accessible.

We are also rebuilding our Nation's infrastructure and making transit and public spaces more accessible. Our Bipartisan Infrastructure Law makes our Nation's biggest investment ever in accessible transit. This includes $1.75 billion to repair and improve accessibility in transit stations across America—including in some of our oldest and busiest railways. This historic investment also expands access to high-speed Internet, so millions of disabled Americans can work, study, and stay connected from home. The Department of Transportation is working to improve air travel for all, including for

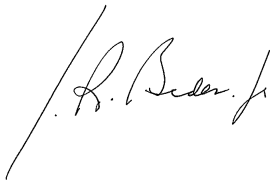
people who use wheelchairs. And the United States Access Board is developing new guidelines under the ADA that will improve the accessibility of sidewalks, streets, crosswalks, and other public rights of way.

We also know the isolation and loss of the pandemic hit the disability community especially hard. That is a big reason why we provided tens of billions of dollars to States to expand Medicaid—an essential lifeline for 21 million Americans, including many in the disability community. And last month, I worked with members of the Congress to reach a bipartisan budget deal that protects Social Security, Medicare, and Medicaid. I also signed an Executive Order to improve jobs and support for caregivers and provide more care options for people with disabilities and their families. I continue to urge States that have not yet expanded Medicaid under the Affordable Care Act to at least cover residents who are currently locked out. And I call on the Congress to improve and expand home- and community-based services so more seniors and people with disabilities can live independently in their own homes.

The ADA is an essential foundation to this continued work—a reminder that we can still do big things in America when we come together. For over 61 million disabled Americans, it is much more than a law—it is the key to equality, opportunity, and independence. And for our country, it is a testament to our character and commitment to keep pushing to finally realize the full promise of America for all Americans.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim July 26, 2023, as the Anniversary of the Americans with Disabilities Act. I encourage Americans to celebrate the 33rd year of this defining moment in Civil Rights law and the essential contributions of individuals with disabilities to our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of July, 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-eighth.



[FR Doc. 2023–16212
Filed 7–27–23; 8:45 am]
Billing code 3395–F3–P

Rules and Regulations

Federal Register
Vol. 88, No. 144
Friday, July 28, 2023

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[NRC–2023–0068]

Regulatory Guide: Cybersecurity Event Notifications

AGENCY: Nuclear Regulatory Commission.

ACTION: Final guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 1 to Regulatory Guide (RG), 5.83, ''Cybersecurity Event Notifications.'' This revision describes methods that the staff of the NRC considers acceptable for licensees to meet requirements in NRC regulations to report and record cybersecurity events.

DATES: Revision 1 to RG 5.83 is available on July 28, 2023.

ADDRESSES: Please refer to Docket ID NRC–2023–0068 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–2023–0068. 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 individuals 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, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. 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.

Revision 1 to RG 5.83 and the response to public comments may be found in ADAMS under Accession Nos. ML23087A017 and ML23087A018, respectively.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Daniel Warner, Office of Nuclear Security and Incident Response, telephone: 301–287–3642; email: *Daniel.Warner@nrc.gov;* and Stanley Gardocki, Office of Nuclear Regulatory Research, telephone: 301–415–1067; email: *Stanley.Gardocki@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a revision in the NRC's ''Regulatory Guide'' series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

The proposed Revision 1 to RG 5.83 was issued with a temporary identification of Draft Regulatory Guide, DG–5079 (ADAMS Accession No. ML22250A443).

This revision of the guide (Revision 1) addresses new concerns identified since the NRC first issued RG 5.83 in 2015. The primary changes made have been to align the definitions in the glossary with those in recent updates to RG 5.71, and to provide clarification in the eight-hour notification section about the reportability of malicious activity against devices that reside on the same networks as critical digital assets (CDAs) or that support CDAs.

II. Additional Information

The NRC published a notice of the availability of DG–5079 in the **Federal Register** on April 24, 2023 (88 FR 24715), for a 30-day public comment period. The public comment period closed on May 24, 2023. Public comments on DG–5079 and the staff responses to the public comments are available under ADAMS under Accession No. ML23087A018.

As noted in the **Federal Register** on December 9, 2022 (87 FR75671), this document is being published in the ''Rules'' section of the **Federal Register** to comply with publication requirements under title 1 of the *Code of Federal Regulations* (1 CFR), chapter I.

III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting, Forward Fitting, and Issue Finality

Issuance of RG 5.83, Revision 1, does not constitute backfitting as defined in § 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Backfitting,'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests'' (ADAMS Accession No. ML18093B087); constitute forward fitting as that term is defined and described in MD 8.4; or affect issue finality of any approval issued under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' As explained in RG 5.83, Revision 1, applicants and licensees are not required to comply with the positions set forth in this guide.

V. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/reg-guides/*

contactus.html. Suggestions will be considered in future updates and enhancements to the ''Regulatory Guide'' series.

Dated: July 24, 2023.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2023–15990 Filed 7–27–23; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0935; Project Identifier MCAI–2022–01311–T; Amendment 39–22491; AD 2023–13–06]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Bombardier, Inc., Model BD–100–1A10 airplanes. This AD was prompted by an in-service event where the nose gear door amber caution message displayed on the crew alerting system during the initial climb after gear retraction. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 1, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 1, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0935; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com*; website *bombardier.com*.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2023–0935.

FOR FURTHER INFORMATION CONTACT: Gabriel D. Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7343; email *9-avs-nyaco-cos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Bombardier, Inc., Model BD–100–1A10 airplanes. The NPRM published in the **Federal Register** on April 25, 2023 (88 FR 24924). The NPRM was prompted by AD CF–2022–57, dated October 5, 2022, issued by Transport Canada, which is the aviation authority for Canada (referred to after this as the MCAI). The MCAI states an in-service event occurred where the nose gear door amber caution message displayed on the crew alerting system during the initial climb after gear retraction. After landing, an inspection found that one of the nose landing gear (NLG) door hinge fitting assemblies were broken. The absence of an inspection to detect cracks in the fillet radii of the NLG door hinge fitting could result in door misalignment with the airplane.

In the NPRM, the FAA proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is issuing this AD to address cracked fillet radii of NLG door hinge fittings. The unsafe condition, if not addressed, could result in a NLG door misalignment, which could increase the drag and yawing movement during flight, could cause jamming of the door affecting the ability to extend or retract the NLG, or could potentially result in the NLG door detaching from the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0935.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Bombardier Challenger 300 BD–100 Time Limits/Maintenance Checks Temporary Revision (TR) TR5–2–101, dated June 30, 2022; and (Bombardier) Challenger 350 BD–100 Time Limits/Maintenance Checks Temporary Revision TR5–2–30, dated June 30, 2022. This service information specifies new or more restrictive airworthiness limitations for the NLG door hinge fittings fillet radii. These documents are distinct because they apply to different airplane configurations.

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

Costs of Compliance

The FAA estimates that this AD, would affect 716 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA has determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane

estimate. Therefore, the agency estimates the average total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–13–06 Bombardier, Inc.: Amendment 39–22491; Docket No. FAA–2023–0935; Project Identifier MCAI–2022–01311–T.

(a) Effective Date

This airworthiness directive (AD) is effective September 1, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Bombardier, Inc., Model BD–100–1A10 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time limits/maintenance checks; 32, Landing Gear.

(e) Reason

This AD was prompted by an in-service event that occurred where the nose gear door amber caution message displayed on the crew alerting system during the initial climb after gear retraction. The FAA is issuing this AD to address cracked fillet radii of the nose landing gear (NLG) door hinge fittings. The unsafe condition, if not addressed, could result in a NLG door misalignment, which could increase the drag and yawing movement during flight, could cause jamming of the door affecting the ability to extend or retract the NLG, or could potentially result in the NLG door detaching from the airplane.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 60 days after the effective date of this AD, revise the existing maintenance and inspection program, as applicable, to incorporate the information specified in Bombardier Challenger 300 BD–100 Time Limits/Maintenance Checks Temporary Revision (TR) TR5–2–101, dated June 30, 2022; or (Bombardier) Challenger 350 BD–100 Time Limits/Maintenance Checks TR TR5–2–30, dated June 30, 2022; as applicable. The initial compliance time for doing the tasks is at the time specified in Bombardier Challenger 300 BD–100 Time Limits/Maintenance Checks Temporary Revision (TR) TR5–2–101, dated June 30, 2022; or (Bombardier) Challenger 350 BD–100 Time Limits/Maintenance Checks TR TR5–2–30, dated June 30, 2022; as applicable, or within 60 days after the effective date of this AD, whichever occurs later.

(h) No Alternative Actions or Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals, may be used unless the actions and intervals, are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (i)(1) of this AD.

(i) Other FAA 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 manager of the certification office, send it to ATTN: Manager, FAA, International Validation Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or Transport Canada; or Bombardier, Inc.'s Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Additional Information

(1) Refer to Transport Canada AD CF–2022–57, dated October 5, 2022, for related information. This Transport Canada AD may be found in the AD docket at regulations.gov under Docket No. FAA–2023–0935.

(2) For more information about this AD, contact Gabriel D. Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7343; email *9-avs-nyaco-cos@faa.gov*.

(k) Material Incorporated by Reference

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

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

(i) Bombardier Challenger 300 BD–100 Time Limits/Maintenance Checks Temporary Revision (TR) TR5–2–101, dated June 30, 2022.

(ii) (Bombardier) Challenger 350 BD–100 Time Limits/Maintenance Checks Temporary Revision TR5–2–30, dated June 30, 2022.

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

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

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

Issued on July 21, 2023.

Victor Wicklund,

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

[FR Doc. 2023–16010 Filed 7–27–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31500; Amdt. No. 4072]

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 July 28, 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 July 28, 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 July 21, 2023.

Thomas J. Nichols,

Flight Standards Service Manager, Aviation Safety, 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; § 97.31RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport name	FDC No.	FDC date	Procedure name
7–Sep–23	AR	Manila	Manila Muni	3/0150	7/5/23	RNAV (GPS) RWY 18, Amdt 1B.
7–Sep–23	CA	Ukiah	Ukiah Muni	3/1126	5/12/23	RNAV (GPS)–B, Amdt 1.
7–Sep–23	OH	Piqua	Piqua/Hartzell Fld	3/1232	7/5/23	RNAV (GPS) RWY 26, Amdt 1.
7–Sep–23	WY	Jackson	Jackson Hole	3/1329	7/13/23	RNAV (GPS) Z RWY 19, Amdt 3.
7–Sep–23	MI	Detroit	Detroit Metro Wayne County	3/1408	7/6/23	RNAV (GPS) PRM Y RWY 4L, Orig-A.
7–Sep–23	MO	St Louis	Creve Coeur	3/1480	5/5/23	Takeoff Minimums and Obstacle DP, Amdt 2A.
7–Sep–23	MD	Ridgely	Gooden Airpark	3/2130	7/6/23	RNAV (GPS) RWY 30, Orig-C.
7–Sep–23	CA	Palm Springs	Bermuda Dunes	3/2629	5/9/23	RNAV (GPS) RWY 10, Orig-C.
7–Sep–23	MN	Wheaton	Wheaton Muni	3/3200	7/10/23	RNAV (GPS) RWY 16, Orig-B.
7–Sep–23	MN	Wheaton	Wheaton Muni	3/3203	7/10/23	RNAV (GPS) RWY 34, Orig-B.
7–Sep–23	NV	Reno	Reno/Tahoe Intl	3/3715	7/13/23	RNAV (GPS) X RWY 35L, Amdt 2.
7–Sep–23	WV	Martinsburg	Eastern WV Rgnl/Shepherd Fld.	3/4197	7/12/23	RNAV (GPS) RWY 8, Amdt 1C.
7–Sep–23	AL	Gadsden	Northeast Alabama Rgnl	3/4379	6/22/23	RNAV (GPS) RWY 24, Amdt 1C.
7–Sep–23	CA	Los Angeles	Whiteman	3/4958	7/13/23	VOR–A, Amdt 2B.
7–Sep–23	MA	Northampton	Northampton	3/5168	7/12/23	RNAV (GPS) RWY 14, Orig-B.
7–Sep–23	TN	Fayetteville	Fayetteville Muni	3/5209	7/13/23	VOR/DME RWY 2, Orig-G.
7–Sep–23	TN	Fayetteville	Fayetteville Muni	3/5211	7/13/23	RNAV (GPS) RWY 20, Amdt 1B.
7–Sep–23	TN	Fayetteville	Fayetteville Muni	3/5212	7/13/23	RNAV (GPS) RWY 2, Orig-A.
7–Sep–23	WY	Riverton	Central Wyoming Rgnl	3/5422	6/14/23	ILS OR LOC RWY 28, Amdt 3A.
7–Sep–23	WY	Riverton	Central Wyoming Rgnl	3/5423	6/14/23	RNAV (GPS) RWY 28, Amdt 1A.
7–Sep–23	WY	Riverton	Central Wyoming Rgnl	3/5424	6/14/23	VOR RWY 28, Amdt 10A.
7–Sep–23	OH	Wapakoneta	Neil Armstrong	3/5613	6/23/23	RNAV (GPS) RWY 8, Orig-C.
7–Sep–23	OH	Wapakoneta	Neil Armstrong	3/5614	6/23/23	RNAV (GPS) RWY 26, Orig-B.
7–Sep–23	OH	Wapakoneta	Neil Armstrong	3/5615	6/23/23	VOR–A, Amdt 8A.
7–Sep–23	NE	Red Cloud	Red Cloud Muni	3/5885	7/13/23	RNAV (GPS) RWY 16, Orig-B.
7–Sep–23	NY	Piseco	Piseco	3/6072	7/14/23	RNAV (GPS) RWY 4, Orig-B.
7–Sep–23	MA	Boston	General Edward Lawrence Logan Intl.	3/6275	6/27/23	RNAV (GPS) RWY 27, Amdt 1.
7–Sep–23	CA	Petaluma	Petaluma Muni	3/6291	6/29/23	RNAV (GPS) RWY 29, Orig-C.
7–Sep–23	CA	Petaluma	Petaluma Muni	3/6292	6/29/23	VOR RWY 29, Orig-D.
7–Sep–23	SD	Aberdeen	Aberdeen Rgnl	3/6397	6/26/23	RNAV (GPS) RWY 13, Amdt 1.
7–Sep–23	WI	Crandon	Crandon/Steve Conway Muni	3/6423	7/14/23	RNAV (GPS) RWY 30, Orig-A.
7–Sep–23	WI	Crandon	Crandon/Steve Conway Muni	3/6424	7/14/23	RNAV (GPS) RWY 12, Orig-A.
7–Sep–23	ND	Northwood	Northwood Muni/Vince Fld	3/6559	4/25/23	RNAV (GPS) RWY 26, Orig-A.
7–Sep–23	GA	Macon	Middle Georgia Rgnl	3/6594	6/8/23	Takeoff Minimums and Obstacle DP, Amdt 3B.
7–Sep–23	VA	Norfolk	Norfolk Intl	3/6605	4/25/23	ILS OR LOC RWY 5, Amdt 26F.
7–Sep–23	NJ	Teterboro	Teterboro	3/7161	5/17/23	Takeoff Minimums and Obstacle DP, Amdt 8.
7–Sep–23	WI	Ephraim	Ephraim/Gibraltar	3/7248	5/18/23	Takeoff Minimums and Obstacle DP, Orig.
7–Sep–23	WV	Charleston	West Virginia Intl Yeager	3/7282	6/29/23	VOR–A, Amdt 14.
7–Sep–23	ME	Portland	Portland Intl Jetport	3/7909	4/28/23	RNAV (GPS) RWY 11, Amdt 4B.
7–Sep–23	MT	Malta	Malta	3/8199	4/28/23	RNAV (GPS) RWY 8, Amdt 2.
7–Sep–23	NY	Kingston	Kingston-Ulster	3/9446	5/2/23	RNAV (GPS) RWY 15, Amdt 1A.
7–Sep–23	NY	Kingston	Kingston-Ulster	3/9448	5/2/23	RNAV (GPS) RWY 33, Amdt 1A.

AIRAC date	State	City	Airport name	FDC No.	FDC date	Procedure name
7–Sep–23	WV	Charleston	West Virginia Intl Yeager	3/9811	6/29/23	RNAV (RNP) Z RWY 23, Orig-B.

[FR Doc. 2023–16039 Filed 7–27–23; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31499; Amdt. No. 4071]

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 July 28, 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 July 28, 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 July 21, 2023.

Thomas J. Nichols,

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

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 7 September 2023

Muscle Shoals, AL, KMSL, Takeoff Minimums and Obstacle DP, Amdt 1A
Groton (New London), CT, KGON, Takeoff Minimums and Obstacle DP, Amdt 8A
Leesburg, FL, KLEE, RNAV (GPS) RWY 13, Amdt 2E
Leesburg, FL, KLEE, Takeoff Minimums and Obstacle DP, Amdt 5A
Titusville, FL, X21, RNAV (GPS)–B, Orig-B, CANCELED
Donalsonville, GA, 17J, VOR–A, Amdt 3B, CANCELED
Moultrie, GA, KMGR, NDB–A, Amdt 1, CANCELED
Michigan City, IN, KMGC, Takeoff Minimums and Obstacle DP, Amdt 2A
Grand Rapids, MI, KGRR, RADAR 1, Amdt 10C, CANCELED
Shelby, MT, KSBX, RNAV (GPS) RWY 5, Orig-C
Shelby, MT, KSBX, RNAV (GPS) RWY 23, Amdt 2C
Reno, NV, KRNO, RNAV (GPS) X RWY 35R, Amdt 3A
Cleveland, OH, KBKL, Takeoff Minimums and Obstacle DP, Amdt 7A
Jamestown, TN, 2A1, VOR–A, Amdt 2A, CANCELED
Alice, TX, KALI, Takeoff Minimums and Obstacle DP, Orig-A

Effective 5 October 2023

Anchorage, AK, PANC, ILS OR LOC RWY 7L, ILS RWY 7L (SA CAT I), ILS RWY 7L (SA CAT II), Amdt 5
Anchorage, AK, PANC, ILS OR LOC RWY 7R, ILS RWY 7R (SA CAT I), ILS RWY 7R (CAT II), ILS RWY 7R (CAT III), Amdt 5
Brevig Mission, AK, PFKT, BREVIG THREE, Graphic DP
Brevig Mission, AK, PFKT, Takeoff Minimums and Obstacle DP, Amdt 1
Galena, AK, PAGA, VOR RWY 26, Orig
Northway, AK, PAOR, NORTHWAY ONE, Graphic DP
Northway, AK, PAOR, RNAV (GPS) RWY 6, Amdt 1
Northway, AK, PAOR, RNAV (GPS) RWY 24, Amdt 2
Northway, AK, PAOR, Takeoff Minimums and Obstacle DP, Amdt 3
Northway, AK, PAOR, VOR–A, Amdt 2
Tok, AK, PFTO, GULKANA ONE, Graphic DP
Tok, AK, PFTO, RNAV (GPS) RWY 8, Amdt 1
Tok, AK, PFTO, RNAV (GPS)–A, Amdt 1
Tok, AK, PFTO, Takeoff Minimums and Obstacle DP, Amdt 2
Williams, AZ, KCMR, RNAV (GPS) RWY 18, Orig
Williams, AZ, KCMR, Takeoff Minimums and Obstacle DP, Orig
Coalinga, CA, C80, AVENAL ONE, Graphic DP
Coalinga, CA, C80, RNAV (GPS) RWY 30, Orig
Coalinga, CA, C80, Takeoff Minimums and Obstacle DP, Orig
Indianapolis, IN, KTYQ, ILS OR LOC RWY 36, Amdt 6
Indianapolis, IN, KTYQ, RNAV (GPS) RWY 18, Amdt 2
Indianapolis, IN, KTYQ, RNAV (GPS) RWY 36, Amdt 1
Indianapolis, IN, KTYQ, Takeoff Minimums and Obstacle DP, Amdt 2
Ruston, LA, KRSN, NDB RWY 18, Orig-G, CANCELED
Ruston, LA, KRSN, RNAV (GPS) RWY 36, Amdt 2
Worcester, MA, KORH, ILS OR LOC RWY 11, ILS RWY 11 (CAT II), ILS RWY 11 (CAT III), Amdt 25B
Worcester, MA, KORH, ILS OR LOC RWY 29, Amdt 4E
Leonardtown, MD, 2W6, RNAV (GPS) RWY 11, Amdt 3
Leonardtown, MD, 2W6, Takeoff Minimums and Obstacle DP, Amdt 1
Detroit, MI, KDET, ILS OR LOC RWY 15, Amdt 11A
St Paul, MN, 21D, Takeoff Minimums and Obstacle DP, Amdt 2
Kansas City, MO, KMKC, ILS OR LOC RWY 4, Amdt 6
Kansas City, MO, KMKC, ILS OR LOC RWY 19, Amdt 24A
Kansas City, MO, KMKC, RNAV (GPS) RWY 4, Amdt 3B
Kansas City, MO, KMKC, RNAV (GPS) RWY 22, Amdt 2A
Kansas City, MO, KMKC, RNAV (GPS) Y RWY 19, Orig
Kansas City, MO, KMKC, RNAV (GPS) Z RWY 19, Amdt 2
Kansas City, MO, KMKC, Takeoff Minimums and Obstacle DP, Amdt 5A
Mountain View, MO, KMNF, RNAV (GPS) RWY 28, Amdt 1
Bedford, PA, KHMZ, RNAV (GPS) RWY 32, Amdt 2A
Bedford, PA, KHMZ, VOR–A, Amdt 1B, CANCELED
Chambersburg, PA, N68, RNAV (GPS) RWY 6, Amdt 1
Chambersburg, PA, N68, RNAV (GPS) RWY 24, Amdt 1
Chambersburg, PA, N68, VOR/DME–B, Amdt 2B, CANCELED
Big Lake, TX, E41, Takeoff Minimums and Obstacle DP, Amdt 3
Dallas, TX, KDAL, Takeoff Minimums and Obstacle DP, Amdt 17A
Winnie/Stowell, TX, T90, RNAV (GPS)–A, Orig
Winnie/Stowell, TX, T90, Takeoff Minimums and Obstacle DP, Orig
Dixon, WY, KDWX, CARBON TWO, Graphic DP
Dixon, WY, KDWX, DIXON TWO, Graphic DP

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BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 998

[Docket No. 230717–0169]

RIN 0648–BM21

Shore Leave for Professional Mariners of the National Oceanic and Atmospheric Administration

AGENCY: Office of Marine and Aviation Operations (OMAO), National Oceanic and Atmospheric Administration (NOAA), United States Department of Commerce.

ACTION: Final rule.

SUMMARY: On December 23, 2022, the President signed into law the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (FY 2023 NDAA). Pursuant to the FY 2023 NDAA, this final rule establishes shore leave regulations for NOAA's professional mariners and authorizes payment of the difference between a NOAA professional mariner's temporary and permanent rates of pay for annual leave

accrued while temporarily promoted. This final rule also makes clerical amendments to create a new subchapter specific to NOAA Marine and Aviation Operations.

DATES: This rule is effective October 1, 2023.

FOR FURTHER INFORMATION CONTACT: LCDR Zachary Cress, NOAA Corps, OMAO Executive Affairs Division, 301–713–1045.

SUPPLEMENTARY INFORMATION:

Background

In addition to commissioned officers of the NOAA Corps, NOAA Marine and Aviation Operations employs civilian professional mariners who serve in crew positions on NOAA ships as credentialed licensed engineering officers, unlicensed engineers, licensed mates, engineering electronics technicians, able and ordinary seamen, stewards, and survey technicians as well as non-credentialed, but vitally important electronics technicians who maintain ships' mission systems.

Unlike NOAA commissioned officers, credentialed NOAA professional mariners work exclusively on NOAA ships and do not rotate between sea and shore assignments. Non-credentialed electronics technicians rotate between sea and shore duty within NOAA Marine and Aviation Operations Engineering Branch, but are required, as a condition of employment, to perform duties at sea and so earn shore leave.

Commercial employers of credentialed mariners typically employ rotational staffing models in which mariners work on a ship for a specified period and are off for a specified period, such as 2-on-1-off, in which a mariner may work, for example, 28 days on followed by 14 days paid time off. NOAA, as a Federal agency, cannot fully implement rotational staffing models without the authority to provide additional paid time off.

Shore Leave

Shore leave is a leave of absence, in addition to earned annual leave, that is earned by employees serving aboard oceangoing vessels. Unlike annual leave, shore leave is earned in whole days rather than hours, and unused shore leave is not payable. Under existing law and regulations, shore leave earnings are limited to 2 days for each 30 calendar days of qualifying service.

Section 11706 of the FY 2023 NDAA authorizes NOAA to prescribe regulations for shore leave for its professional mariner workforce without regard to the requirements of 5 U.S.C. 6305 and, by extension, the regulations implementing 5 U.S.C. 6305 at 5 CFR part 630, subpart G. Section 11706 of the FY 2023 NDAA provides that such regulations shall require NOAA professional mariners serving aboard oceangoing vessels to be granted 4 days of shore leave per 14-day pay period.

This final rule establishes such shore leave accrual rates for NOAA professional mariners. Because a professional mariner may join a NOAA ship in the middle of a pay period, and because ship sailing schedules do not conform to established pay periods, these regulations allow professional mariners to earn 1 day of shore leave for each 3 and one-half days of consecutive periods of assignment such that they may earn the required 4 days of shore leave for a 14-day pay period.

This final rule adopts most of the conditions of qualifying service for which shore leave may be earned under 5 CFR part 630, subpart G, but departs from the requirement that they be earned only in relation to extended voyages of 7 consecutive days, such that they may be earned for any consecutive period of work aboard a NOAA ship. This final rule also adopts the same conditions of granting and forfeiture of shore leave under 5 CFR 630.704.

Temporary Promotion

Section 11706 of the FY 2023 NDAA also requires that regulations established for shore leave provide that temporarily promoted NOAA professional mariners may be paid the difference between their temporary and permanent rates of pay for leave accrued while temporarily promoted.

NOAA professional mariners are often temporarily promoted to the next higher grade to fill an absence when they are qualified and hold the appropriate credential and/or license to serve in that higher grade. For example, a third assistant engineer may be temporarily promoted to second assistant engineer to fill a vacancy and perform the specific duties of that position. Temporary promotions are made only for full pay periods, and a temporarily promoted professional mariner receives the pay of the grade to which they are temporarily promoted for the specified pay period(s). However, at present, any hours of annual leave earned while temporarily promoted are paid out at the professional mariner's permanent pay rate, rather than at the temporarily increased pay rate at which they earned that leave.

This final rule authorizes payment of the difference between a NOAA professional mariner's temporary and permanent rates of pay for leave accrued while temporarily promoted.

Housekeeping

Part 998 of this title is currently placed within subchapter G, which concerns the Requirements for Certification by NOAA of Non-Federal Assets into the Integrated Coastal and Ocean Observation System. NOAA Marine and Aviation Operations rules are not within the scope of that subchapter. This final rule creates a new subchapter H for NOAA Marine and Aviation Operations rules. This final rule also renames part 998 from ''National Oceanic and Atmospheric Administration Commissioned Officer Corps'' to ''Marine and Aviation Operations'' in recognition that the name of part 998 should be inclusive of the entire NOAA Marine and Aviation Operations workforce rather than a subset of that workforce, the NOAA Commissioned Officer Corps (NOAA Corps).

Classification

Pursuant to 5 U.S.C. 553(a)(2), the provisions of the Administrative Procedure Act (APA) requiring notice of proposed rulemaking and the opportunity for public participation are inapplicable to this final rule because this rule falls within the agency management and personnel exception as it strictly regulates NOAA professional mariner personnel, addresses internal agency management, and does not affect persons outside the agency.

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

This regulation is exempt from the notice and comment provisions of the APA. Therefore, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Accordingly, no Regulatory Flexibility Analysis is required and none has been prepared.

This rule does not have any collection of information requirements under the Paperwork Reduction Act.

List of Subjects in 15 CFR Part 998

Administrative practice and procedure, Government employees, Military personnel.

Dated: July 18, 2023,

Richard Spinrad,

Under Secretary of Commerce for Oceans and Atmosphere, NOAA Administrator, National Oceanic and Atmospheric Administration.

For the reasons set out in the preamble, NOAA amends 15 CFR chapter IX as follows:

PART 998—MARINE AND AVIATION OPERATIONS

■ 1. The authority citation for part 998 continues to read as follows:

Authority: 33 U.S.C. 3001 *et seq.*

■ 2. Revise the heading for part 998 to read as set forth above.

■ 3. Under authority of 33 U.S.C. 3001 *et seq.,* add subchapter H to read as follows:

SUBCHAPTER H—REGULATIONS OF NOAA MARINE AND AVIATION OPERATIONS

■ 4. Transfer part 998 to subchapter H.

■ 5. Amend part 998 by adding subpart E, consisting of §§ 998.50 through 998.54, to read as follows:

Subpart E—Shore Leave

Sec.
998.50 Applicability.
998.51 Definitions.
998.52 Computation of shore leave.
998.53 Granting shore leave.
998.54 Pay for temporary promotion.

Authority: 33 U.S.C. 3079b.

Subpart E—Shore Leave

§ 998.50 Applicability.

This subpart applies to professional mariners as defined in section 3079b(c) of title 33, United States Code, and in § 998.51, who are regularly assigned duties aboard a NOAA ship. An employee is considered to be regularly assigned when his or her continuing duties are such that all or a significant part of them require that he or she serve aboard a NOAA ship. Temporary assignments of a shore-based employee of the Administration, such as for limited work projects or for training, do not constitute a regular assignment. This subpart does not apply to commissioned officers of the NOAA Corps serving on NOAA ships.

§ 998.51 Definitions.

NOAA ship means a research or survey vessel owned or operated by NOAA as part of the NOAA fleet defined at 33 U.S.C. 891(2), but does not mean a vessel owned or operated by NOAA under the jurisdiction of the NOAA Small Boat Program.

Professional mariner means an individual employed by the Administration on a NOAA ship who has the necessary expertise to serve in the engineering, deck, steward, electronic technician, or survey departments.

Shore leave means a leave of absence, in addition to earned annual leave, that is earned by professional mariners serving aboard NOAA ships, as authorized by section 3079b of title 33, United States Code, and this subpart.

§ 998.52 Computation of shore leave.

(a) A professional mariner earns shore leave at the rate of one day of shore leave for each 3 and one-half consecutive days of assignment to a NOAA ship such that a total of up to 4 days of shore leave may be earned in any given pay period.

(b) For a professional mariner, an assignment begins either on the date he or she assumes their duties aboard a NOAA ship or on the date he or she comes aboard when a voyage is in progress. The assignment terminates on the date he or she ceases to be assigned to a NOAA ship or on the date on which he or she is released from assignment of their duties.

(c) In computing days of assignment, the Administration shall also include:

(1) The days a professional mariner spends traveling to join a NOAA ship to which assigned;

(2) The days a professional mariner spends traveling between NOAA ships when the employee is assigned from one NOAA ship to another; and

(3) The days on which the professional mariner is on sick leave when he or she becomes sick during an assignment (whether or not continued as a member of the crew) but not beyond the termination date of the assignment to the NOAA ship.

(d) In computing days of assignment, the Administration shall not include days the professional mariner is on any kind of leave other than sick leave.

§ 998.53 Granting shore leave.

(a) *Authority.* (1) A professional mariner has an absolute right to use shore leave, subject to the right of the head of the agency to fix the time at which shore leave may be used.

(2) A professional mariner shall submit his or her request for shore leave in writing and whenever such a request for shore leave is denied, the denial shall be in writing.

(b) *Accumulation.* Shore leave for professional mariners may be accumulated for future use without limitation and is in addition to annual leave.

(c) *Charge for shore leave.* The minimum charge for shore leave is one day and additional charges are in multiples thereof.

(d) *Lump-sum payment.* Shore leave may not be the basis for lump-sum payment on separation from the Administration.

(e) *Terminal leave.* (1) Except as provided by paragraph (e)(2) of this section, NOAA shall not grant shore leave to a professional mariner as terminal leave. For the purpose of this paragraph terminal leave means an approved absence immediately before an employee's separation when an agency knows the employee will not return to duty before the date of his or her separation.

(2) NOAA shall grant shore leave as terminal leave when the professional mariner's inability to use shore leave was due to circumstances beyond his or her control and not due to his or her own act or omission.

(f) *Forfeiture of shore leave.* Shore leave not granted before:

(1) Separation from employment with the Administration, or

(2) Official assignment (other than by temporary detail) to a position within NOAA in which the employee does not earn shore leave, is forfeited. When an official assignment will result in forfeiture of shore leave, NOAA, to the extent administratively practicable shall give an employee an opportunity to use the shore leave he or she has to his or her credit either before the reassignment or not later than 6 months after the date of his reassignment when the agency is unable to grant the shore leave before the reassignment.

§ 998.54 Pay for temporary promotion.

Professional mariners serving in a position aboard a NOAA ship to which they have been temporarily promoted pursuant to 5 CFR 335.102(f) shall be paid the difference between their temporary and permanent rates of pay for leave accrued while serving in the temporary promotion position unless:

(a) The professional mariner uses the leave before returning to their permanent position; or

(b) The professional mariner is permanently promoted to the higher position without further competition.

[FR Doc. 2023–15680 Filed 7–27–23; 8:45 am]

BILLING CODE 3510–12–P

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

32 CFR Part 1700

Procedures for Disclosure of Records Pursuant to the Freedom of Information Act

AGENCY: Office of the Director of National Intelligence.

ACTION: Final rule.

SUMMARY: This final rule amends the Office of the Director of National Intelligence's (ODNI) rules implementing the Freedom of Information Act (FOIA).

DATES:

Effective date: This rule is effective September 26, 2023.

Comment date: Comments due on or before August 28, 2023.

ADDRESSES: Submit electronic comments to *DNI-FOIA-Liaison@dni.gov.*

FOR FURTHER INFORMATION CONTACT: Erin Morrison, 703–275–3500, *DNI-FOIA-Liaison@dni.gov.*

SUPPLEMENTARY INFORMATION: On August 16, 2007, 32 CFR part 1700 ''Procedures for Disclosure of Records Pursuant to the Freedom of Information Act'' became effective for ODNI. The regulation addresses all aspects of FOIA processing, including how and where to submit FOIA requests, fees for record services, procedures for handling business information, requests for expedited processing, and the right to appeal denials of information. This amendment makes alterations due to organizational changes and subsequent amendments to the FOIA.

Executive Order 12866 and 13563

This final rule has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, section 1, Statement of Regulatory Philosophy and Principles, and in accordance with Executive Order 13563, Improving Regulation and Regulatory Review, section 1, General Principles of Regulation. Because this final rule does not constitute a significant regulatory action under section 3(f) of Executive Order 12866, it was not subject to mandatory prior review by the Office of Management and Budget Office of Information and Regulatory Affairs (OMB/OIRA) under section 6 of Executive Order 12866.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that ODNI consider the impact of paperwork and other burdens imposed on the public associated with the collection of information. There are no information collection requirements associated with this final rule and therefore no analysis of burden is required.

Executive Order 12988

This final rule meets the applicable standards set forth in Executive Order 12988, Civil Justice Reform.

Executive Order 13132

Executive Order 13132 requires ODNI to examine the implications for the distribution of power and responsibilities among the various levels of government resulting from this final rule. ODNI concludes that the final rule does not affect the rights, roles and responsibilities of the States, involves no preemption of State law, and does not limit State policymaking discretion. This rule has no federalism implications as defined by the Executive Order.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), ODNI has reviewed this final rule and certifies that it will not have a significant economic impact on a substantial number of small entities, and thus no regulatory flexibility analysis is required. This final rule pertains to ODNI's policies and practices for processing FOIA requests, and does not impose any new requirements on small entities.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, 109 Stat. 48 (Mar. 22, 1995), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. This final rule imposes no Federal mandate on any State, local, or Tribal government or on the private sector. Accordingly, no UMRA analysis of economic and regulatory alternatives is required.

Small Business Regulatory Enforcement Fairness Act of 1996

This final rule will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Thus, it does not constitute major rules as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804.

Environmental Impact

ODNI has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347, and has determined that this action does not have a significant effect on the human environment.

Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended, 42 U.S.C. 6362. This rulemaking is not a major regulatory action under the provisions of the EPCA.

This document revises part 1700.

List of Subjects in 32 CFR Part 1700

Administrative practice and procedure, Freedom of information.

The Office of the Director of National Intelligence revises 32 CFR part 1700 to read as follows:

PART 1700—PROCEDURES FOR DISCLOSURE OF RECORDS PURSUANT TO THE FREEDOM OF INFORMATION ACT

Sec.
1700.1 Authority and purpose.
1700.2 Definitions.
1700.3 Contact for general information and requests.
1700.4 Requirements for making requests.
1700.5 Processing of requests for records.
1700.6 Time frames for ODNI responses.
1700.7 Administrative appeals.
1700.8 Procedures for requests implicating confidential commercial information.
1700.9 Fees.
1700.10 Other rights and services.

Authority: 5 U.S.C. 552; 50 U.S.C. 3023–3025; Pub. L. 108–458, 118 Stat. 3638.

§ 1700.1 Authority and purpose.

(a) This part is issued under the authority of the Freedom of Information Act, as amended, 5 U.S.C. 552; the National Security Act of 1947, as amended, 50 U.S.C. 3023–3025; and the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108–458, 118 Stat. 3638.

(b) This part prescribes procedures for:

(1) ODNI administration of the FOIA;

(2) Requesting records from ODNI pursuant to the FOIA; and

(3) Filing an administrative appeal with ODNI of an initial adverse decision under the FOIA.

(c) This part contains the rules that ODNI follows in processing requests for records under the FOIA. The rules in this part should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget.

§ 1700.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Direct costs* are those expenditures which ODNI actually incurs in the processing of a FOIA request. It includes, but is not limited to, the salary of the employee performing the work and costs associated with duplication. It does not include overhead factors such as space.

(b) *Fees* are those direct costs which may be assessed considering the categories established by the FOIA. Requesters should submit information

to assist ODNI in determining the proper fee category. ODNI may draw reasonable inferences from the identity and activities of the requester in making fee determinations. The fee categories include:

(1) *Commercial use request.* A request seeking information for a use or purpose that furthers the requester's commercial, trade, or profit interests, including pursuit of those interests through litigation.

(2) *Educational institution.* Any institution that operates a program or programs of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research. ODNI may seek assurance from the requester that the request is in furtherance of scholarly research and will advise requesters of their placement in this category.

(3) *Non-commercial scientific institution.* An institution that is not operated on a commercial basis and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

(4) *Representative of the news media.* Any person or entity that actively gathers information of potential interest to a segment of the public, uses editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information that concerns current events or that would be of interest to the public.

(c) *Freedom of Information Act, FOIA,* or *the Act* is the statute as codified at 5 U.S.C. 552, as amended.

(d) *FOIA Public Liaison* is the individual designated by the Chief FOIA Officer to assist FOIA requesters with concerns about ODNI's processing of their FOIA requests, including assistance in resolving disputes.

(e) *Information Review & Release Group (''IRRG'') Chief* is the ODNI employee to whom the Chief of the ODNI Information Management Office (IMO) has delegated their responsibility for processing FOIA requests.

(f) *ODNI* is the Office of the Director of National Intelligence and its component organizations. This does not include other members of the Intelligence Community as defined in 50 U.S.C. 3003, or other federal entities subsequently designated in accordance with this authority, unless specifically designated and included in this part or in the notice of a system of records.

(g) *OGIS* is the Office of Government Information Services within the National Archives and Records Administration.

(h) *Pages* are paper copies of standard office size or the dollar value equivalent in other media.

(i) *Person* is an individual, partnership, corporation, association, or public or private organization other than an agency.

(j) *Record* is any document, irrespective of physical or electronic form, made or received by ODNI in pursuance of federal law or in connection with the transaction of public business and appropriate for preservation by ODNI as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of ODNI or because of the informational value of the data contained therein.

(k) *Reproduction* is the generation of a copy of a requested record in a form appropriate for release.

(l) *Requester* is a person, organization, or other entity who submits a written or electronic communication requesting information on or concerning the FOIA program, the availability of records from ODNI, or both.

(m) *Review* means all time expended in examining a record to determine whether any portion must be withheld pursuant to law and in effecting any required deletions. This does not include personnel hours expended in resolving general legal or policy issues.

(n) *Search* means all time expended in looking for and retrieving material that may be responsive to a request.

§ 1700.3 Contact for general information and requests.

For general information on this part, to inquire about the FOIA program at ODNI, or to file a FOIA request, a written submission should be sent, either by mail to the Office of the Director of National Intelligence, IRRG Chief, Information Management Office, Washington, DC 20511, or by email to *DNI-FOIA@dni.gov.* To check on the status of a pending case, an individual may either call the ODNI FOIA Office at (703) 275–1313 or email the ODNI FOIA Office at *DNI-FOIA@dni.gov.*

§ 1700.4 Requirements for making requests.

(a) FOIA requests must be submitted in writing. They may be sent to the Office of the Director of National Intelligence, IRRG Chief, Information Management Office, Washington, DC 20511; by email to *DNI-FOIA@dni.gov;* or through the FOIA portal at *https://www.foia.gov.* For the most expeditious handling, the request letter and envelope, or subject line of the electronic transmission, should be marked ''Freedom of Information Act Request.'' The requester shall provide contact information, such as a phone number, email address, or mailing address.

(b) A requester who is making a request for records about themselves must comply with the verification of identity requirements provided in the ODNI Privacy Act regulations, 32 CFR 1701.7(d).

(c) Where a request for records pertains to a third party, a requester may receive greater access by submitting either a notarized authorization signed by that third party or a declaration made in compliance with the requirements set forth in 28 U.S.C. 1746 by that third party. Such notarized authorization or declaration should authorize disclosure of the requested records to the requester. If the third party is deceased, the requester should submit proof of that fact (*e.g.,* a copy of a death certificate or an obituary). As an exercise of administrative discretion, ODNI can require a requester to supply additional information to verify that a third party has consented to disclosure.

(d) Requests must describe the records sought with sufficient detail to enable ODNI personnel to locate them with a reasonable amount of effort. In general, requesters should include as much detail as possible about the specific records or the types of records that they are seeking, such as the date, title, name, author, recipient, or subject matter of the record. Before or after submitting their requests, requesters may contact the FOIA Public Liaison to discuss the records they are seeking and to receive assistance in describing the records. If ODNI determines that a request does not reasonably describe the records sought, ODNI shall inform the requester what additional information is needed or why the request is otherwise insufficient. If a request does not reasonably describe the records sought, the agency's response to the request may be delayed.

(e) A request should specify the preferred format (including electronic) to convey the records requested. ODNI will accommodate a request for a specific format if the record is readily available in that format. When the format of the response is not specified,

ODNI will provide responsive records in the most convenient format.

§ 1700.5 Processing of requests for records.

(a) On receipt of a request, IMO's IRRG staff will send an acknowledgement letter to the requester which will provide an assigned request number for future reference and, if fees will be charged, shall confirm the requester's agreement to pay fees.

(b) To determine which records are responsive to the request, IRRG staff will task relevant ODNI components to search all places likely to contain potentially responsive records. The ODNI components ordinarily will include records in their possession as of the date that they begin their search unless the request specifically included an end date for the search. If another date is used, the IRRG staff will inform the requester of the date used and the reason for its use. The potentially responsive records will be sent to IRRG staff for responsiveness review and application of relevant exemptions, if any.

(c) When reviewing responsive records, ODNI will determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA. As to any such record, the agency will ordinarily proceed in one of the following ways:

(1) When the record originates with ODNI but contains information of interest to another agency or other Federal Government office, ODNI will typically consult with that other agency or office prior to making a release determination.

(2) When ODNI believes that a different agency is best able to determine whether to disclose the record, ODNI typically will refer the record to that agency and ask that agency to respond to the requester concerning that record (provided the other agency is subject to FOIA).

(i) Ordinarily, the agency that originated the record will be presumed to be the best agency to make the disclosure determination. However, if ODNI and the originating agency jointly agree that ODNI is in the best position to respond regarding the record, then the record may be handled as a consultation.

(ii) If another agency accepts responsibility for responding to a particular record, ODNI will notify the requester of the referral. When appropriate and available, the notice will include a point of contact for the other agency.

(3) The standard referral procedure is not appropriate where disclosure of the identity of the agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. For instance, if ODNI locates within its file's materials originating with another Intelligence Community element, and the involvement of that element in the matter is classified and not publicly acknowledged, then disclosing or attributing the involvement of that Intelligence Community element could cause damage to the national security. In such an instance, and to avoid harm to an interest protected by an applicable exemption, ODNI will coordinate with the originating agency to seek its views on the disclosure of the record. ODNI will then inform the requester of the release determination.

(d) When a request is made for information that is classified, ODNI must determine whether the information is currently and properly classified in accordance with applicable classification rules. When a request involves a record containing classified information that has been classified by another agency, ODNI will refer that portion of the request to the agency that originated the information, or has the primary interest in it, as appropriate. Similarly, when a record contains information that ODNI has derivatively classified (for example, when ODNI's classification is based on information originally classified by another agency), ODNI must refer that portion of the request to the agency that originally classified the underlying information.

(e) ODNI will notify the requester of its determination to grant, deny, or refer the FOIA request. ODNI will release reasonably segregable, non-exempt information. For any adverse determination—including those regarding any disputed fee matter; a denial of a request for a fee waiver; a determination to withhold a record in whole or in part; a determination that a record does not exist or cannot be located; or a denial of a request for expedited processing—the notice will include the following information:

(1) The name and title or position of the person responsible for the determination to deny the request in whole or in part;

(2) A brief statement of the reasons for the denial, including any FOIA exemption applied in denying the request. The notice will indicate, if feasible, the amount of information deleted and the exemption under which a deletion is made on the released portion of the record, unless including that information would harm an interest protected by the exemption;

(3) An estimate of the volume of information withheld, if applicable, such as the number of pages or some other reasonable form of estimation. Such an estimate is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part or if providing an estimate would harm an interest protected by an applicable FOIA exemption;

(4) A statement that the adverse determination may be appealed and a description of the requirements for an appeal; and

(5) A statement notifying the requester of the assistance available from the FOIA Public Liaison, and the dispute resolution services offered by OGIS.

§ 1700.6 Time frames for ODNI responses.

(a) ODNI will ordinarily respond to requests according to their order of receipt.

(b) When evaluating requests, ODNI may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work or time needed to process the request.

(c) Subject to paragraphs (e) and (f) of this section, ODNI will respond to a FOIA request within 20 days after receipt of the request. A request is received by ODNI, for purposes of commencing the 20-day time frame for its response, on the day that the request is received by the IMO or, in any event, not later than ten days after the request is first received by any ODNI component.

(d) ODNI must determine whether to grant or deny, in whole or in part, an administrative appeal submitted in accordance with § 1700.7 within 20 days after receipt of the appeal, unless the time frame for a response to an appeal is extended in accordance with paragraph (e) of this section.

(e) ODNI may toll the 20-day time frame set forth in paragraph (c) or (d) of this section for one of the two reasons cited below, as permitted by 5 U.S.C. 552(a)(6)(A)(ii). If ODNI tolls the time frame, the tolling period ends upon receipt of the requester's response.

(1) Once, to await information that the ODNI has reasonably requested from the requester; or

(2) As necessary, to clarify with the requester issues regarding the fee assessment.

(f) Whenever the statutory time limit for processing a request cannot be met because of ''unusual circumstances,'' as defined in the FOIA, and ODNI extends

the time limit on that basis, ODNI will notify the requester in writing, before expiration of the 20-day period to respond, of the unusual circumstances involved and of the date by which processing of the request can be expected to be completed. Where the extension exceeds 10 days, ODNI shall, as described by the FOIA, provide the requester with an opportunity to modify the request or arrange an alternative time period for processing. ODNI shall make available its designated FOIA contact and its FOIA Public Liaison for this purpose and notify the requester of the dispute resolution services offered by OGIS.

(g) For the purposes of satisfying unusual circumstances under the FOIA, ODNI may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. ODNI will notify the requester(s) of the decision to aggregate.

(h) Requests and appeals shall be processed on an expedited basis whenever it is determined that they involve a compelling need. For this purpose, a ''compelling need'' involves either:

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information.

(i) A request for expedited processing must be in writing and may be made at any time.

(j) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. Under this paragraph (h), a requester who is not a full-time member of the news media must establish that the requester is a person whose primary professional activity or occupation is information dissemination, though it need not be the requester's sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—an urgency that extends beyond the public's right to know about government activity generally. The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an ''urgency to inform'' the public on the topic. As a matter of administrative discretion, ODNI may waive the formal certification requirement.

(k) The IMO will decide within 10 days of its receipt of a request for expedited processing of its decision whether to grant or deny such a request. If expedited processing is granted, the request shall be given priority, placed in the processing track for expedited requests, and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

§ 1700.7 Administrative appeals.

(a) A requester may appeal any adverse determination to a person designated by the Director of National Intelligence (the ''Designee''). The Designee will act on behalf of the Director of National Intelligence on all appeals under this section.

(b) An appeal ordinarily will not be adjudicated if the request becomes subject to litigation.

(c) The appeal must be transmitted if sent by email, or postmarked if sent by U.S. mail, within 90 days after the date of the adverse determination letter. The appeal shall clearly identify the ODNI determination that is being appealed, including the assigned ODNI case request number. For the most expeditious handling, the subject line of the electronic transmission, or appeal letter and envelope, should be marked ''Freedom of Information Act Appeal.''

(d) On receipt of any appeal involving classified information, the Designee must take appropriate action to ensure compliance with applicable classification rules.

(e) ODNI's decision on an appeal shall be in writing. A decision upholding ODNI's original determination will contain a statement that identifies the reasons for affirmance, including any FOIA exemptions applied. The decision will provide the requester with notification of the statutory right to file a lawsuit and will inform the requester of the mediation services offered by OGIS as a non-exclusive alternative to litigation. If ODNI's decision is remanded or modified on appeal, the requester will be notified of that determination in writing. ODNI will thereafter further process the request in accordance with that appeal determination.

§ 1700.8 Procedures for requests implicating confidential commercial information.

(a) Definitions:

(1) *Confidential commercial information* means commercial or financial information obtained by ODNI from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(2) *Submitter* means any person or entity, including a corporation, State, or foreign government, but not including another Federal Government entity, that provides information, either directly or indirectly, to the Federal Government.

(b) A submitter of confidential commercial information must use good faith efforts to designate by appropriate markings, either at the time of submission or within a reasonable time thereafter, any portion of its submission that it considers to be protected under FOIA Exemption 4. These designations shall expire 10 years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(c) ODNI will provide the submitter with prompt written notice of confidential commercial information when records containing such information are responsive to a FOIA request and ODNI determines that it may be required to disclose the records. The notice shall:

(1) Give the submitter an opportunity to object to disclosure of the information, in whole or in part;

(2) Describe the confidential commercial information requested or include copies of the requested record(s) or record portion(s) containing the information; and

(3) Inform the submitter of the time frame in which it must respond to the notice.

(d) ODNI will allow the submitter seven days to respond to the notice described in paragraph (b) of this section. If the submitter objects to the disclosure of the information, in whole or in part, they must provide ODNI with a detailed written statement of the objection. The statement must specify all grounds for withholding any portion of the information under any FOIA exemption and, when relying on FOIA Exemption 4, it must explain why the information is a trade secret, or commercial or financial information that is privileged and confidential. If the submitter fails to respond within the time frame specified in the notice or an extended time frame if requested by the submitter, ODNI will conclude that the submitter has no objection to disclosure of the information. ODNI will only consider information that it receives within the time frame specified in the notice or an extended time frame if requested by the submitter. Any information provided by a submitter under this Part may itself be subject to disclosure under the FOIA.

(e) ODNI will consider the submitter's objection and specific grounds for non-disclosure in deciding whether to disclose confidential commercial information. Whenever ODNI decides to disclose information over the submitter's objection, it will provide written notice to the submitter that includes:

(1) A statement of the reasons why each of the bases for withholding were not sustained in whole or in part;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time after the notice.

(f) The notice requirements of paragraphs (c) and (d) of this section shall not apply if:

(1) ODNI determines that the information is exempt under the FOIA;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12600; or

(4) The designation made by the submitter under paragraph (a) of this section appears obviously frivolous. In such a case, ODNI shall, within a reasonable time prior to the date the disclosure will be made, give the submitter written notice of the final decision to disclose the information.

(g) Whenever ODNI provides a submitter with the notice described in paragraph (b) of this section, ODNI also will provide notice to the requester that notice and an opportunity to object to the disclosure are being provided to the submitter. ODNI also must notify the requester when it notifies the submitter of its intent to disclose the requested information, and whenever a submitter files a lawsuit to prevent the disclosure of the information.

§ 1700.9 Fees.

(a) Search, review, and reproduction fees will be charged in accordance with the provisions below relating to the schedule, limitations, and category of requester. Applicable fees will be due even if a subsequent search locates no responsive records or some or all of the responsive records must be denied under one or more of the exemptions of the FOIA. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(1) ODNI will charge fees that recoup the full allowable direct costs it incurs in processing a FOIA request. Fees may be charged for search, review or duplication. As a matter of administrative discretion, ODNI may release records without charge or at a reduced rate whenever ODNI determines that the interest of the U.S. Government would be served. ODNI will use the most efficient and least costly methods to comply with a request. ODNI may charge for search time even if no records are located or the records located are exempt from disclosure. If ODNI fails to comply with the FOIA's time limits in which to respond to a request, it may not charge search fees, unless the circumstances outlined in paragraph (o) of this section are met.

(2) [Reserved]

manual searches for records, ODNI will charge the salary rate(s) (calculated as the basic rate of pay plus 16 percent of that basic rate to cover benefits) of the employee(s) performing the search.

(c) In calculating charges for computer searches for records, ODNI will charge the actual direct cost of providing the service, including the cost of operating computers and other electronic equipment, such as photocopiers and scanners, directly attributable to searching for records potentially responsive to the FOIA request and the portion of the salary of the operators/programmers performing the search.

(d) ODNI may only charge requesters seeking records for commercial use for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review—that is, the review undertaken the first time IRRG staff analyzes the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. ODNI may assess the costs for such subsequent review. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage.

(e) Records will be duplicated at a rate of $.50 per page, except that ODNI may adjust this rate from time to time by rule published in the **Federal Register**. For copies prepared by computer, such as tapes, CDs, DVDs, or printouts, ODNI will charge the actual cost, including operator time, of production. For other methods of reproduction or duplication, ODNI will charge the actual direct costs of producing the document(s). If ODNI estimates that duplication charges are likely to exceed $25.00, it will notify the requester of the estimated amount of fees, unless the requester indicated in advance their willingness to pay fees as high as those anticipated. The notice will offer an opportunity to confer with IRRG staff to reformulate the request to meet the requester's needs at a lower cost. If ODNI notifies a requester that the actual or estimated fees are in excess of $25.00, the request will not be considered received and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee, or designate some amount of fees they are willing to pay, or in the case of a non-commercial use requester who has not yet been provided with their statutory entitlements, the requester designates that they seek only that which can be provided by the statutory entitlements. The ODNI's IRRG staff or FOIA Public Liaison are available to assist requesters with reformulating requests to meet their needs at a lower cost.

(f) ODNI will charge the requester the full costs of providing them with the following services:

(1) Certifying that records are true copies; or

(2) Sending records by special methods such as express mail.

(g) ODNI may assess interest charges on an unpaid bill starting on the 31st calendar day following the day on which the bill was sent. Interest shall be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by ODNI.

(h) ODNI will not charge a search fee for requests by educational institutions, non-commercial scientific institutions, or representatives of the news media. A search fee will be charged for a commercial use request.

(i) ODNI will not charge duplication fees for requests by educational institutions, non-commercial scientific institutions, or representatives of the news media for a non-commercial use request if ODNI fails to comply with the FOIA's time limits in which to respond to a request.

(j) Except for a commercial use request, ODNI will not charge for the first 100 pages of duplication and the first two hours of search.

(k) A requester may not file multiple requests, each seeking portions of a record or records, solely for the purpose of avoiding payment of fees. When ODNI reasonably believes that a requester, or a group of requesters acting in concert, has submitted requests that constitute a single request involving clearly related matters, ODNI may aggregate those requests and charge accordingly.

(l) ODNI may not require a requester to make payment before ODNI begins

work to satisfy the request or to continue work on a request, unless:

(1) ODNI estimates or determines that the allowable charges that the requester may be required to pay are likely to exceed $250.00; or

(2) The requester has previously failed to pay a fee charged within 30 calendar days of the date of billing.

(m) In cases in which ODNI requires advance payment, the request will not be considered received and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within 30 calendar days after the date of ODNI's fee determination, the request will be closed.

(1) Upon completion of all required review and the receipt of accrued fees (or promise to pay fees), ODNI will promptly inform the requester in writing of those records or portions of records that will be released and those that will be denied.

(2) For records to be released, ODNI will provide paper copies or records on electronic media, if requested and available.

(3) For records not released or partially released, ODNI shall explain the reasons for any denial and give notice of a right of administrative appeal. For partial releases, redactions will be applied to ensure requesters can see the placement and general length of withholdings with the applicable exemption(s) clearly with respect to each withholding.

(n) Fee waiver requests and appeals. Upon written request, ODNI may waive or reduce fees that are otherwise chargeable under this part. If a fee waiver or reduction in fees is requested, the requester must demonstrate that a waiver or reduction in fees is in the public interest because disclosure of the requested records is likely to contribute significantly to the public understanding of the operations or activities of the government and is not primarily in the requester's commercial interest. After processing, actual fees must exceed $25.00 for ODNI to require payment of fees. Appeals should be resolved prior to the initiation of processing and the incurring of costs. However, fee waiver requests will be accepted at any time prior to ODNI's decision regarding the request, except when processing has been initiated.

(o) If the ODNI has determined that unusual circumstances, as defined by the FOIA, apply and more than 5,000 pages are necessary to respond to the request, the ODNI may charge search fees, or, in the case of requesters described in paragraph (h) of this section, may charge duplication fees, if the following steps are taken.

(1) The ODNI must have provided timely written notice of unusual circumstances to the requester in accordance with the FOIA and ODNI must have discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii).

(2) If this exception is satisfied, the ODNI may charge all applicable fees incurred in the processing of the request.

§ 1700.10 Other rights and services.

Nothing in this part shall be construed so as to enlarge, diminish, modify, or alter the powers or authority of the ODNI; or construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Dated: July 7, 2023.

Gregory M. Koch,

Director, Information Management Office, Chief Operating Officer, Office of the Director of National Intelligence.

[FR Doc. 2023–15512 Filed 7–27–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2023–0605]

Security Zones; Seattle's Seafair Fleet Week Moving Vessels, Puget Sound, WA

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce Seattle's Seafair Fleet Week Moving Vessels security zones from August 1 through August 7, 2023, to ensure the security of the vessels from sabotage or other subversive acts during Seafair Fleet Week Parade of Ships. Our regulation for marine events within the Thirteenth Coast Guard District identifies the regulated area for this event in Seattle, WA. During the enforcement period, no person or vessel may enter or remain in the security zones without the permission of the Captain of the Port (COTP), Puget Sound or his designated representative. The COTP has granted general permission for vessels to enter the outer 400 yards of the security zones as long as those vessels within the outer 400 yards of the security zones operate at the minimum speed necessary to maintain course unless required to maintain speed by the navigation rules.

DATES: The regulations in 33 CFR 165.1333 will be enforced for the security zones identified in the **SUPPLEMENTARY INFORMATION** section below for the dates and times specified.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email MST1 Steve Barnett, Sector Puget Sound Waterways Management Division, U.S. Coast Guard; telephone 206–217–6051, email *SectorPugetSoundWWM@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the security zones for Seattle's Seafair Fleet Week Moving Vessels in 33 CFR 165.1333 for the regulated areas in the Elliott Bay from 11:30 a.m. on August 1, 2023, through 5 p.m. on August 7, 2023. This action is being taken to ensure the security of the vessels from sabotage or other subversive acts during this event. Our regulation for marine events within the Thirteenth Coast Guard District, § 165.1333, specifies the location of the regulated area in the Puget Sound around the participating vessels designated in this notice.

During the enforcement period, as reflected in § 165.1333, no person or vessel may enter or remain in the security zones without the permission of the COTP or a designated representative. The COTP may be assisted by other federal, state or local agencies with the enforcement of the security zones. For 2023, the following areas are § 165.1333 security zones: all navigable waters within 500 yards of USS JOHN S. McCAIN (CG–56), USCGC HENRY BLAKE (WLM–563), USCGC ROBERT WARD (WPC–1130), USCGC WAHOO (WPB–87345), HMCS YELLOWKNIFE (MM–706), HMCS EDMONTON (MM–703), HMCS NANAIMO (MM–702), while each such vessel is in the Sector Puget Sound COTP Zone.

The COTP has granted general permission for vessels to enter the outer 400 yards of the security zones as long as those vessels within the outer 400 yards of the security zones operate at the minimum speed necessary to maintain course unless required to maintain speed by the navigation rules. All vessel operators who desire to enter the inner 100 yards of the security zones or transit the outer 400 yards at greater

than minimum speed necessary to maintain course must obtain permission from the COTP or a designated representative by contacting the on-scene patrol craft on VHF Ch 13 or Ch 16. Requests must include the reason why movement within this area is necessary. Vessel operators granted permission to enter the security zones will be escorted by the on-scene patrol craft until they are outside of the security zones.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advanced notification of the security zones via the Local Notice to Mariners and marine information broadcasts before the start of the event. In the event that there are changes to the participating vessels, due to operational requirements, the Coast Guard will provide actual notice for any additional designated participating vessels not covered in this notice.

Members of the public may contact Sector Puget Sound COTP at 206–217–6002 for an up-to-date list of designated participating vessels.

If the COTP determines that the security zones need not be enforced for the full duration stated in this notice of enforcement, a Broadcast Notice to Mariners may be used to grant general permission to enter all portions of the regulated areas.

Dated: July 24, 2023.

M.A. McDonnell,

Captain, U.S. Coast Guard, Captain of the Port Sector Puget Sound.

[FR Doc. 2023–16042 Filed 7–27–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0616]

RIN 1625–AA00

Safety Zone; Kaiser Fireworks, Lake St. Clair; Grosse Pointe Park, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters on Lake St. Clair in Grosse Point Park, MI. The safety zone is necessary and intended to protect personnel, vessels, and the marine environment from potential hazards associated with fireworks displays created by the Kaiser family. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Detroit, or his designated representative.

DATES: This rule is effective from 9 p.m. through 10:30 p.m. on August 5, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0616 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Tracy Girard, Waterways Department, Sector Detroit, Coast Guard; telephone (313) 568–9564, email *Tracy.M.Girard@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event sponsor notified the Coast Guard with insufficient time to publish an NPRM and immediate action is necessary to protect personnel, vessels, and the marine environment on Lake St. Clair. It is impracticable and contrary to the public interest to publish a NPRM because we must establish this safety zone by August 5, 2023.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with a fireworks display.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Detroit (COTP) has determined that potential hazards associated with fireworks displays will be a safety concern for anyone within a 200-yard radius of the launch site. The likely combination of recreational vessels, darkness punctuated by bright flashes of light, and fireworks debris falling into the water presents risks of collisions which could result in serious injuries or fatalities. This rule is necessary to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone from 9 p.m. through 10:30 p.m. on August 5, 2023. The safety zone will encompass all U.S. navigable waters of Lake St. Clair within a 200-yard radius of the fireworks launch site located 42°22.629′ N, 082°54.929′ W, near Grosse Point Park, MI. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the fireworks display. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated representative. The Captain of the Port Detroit or his designated representative may be contacted via VHF Channel 16.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small, designated area of Lake

St. Clair one hours 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 rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting approximately 1 hour that will prohibit entry within 200-yard radius of where the fireworks display will be conducted. It is categorically excluded from further review under paragraph L[60] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 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.T09–0616 to read as follows:

§ 165.T09–0616 Kaiser Fireworks, Lake St. Clair; Grosse Pointe Park, MI.

(a) *Location.* The following area is a temporary safety zone: all U.S. navigable waters of Lake St. Clair within a within a 200-yard radius of the fireworks launch site located at position 42°22.629′ N, 082°54.929′ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Enforcement Period.* This regulation will be enforced from 9 p.m. through 10:30 p.m. on August 5, 2023. The Captain of the Port Detroit, or a designated representative may suspend enforcement of the safety zone at any time.

(c) *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 Detroit (COTP) in the enforcement of the safety zone.

(d) *Regulations.*

(1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated representative.

(2) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Detroit or his designated representative. The COTP Detroit or his designated representative may be contacted via VHF Channel 16.

Dated: July 21, 2023.

Richard P. Armstrong,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2023–16019 Filed 7–27–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0309]

RIN 1625–AA00

Safety Zone; Henderson Bay, Henderson Harbor, NY

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent safety zone for certain waters of Henderson Harbor. This action is necessary to provide for the safety of life on these navigable waters near Henderson Harbor, Henderson, NY, during a fireworks display and annual reoccurrences of this event. This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Buffalo or a designated representative.

DATES: This rule is effective without actual notice July 28, 2023. For the purposes of enforcement, actual notice will be used from 9:30 through 10 p.m. on July 29, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0309 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email MST2 Andrew Nevenner, Waterways Management Division 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 Information and Regulatory History

On March 6, 2023, the Henderson Business and Community Council notified the Coast Guard that it will be conducting a fireworks display from 9:30 through 10 p.m. on July 29, 2023, For the Christmas in July Celebration. The fireworks are to be launched from a barge in Henderson Bay approximately 1500 yards north of the town boat ramp located on the southern shore of Henderson Harbor 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. In response, on June 21, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Henderson Bay, Henderson Harbor, NY (88 FR 40134). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended July 21, 2023, we received one comment that was in support of the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with the fireworks display.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Buffalo (COTP) has determined that potential hazards associated with the fireworks to be used in this July 29, 2023 display will be a safety concern for anyone within a 140-yard radius of the barge. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment in support of our NPRM published June 21, 2023. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone that will be enforced from 9 p.m. through 10:30 p.m. on July 29, 2023. The safety zone will cover all navigable waters within 140 yards of a barge in Henderson Harbor located approximately 1500-yards north of the town boat ramp located on the southern shore of Henderson Harbor 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 p.m. through 10:30 p.m. fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on 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 Henderson Bay for less than 2 hour during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 1.5 hours that would prohibit entry within 140 yards of a fireworks barge. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We prepare a preliminary REC for these types of field regulations because the DHS Instruction Manual (and U.S. Coast Guard Environmental Planning Implementing Procedures) direct that a REC be prepared for these specified field regulations when certain conditions apply—see L59(a), L60(a), and L60(d).

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

Harbors, marine safety, navigation (water), reporting and recordkeeping requirements, security measures, waterways.

For the reasons discussed in the preamble, the Coast Guard is amending 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; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 1.03.

■ 2. In § 165.939, amend Table 165.939, by adding entry (b)(34) to read as follows:

§ 165.939 Safety Zones; Annual Events in the Captain of the Port Buffalo Zone.

* * * * *

Event	Location [1]	Enforcement date and time [2]
(b) July Safety Zones		
* * *	* * *	* * *
(34) Christmas in July Fireworks ...	Henderson Harbor, NY. All waters within a 420-foot radius of the barge at position 43°86′66″ N, 076°20′97″ W in Henderson Harbor, NY.	On or around the last weekend of July.

[1] All coordinates listed in Table 165.xxx reference Datum NAD 1983.
[2] As noted in paragraph (a)(3) of this section, the enforcement dates and times for each of the listed safety zones are subject to change. In the event of a change, or for enforcement periods listed that do not allow a specific date or dates to be determined, the Captain of the Port will provide notice to the public by publishing a Notice of Enforcement in the **Federal Register**, as well as, issuing a Broadcast Notice to Mariner.]

Dated: July 21, 2023.

Sean M. Murray,

Commmander, U.S. Coast Guard, Alternate Captain of the Port Buffalo.

[FR Doc. 2023–16018 Filed 7–27–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 5b

RIN 0970–AC92

Privacy Act; Implementation

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS or the Department).

ACTION: Final rule.

SUMMARY: HHS exempts certain records in an existing system of records maintained by OCSE within ACF from the accounting, access, and amendment requirements of the Privacy Act. The affected system of records is *OCSE Federal Case Registry of Child Support Orders, HHS/ACF/OCSE,* System No. 09–80–0385. Only case files marked with the Family Violence Indicator (FVI) will be exempted, to align with a restriction in section 453(b)(2) of the Social Security Act which prohibits disclosure of case files marked with the FVI to anyone other than a court or agent of a court, to avoid harm to the custodial parent or the child of such parent.

DATES: This rule is effective on July 28, 2023.

FOR FURTHER INFORMATION CONTACT: Tricia John, Policy Specialist, OCSE Division of Policy and Training, at *ocse.dpt@acf.hhs.gov.* Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

This rule is published under the authority granted to the Secretary of Health and Human Services by the Privacy Act (5 U.S.C. 552a(k)(2)), to allow the head of any agency to exempt a system of records from the access, amendment, or accountings of disclosures provisions of the Privacy Act (5 U.S.C. 552a(c)(3) and (d)(1) through (4)) ''if the system of records is—investigatory material compiled for law enforcement purposes.'' 5 U.S.C. 552a(k)(2)

II. Background

The Privacy Act of 1974, as amended, 5 U.S.C. 552a (hereafter abbreviated ''Privacy Act'' or ''Act''), governs how the U.S. Government collects, maintains, uses, and disseminates records about individuals that are maintained in a ''system of records.'' A system of records is a group of any records under the control of an agency from which information about an individual is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. See 5 U.S.C. 552a(a)(4) and (5).

Under the Privacy Act, individuals have access and amendment rights with respect to records about them in a federal agency system of records, and the right to seek an accounting of certain disclosures made of the records about them, but the Act permits certain types of systems of records (identified in subsections (j) and (k) of the Act) to be exempted from those, and other, requirements of the Act. Subsection (k)(2) permits the head of an agency to promulgate rules to exempt investigatory material compiled for law enforcement purposes from requirements including those listed in 5 U.S.C. 552a(c)(3) and (d)(1) through (4)—subject to a limitation stated in 5 U.S.C. 552a(k)(2). The limitation is that if, as a result of the agency's maintenance of the material, the subject individual is denied any right, privilege, or benefit that the individual would otherwise be entitled by federal law or for which the individual would otherwise be eligible, the exemptions will apply only to confidential source identifying material (*i.e.,* material that would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence).

The exempted system, *OCSE Federal Case Registry of Child Support Orders,* HHS/ACF/OCSE, System No. 09–80–0385 (hereafter abbreviated ''FCR''), is a Privacy Act system containing investigatory material compiled for law enforcement purposes. The system of records was established August 24, 1998 (see 63 FR 45080) and was last modified in full on September 13, 2022 (see 87 FR 56055). FCR records are compiled to assist states in administering programs under 42 U.S.C. 651 to 669b (title IV–D of the Social Security Act) to improve states' abilities to locate parents and collect child support. OCSE is required to compare records transmitted to or maintained within the FCR to records maintained within HHS/ACF's National Directory of New Hires and other federal agencies' databases and to disclose information about the individuals within the records to state child support agencies or other authorized persons. The information in the FCR assists state child support agencies or other authorized persons to locate individuals who are involved in child support cases and their employment and asset information. The FCR also conducts FCR-to-FCR comparisons to locate information about individuals who are involved in child support cases in more than one state and provides the information to those states. Additional purposes of the FCR are specified in sections 453 and 463 of the Social Security Act (42 U.S.C. 653, 663) and include assisting states in administering programs under 42 U.S.C. 601 to 619 (title IV–A of the Social Security Act); assisting states in carrying out their responsibilities under child and family

services programs operated under 42 U.S.C. 621 through 629m (title IV–B of the Social Security Act); assisting Foster Care and Adoption Assistance programs operated under 42 U.S.C. 670 through 679c (title IV–E of the Social Security Act); providing individuals' states of residence sought pursuant to the Convention on the Civil Aspects of International Child Abduction to authorized persons in a Central Authority; assisting the Attorney General of the United States in locating any parent or child for the purpose of enforcing state or federal law with respect to the unlawful taking or restraint of a child, or making or enforcing a child custody or visitation determination; and assisting the Secretary of the Treasury in administering the sections of the Internal Revenue Code that grant tax benefits based on support or residence of children. FCR records, without personal identifiers, are also available for research purposes likely to contribute to achieving the purposes of the Temporary Assistance for Needy Families (TANF) or the federal/state child support program.

A disclosure prohibition in section 453(b)(2) of the Social Security Act (42 U.S.C. 653(b)(2)) applies to FCR case files marked with the FVI; it prohibits the disclosure of information from the FCR if a state has notified OCSE that the state has reasonable evidence of domestic violence or child abuse and that disclosure of such information could be harmful to the custodial parent or child. *See also* 45 CFR 303.21(e) (describing safeguarding requirements for files marked with the FVI). The exemptions from the Privacy Act's accounting, access, and amendment requirements will apply only to FCR case files marked with the FVI. The exemptions will apply to the entire contents of such files. The FVI indicates there is reasonable evidence of domestic violence or child abuse.

III. Summary Description of the Regulatory Provision

The notice of proposed rulemaking (NPRM) was published in the **Federal Register** on September 13, 2022 (87 FR 55977 through 55979). The comment period ended November 14, 2022.

OCSE received five sets of comments from interested individuals, which were posted on *www.regulations.gov.*

Section 5b.11: Exempt Systems.

In the NPRM, we proposed to add a new paragraph to 45 CFR 5b.11(b)(3)(ii) to provide an exemption to the system of records, *OCSE Federal Case Registry of Child Support Orders (FCR),* HHS/ACF/OCSE, 09–80–0385. Specifically, we proposed exempting only FCR records marked with the Family Violence Indicator, based on the requirements of 42 U.S.C. 653(b)(2).

The majority of commenters supported the proposed exemption. We received one comment from an individual opposed to the regulation altogether and a comment supporting the relief but expressing concern about the possible unintended consequences of protecting abusive parents. In drafting the final rule, the following are OCSE's Response to Comments including the rationale for any changes made to the proposed rule and a final summary of regulatory changes.

IV. Response to Comments

Comment 1: A majority of the individuals who submitted comments were unequivocal in their support of the exemption and rationale described in the NPRM.

One commenter agreed that promulgating this new regulation would help courts and families reach a more expeditious resolution and reduce stress on those families.

Two commenters agreed that the rule was necessary to comply with the disclosure restrictions contained in section 453(b)(2) of the Social Security Act, and that it was important to the protection of domestic violence victims.

Response 1: Based on the overwhelming support for the proposed Privacy Act exemption for FCR records marked FVI, and for the reasons described in the NPRM and by the majority of commenters, OCSE agrees that this regulation is needed and should be provided.

Comment 2: One individual opposed the proposed rule, stating that the proposed rule is insufficient to prevent unintended prejudice in setting the FVI in child support cases. The commenter stated that while they agreed that ACF had the authority to promulgate the rule, that ''the rule grants [the] states an excessive amount of discretion in how states choose to apply or remove the [FVI].'' Finally, the commenter stated that the possible mistaken application of the FVI would not allow individuals to obtain the contents of their file, making it difficult to certify information about arrears owed, or to verify that information in the file is correct. The commenter believes the agency needs to establish a more detailed rule regarding the placement of the FVI.

Another individual stated that while they appreciated regulations that help protect the privacy of custodial parents and their children, they were concerned about the unintended consequences of protecting abusive parents.

Response 2: While we appreciate the commenters' concerns about parents who may be impacted by the improper placement of the FVI, this rule only sets out to meet the requirements of the Privacy Act to ensure that the Department's Privacy Act regulations include the disclosure exemption already existing in federal law. This rule does not apply to any policies and procedures regarding the placement of the FVI; it is necessary to bring the agency into compliance with the Privacy Act, which requires an agency to promulgate a disclosure exemption rule whenever an exemption is necessary and permissible under the Act.

Summary of Regulatory Changes: For the reasons described above and in careful consideration of the comments, we finalize 45 CFR 5b.11(b)(3)(ii) by exempting the disclosure of records marked with the Family Violence Indicator maintained in the OCSE Federal Case Registry of Child Support Orders, as required under 42 U.S.C. 653(b)(2).

V. Regulatory Review

Paperwork Reduction Act

No new information collection requirements are imposed by these regulations.

Regulatory Flexibility Analysis

The Secretary certifies that, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), this rule will not result in a significant impact on a substantial number of small entities. The primary impact is on state governments. State governments are not considered small entities under the Regulatory Flexibility Act.

Regulatory Impact Analysis

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule meets the standards of Executive Order 13563 because it creates a short-term public benefit, at minimal cost to the Federal Government, by not imposing penalties against a state's TANF grant,

during a time when public assistance funds are critically needed.

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this final rule is significant and was accordingly reviewed by OMB.

ACF determined that the costs to title IV–D agencies as a result of this rule will not be ''economically significant'' as defined in Executive Order 12866 (have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities). Accordingly, OIRA has determined that this rulemaking is ''not major'' under Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act).

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an annual expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation). That threshold level is currently approximately $164 million. This rule does not impose any mandates on state, local, or tribal governments, or the private sector, that will result in an annual expenditure of $164 million or more.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. This regulation does not impose requirements on states or families. This regulation will not have an adverse impact on family well-being as defined in the legislation.

Executive Order 13132

Executive Order 13132 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 the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism impact as defined in the Executive Order.

January Contreras, Assistant Secretary of the Administration for Children & Families, approved this document on February 15, 2023.

List of Subjects in 45 CFR Part 5b

Privacy.

Dated: July 24, 2023.

Xavier Becerra,

Secretary, Department of Health and Human Services.

For the reasons discussed in the preamble, the Department of Health and Human Services amends 45 CFR part 5b as set forth below:

PART 5b—PRIVACY ACT REGULATIONS

■ 1. The authority citation for part 5b continues to read as follows:

Authority: 5 U.S.C. 301, 5 U.S.C. 552a.

■ 2. Amend § 5b.11 by adding paragraph (b)(3)(ii) to read as follows:

§ 5b.11 Exempt systems.

* * * * *

(b) * * *

(3) * * *

(ii) Pursuant to subsection (k)(2) of the Privacy Act:

(A) OCSE Federal Case Registry of Child Support Orders (FCR), HHS/ACF/OCSE, 09–80–0385; only records marked with the Family Violence Indicator are exempt, based on the requirements of 42 U.S.C. 653(b)(2).

(B) [Reserved]

* * * * *

[FR Doc. 2023–15976 Filed 7–27–23; 8:45 am]

BILLING CODE 4184–42–P

Proposed Rules

Federal Register
Vol. 88, No. 144
Friday, July 28, 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.

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 115 and 121

RIN 3245–AG16

Small Business Size Standards: Adjustment of Alternative Size Standard for SBA's 7(a) and CDC/504 Loan Programs for Inflation; and Surety Bond Limits: Adjustments for Inflation

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) proposes to amend its Small Business Size Regulations to increase the alternative size standard for its 7(a) Business and Certified Development Company (CDC/504) Loan Programs (collectively ''Business Loan Programs'') by 34.46% to account for inflation that has occurred since the size standard's establishment in 2010. The inflation adjustment would increase the size standard's level for tangible net worth to $20 million and for net income to $6.5 million. SBA also is adjusting for inflation the applicable statutory limits for contract size under the Surety Bond Guarantee (SBG) Program. The adjustment would increase the contract limit to $9 million and to $14 million for Federal contracts if a Federal contracting officer certifies that such a guarantee is necessary.

DATES: SBA must receive comments to this proposed rule on or before September 26, 2023.

ADDRESSES: Identify your comments by RIN 3245–AG16 and submit them by one of the following methods: (1) Federal eRulemaking Portal: *www.regulations.gov.* Follow the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, Ph.D., Chief, Office of Size Standards, 409 Third Street SW, Mail Code 6530, Washington, DC 20416.

SBA will post all comments to this proposed rule on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* you must submit such information to U.S. Small Business Administration, Khem R. Sharma, Ph.D., Chief, Office of Size Standards, 409 Third Street SW, Mail Code 6530, Washington, DC 20416, or send an email to *sizestandards@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public.

FOR FURTHER INFORMATION CONTACT: Khem Sharma, Ph.D., Chief, Office of Size Standards, (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background for Small Business Size Standards

To determine eligibility for Federal small business assistance, SBA establishes small business size definitions (usually referred to as ''size standards'') for private sector industries in the United States. SBA uses two primary measures of business size for size standards purposes: average annual receipts over the last five years (either three years or five years for SBA financial assistance programs) and average number of employees over the last 24 months. In addition, SBA's Small Business Investment Company (SBIC), Certified Development Company (CDC/504), and 7(a) Loan Programs use either the industry-based size standards (*i.e.,* average annual receipts or average number of employees), or tangible net worth and net income-based alternative size standards to determine eligibility for those programs.

On September 27, 2010, the Small Business Jobs Act of 2010 (''Jobs Act'') was enacted (Pub. L. 111–240). Section 1116 of the Jobs Act added a new Section 3(a)(5) to the Small Business Act that directed SBA to establish an alternative size standard using maximum tangible net worth and average net income for applicants of the SBA's 7(a) Business and CDC/504 Loan Programs (collectively ''Business Loan Programs''). The Jobs Act also established for applicants for the SBA's Business Loan Programs an interim alternative size standard of not more than $15 million in tangible net worth and of not more than $5 million in the average net income after Federal income taxes (excluding any carry-over losses) of the applicant for the two full fiscal years before the date of the application (referred to as ''Interim Rule''). Under the Jobs Act, this interim statutory alternative size standard would remain in effect until such time as SBA has established a new alternative size standard for the Business Loan Programs through rulemaking. 15 U.S.C. 632(a)(5). Prior to that, SBA employed a lower regulatory alternative size standard that applied to the CDC/504 Loan Program, and applied temporarily to the 7(a) Loan Program for the period beginning on May 5, 2009, and ending on September 30, 2010. 13 CFR 120.301(b)(2).

On September 29, 2010, SBA issued Information Notice 5000–1175 (available at *https://www.sba.gov/sites/default/files/files/bank_5000-1175_0.pdf*) providing that, effective September 27, 2010, the new statutory alternative size standard applied to its Business Loan Programs, thereby replacing and superseding the lower existing alternative size standard of $8.5 million in tangible net worth and $3 million in average net income, as set forth in 13 CFR 121.301(b)(2). The Information Notice further stated that the new statutory alternative size standard would remain in effect until such time as SBA has established a permanent alternative size standard for the Business Loan Programs through rulemaking. The Information Notice also stated that the SBA's disaster loan program, surety bond guarantee program, SBIC program, and small business development and contracting programs, as well as other Federal programs utilizing SBA's industry-based size standards were not affected by the interim statutory alternative size standard, and the current standards for those programs in 13 CFR part 121 remained in effect.

SBA has not established an alternative size standard for its 7(a) and CDC/504 Loan Programs in its regulations. Thus, the Agency continues to use the interim statutory alternative size standard to determine eligibility for a small business concern under SBA's Business Loan Programs, in addition to using the industry-based size standards. A loan applicant is eligible either under its industry-based size standard or if it

meets the statutory alternative size standard of $15 million in tangible net worth and $5 million in average net income. However, due to the lack of rulemaking to codify these levels, SBA's current regulations at 13 CFR 120.301(b)(2) continue to show the tangible net worth of $8.5 million and net income of $3 million that existed prior to the enactment of the interim statutory alternative size standard.

A review of SBA's internal data on its Business Loan Programs for fiscal years 2021–2022 shows that the interim statutory alternative size standard may have enabled some small businesses that were not otherwise eligible under their industry-based size standards to receive 7(a) or CDC/504 Loans (''Business Loans''). However, SBA's internal data systems for its Business Loan Programs lack the necessary detailed electronic data that would allow for an assessment of the exact impact of the interim statutory size standard on small business loan applicants. Since the Agency's electronic systems only include data regarding the number of employees, the NAICS industry, and approved loan amount for each SBA loan recipient, but not the data regarding average annual receipts, tangible net worth, average net income, or whether the loan was approved under the industry or alternative size standard, SBA cannot easily calculate the exact number of businesses that qualified under the interim statutory alternative size standard that otherwise could not have qualified under their industry-based size standards. Similarly, due to the lack of data, SBA cannot easily identify industries or industry sectors in which the statutory alternative size standard helped small businesses the most or the least in accessing SBA Business Loans.

In accordance with its regulations, SBA is required to assess the impact of inflation on its monetary-based size standards *at least* once every five years (67 FR 3041; January 23, 2002) and 13 CFR 121.102(c)). Accordingly, except for the statutory alternative size standard for the SBA Business Loan Programs, SBA adjusted its monetary-based size standards for inflation three times since the Congress enacted the Interim Rule in 2010.[1] In its rulemaking for each adjustment, SBA provided that the statutorily set alternative size standard will remain in effect until SBA establishes a permanent alternative size standard for the SBA Business Loan Programs. Based on the GDP price index, inflation has increased more than 34% since the enactment of the statutory alternative size standard. This has eroded the value of the alternative size standard in real terms. SBA has an important policy objective of maintaining the value of monetary-based size standards in real (*i.e.,* inflation-adjusted) terms, and by adjusting the statutory alternative size standard for inflation. This rulemaking fulfils that objective. Additionally, one of the comments SBA received to its joint interim and final rule on inflation adjustment of monetary-based size standards, published on November 17, 2022 (87 FR 69118), urged SBA to immediately adjust for inflation the statutory alternative size standard for SBA's 7(a) and CDC/504 Loan Programs and to include it in future inflation adjustments of monetary size standards.

As stated earlier, due to the lack of relevant data, SBA is also not in a position to easily determine whether levels of tangible net worth and net income of the statutory alternative size standard are appropriate under the current economic environment. For the same reason, SBA is unable to develop an analysis to support the creation of a different permanent alternative size standard based on tangible net worth and average net income. The Economic and Agricultural Census data that SBA examines to establish the industry-based size standards does not contain information on tangible net worth or average net income by industry. Furthermore, while SBA collects and maintains limited relevant electronic data on each of the applicants for its Business Loan Programs (such as NAICS industry code, the number of employees, and approved loan amount), SBA's electronic data systems for Business Loan Programs do not maintain the data on average annual receipts, tangible net worth, average net income, and on whether an applicant for its Business Loan Programs was determined to be eligible under its industry based size standard or under the statutory alternative size standard. Similarly, the electronic data does not include information on the numbers or amounts of loan approvals that were issued under the industry-based size standard or under the interim statutory alternative size standard.

II. Background for Surety Bond Contract Limits

SBA is amending the contract limits applicable to its Surety Bond Guarantee (SBG) Program. The SBG Program is designed to increase small business' access to Federal, state, and local government contracting, as well as private-sector contracting, by guaranteeing bid, payment, and performance bonds on contracts for small and emerging contractors who cannot obtain surety bonds through regular commercial channels.[2] Surety bonds are important to small businesses interested in competing for Federal contracts because the Federal Government requires prime contractors, prior to the award of a Federal contract exceeding $150,000 for the construction, alteration, or repair of any building or public work of the United States, to furnish a performance bond issued by a surety satisfactory to the officer awarding the contract, and in an amount the contracting officer considers adequate, to protect the government.

The Housing and Urban Development Act of 1970 (Pub. L. 91–609) authorized the SBA's SBG Program. The act amended Title IV of the Small Business Investment Act of 1958 (15 U.S.C. 694a *et seq.,* as amended) to provide SBA authority to guarantee any surety against loss as the result of a breach of the terms of a bid bond, payment bond, or performance bond by a small business. SBA's guarantee gives Sureties an incentive to provide bonding for small businesses and thereby assists small businesses in obtaining greater access to contracting opportunities. Based on the data for fiscal years 2021–2022, the SBG Program assists about 1,700 small businesses annually.[3] The program guarantees individual contracts of up to $6.5 million, and up to $10 million for Federal contracts if a Federal contracting officer certifies that such a guarantee is necessary. The $6.5 million limit should be periodically adjusted for

[1] Small Business Size Standards: Inflation Adjustment to Monetary Based Size Standards (Interim Final Rule) (79 FR 33647; June 12, 2014), finalized on January 25, 2016 (81 FR 3949); Small Business Size Standards: Adjustment of Monetary-Based Size Standards for Inflation (Interim Final Rule) (84 FR 34261; July 18, 2019), finalized on November 17, 2022 (87 FR 69118); Small Business Size Standards: Adjustment of Monetary-Based Size Standards, Disadvantage Thresholds, and 8(a) Eligibility Thresholds for Inflation (Joint Final and Interim Rule) (87 FR 69118; November 17, 2022).

[2] A surety bond is a three-party instrument between a surety, a contractor, and a project owner. The agreement binds the contractor to comply with the contract's terms and conditions. If the contractor is unable to successfully perform the contract, the surety assumes the contractor's responsibilities and ensures that the project is completed. The surety bonds reduce the risk of contracting. Surety bonds are viewed as a means to encourage project owners to contract with small businesses that may not have the credit history or prior experience of larger businesses and are considered to be at greater risk of failing to comply with the contract's terms and conditions.

[3] U.S. Small Business Administration (SBA), *FY 2024 Congressional Budget Justification and FY 2022 Annual Performance Report,* p. 44, *https://www.sba.gov/sites/sbagov/files/2023-03/FY%202024%20SBA%20Congressional%20Budget%20Justification-2023-0313_0.pdf.*

inflation in accordance with 41 U.S.C. 1908. SBA's guarantee is an agreement between a Surety and SBA that SBA will assume a certain percentage of the Surety's loss should a contractor default on the underlying contract. The SBA's guarantee currently ranges from 80% to 90% of the Surety's loss if a default occurs. For more information about SBA's Surety Bond Guarantee Program, see *https://www.sba.gov/funding-programs/surety-bonds*.[4]

During fiscal years 2021–2022, SBA guaranteed 17,966 bid and final (*i.e.,* a payment bond, performance bond, or both a payment and performance bond) surety bonds with a total contract value of about $13.1 billion and total bond value of about $8.3 billion. According to Table 1, Distribution of Number of Surety Bonds and Contract Value by Contract Size (FY 2021–2022), during fiscal years 2021–2022, contracts below $6.5 million accounted for 99.9% of total number of surety bonds and 99% of total contract value. That means that contracts between $6.5 million and $10 million contributed to the limited bonding activity, accounting for just 0.1% of total surety bonds and 1% of total contract value.

As stated earlier, the SBG Program is intended to increase small business' access to Federal, state, and local government contracting, as well as private-sector contracting by guaranteeing bid and final surety bonds. Table 2, Distribution of Surety Bonds, Contract Value, and Bond Value by Contract Type (FY 2021–2022), shows that State and Local Government contracting dominates the SBG program, accounting for 72% of the number of surety bonds, 66.5% of total contract value, and 51.7% of total bond value during fiscal years 2021–2022. The Federal Government contracting accounts for 11% of surety bonds, 15% of total contract value, and 18.1% of total bond value. For its part, private-sector contracting accounts for 8.7% of surety bonds, 11.8% of contract value, and 25.5% of bond value.

TABLE 1—DISTRIBUTION OF NUMBER OF SURETY BONDS AND CONTRACT VALUE BY CONTRACT SIZE

[FY 2021–2022]

Contract size ($ million)	Number of surety bonds			Contract value		
	Count	%	Cum. %	Value ($ million)	%	Cum. %
<0.1	2,092	11.6	11.6	$122	0.9	0.9
0.1 to 0.25	3,870	21.5	33.2	645	4.9	5.9
0.25 to 0.5	4,439	24.7	57.9	1,522	11.6	17.5
0.5 to 1.0	3,449	19.2	77.1	2,386	18.2	35.7
1.0 to 2.0	2,505	13.9	91.0	3,395	25.9	61.6
2.0 to 3.0	872	4.9	95.9	2,030	15.5	77.1
3.0 to 4.0	396	2.2	98.1	1,308	10.0	87.1
4.0 to 5.0	191	1.1	99.2	818	6.2	93.4
5.0 to 6.5	135	0.8	99.9	740	5.7	99.0
6.5 to 10.0	17	0.1	100.0	128	1.0	100.0
Total	17,966	100.0		13,093	100.0	

TABLE 2—DISTRIBUTION OF SURETY BONDS, CONTRACT VALUE, AND BOND VALUE BY CONTRACT TYPE

[FY 2021–2022]

Contract type	Surety bonds		Contract value		Bond value	
	Count	%	Amount ($ million)	%	Amount ($ million)	%
Federal Government	2,039	11.3	$1,983	15.1	$1,509	18.1
Local Government	9,694	54.0	6,469	49.4	3,245	38.9
Private	1,558	8.7	1,541	11.8	2,127	25.5
Special Districts	1,377	7.7	784	6.0	316	3.8
State Government	3,236	18.0	2,243	17.1	1,072	12.8
Other	62	0.3	72	0.6	78	0.9
Total	17,966	100.0	13,093	100.0	8,346	100.0

SBA's guaranteed surety bonds fall in two categories: (1) bid bonds, and (2) final bonds, which consist of a payment bond, performance bond, or both a payment and performance bond. According to the SBG program data for fiscal years 2021–2022, bid bonds account for 67.6% of total surety bonds and 70.7% of total contract value, but just 22.3% of total bond value. Final bonds account for 32.4% of total bonds, 29.3% of total contract value, and 77.7% of total bond value. Average bond value for bid bonds is about $153,000, as compared to more than $1 million for final bonds. These results are provided in Table 3, Distribution of Surety Bonds, Contract Value, and Bond Value by Bond Type (FY 2021–2022).

[4] Also see a July 8, 2022, Congressional Research Service Report on ''SBA Surety Bond Guarantee Program,'' available at *https://crsreports.congress.gov/product/pdf/R/R42037*.

TABLE 3—DISTRIBUTION OF SURETY BONDS, CONTRACT VALUE, AND BOND VALUE BY BOND TYPE

[FY 2021–2022]

Bond type	Number of bonds		Contract value		Bond value	
	Count	%	Amount ($ billion)	%	Amount ($ billion)	%
Bid bonds	12,141	67.6	9.26	70.7	1.86	22.3
Final bonds	5,825	32.4	3.83	29.3	6.49	77.7
Total	17,966	100.0	13.09	100.0	8.35	100.0

The statutory surety bond contract limits have not been adjusted since enacted in 2013. Rising inflation costs have eroded the buying power of contractors. The average size of Federal contracts for construction increased 134% from about $400,000 in 2013 to more than $1 million in 2022. Based on the SBG data for fiscal years 2021–2022, the construction sector accounted for more than 95% of total number of surety bonds, total contract value, and total bond amount. See Table 4, Distribution of Surety Bonds, Contract Value, and Bond Value by Business' NAICS Sector (FY 2021–2022), below. In this rule, SBA is amending the contract limits in its regulations to keep pace with inflation, which also will have the effect of keeping up with Federal contracting trends.

TABLE 4—DISTRIBUTION OF SURETY BONDS, CONTRACT VALUE AND BOND VALUE BY BUSINESS' NAICS SECTOR

[FY 2021–2022]

NAICS sector	Sector title	Number of bonds		Contract value		Bond value	
		Count	%	Amount ($ million)	%	Amount ($ million)	%
11	Agriculture, Forestry, Fishing and Hunting.	9	0.1	4.5	0.0	4.1	0.0
21	Mining, Quarrying, and Oil and Gas Extraction.	5	0.0	2.6	0.0	2.4	0.0
22	Utilities	24	0.1	9.1	0.1	3.6	0.0
23	Construction	17,094	95.1	12,459.6	95.2	7,941.4	95.1
31–33	Manufacturing	213	1.2	155.4	1.2	93.9	1.1
42	Wholesale Trade	12	0.1	7.0	0.1	6.4	0.1
44–45	Retail Trade	8	0.0	4.8	0.0	4.4	0.1
48–49	Transportation and Warehousing.	7	0.0	9.4	0.1	13.7	0.2
51	Information	2	0.0	1.9	0.0	1.0	0.0
53	Real Estate and Rental and Leasing.	1	0.0	2.5	0.0	2.5	0.0
54	Professional, Scientific, and Technical Services.	126	0.7	87.1	0.7	50.1	0.6
56	Administrative and Support and Waste Management and Remediation Services.	452	2.5	341.8	2.6	220.5	2.6
71	Arts, Entertainment, and Recreation.	3	0.0	0.7	0.0	0.1	0.0
72	Accommodation and Food Services.	3	0.0	0.8	0.0	0.4	0.0
81	Other services	6	0.0	5.4	0.0	1.9	0.0
NA	NA	1	0.0	0.2	0.0	0.0	0.0
Total		17,966	100.0	13,092.8	100.0	8,346.4	100.0

III. Analysis of Business Loan Data

The only electronic data on the size of small business applicants approved for loans through the SBA Business Loan Programs available for review is the number of employees and the NAICS industry. In an effort to estimate the percentage of loans that were approved under the statutory alternative size standard, SBA examined its electronic internal data on its Business Loan Programs for fiscal years 2021–2022. During fiscal years 2021–2022, a total of 118,424 loans were issued

through SBA Business Loan programs, of which 84% were issued through 7(a) Business Loan Program and 16% were dispersed through CDC/504 Loan Program. The loan amount through those programs totaled $79.64 billion, of which 82.6% was dispersed through 7(a) Program and 17.4% was dispersed through CDC/504 Program.

As stated earlier, SBA's electronic systems for its business loan data do not keep the data on receipts, tangible net worth, and net income of applicants to its Business Loan Programs. Thus, to estimate receipts, tangible net worth, and net income for each loan recipient, SBA first converted the employment level of each SBA business loan recipient to receipts using the receipts-to-employees ratios from the special tabulations of the 2017 Economic Census (*https://www.census.gov/econ/census/*), 2017 Agricultural Census *www.agcensus.usda.gov/*), and 2017 County Business Patterns (*www.census.gov/econ/cbp/*). The receipts of each loan applicant thus estimated were then combined with the various financial ratios from the Risk Management Association (RMA) (*https://rmau.org*) to derive the estimates of tangible net worth and net income for each loan applicant using the following steps: [5]

Step 1: Estimate receipts equivalent of employment level for the *i*-th loan recipient in the *j*-th industry.

$$Receipts_{i,j} = Employees_{i,j}\ x \left(\frac{Receipts}{Employee}s\right)_j$$

where $Receipts_{i,j}$ is an estimate of receipts of the *i*-th loan recipient in the *j*-th industry and $\left(\frac{Receipts}{Employee}s\right)_j$ is the receipts-to-employees ratio for the *j*-th industry from Economic Census tabulations.

Step 2: Estimate net fixed assets (NFA) for the *i*-th loan recipient in the *j*-th industry.

$$NFA_{i,j} = Receipts_{i,j}\ (from\ Step\ 1) / \left(\frac{Net\ sales}{NFA}\right)_j$$

where $NFA_{i,j}$ is an estimate of net fixed assets of the *i*-th loan recipient in the *j*-the industry and $\left(\frac{Net\ sales}{NFA}\right)_j$ is the net sales to net fixed assets ratio in the *j*-th industry from RMA. Net sales is considered a proxy for receipts.

Step 3: Estimate tangible net worth (TNW) for the *i*-th loan recipient in the *j*-the industry.

$$TNW_{i,j} = NFA_{i,j}\ (from\ Step\ 2) / \frac{(NFA}{TNW)_j}$$

where $TNW_{i,j}$ is an estimate of tangible net worth of the *i*-th loan recipient in the *j*-the industry and $(NFA/TNW)_j$ is the net fixed assets to tangible net worth ratio in the *j*-th industry from RMA.

Step 4: Estimate net income (NI) for the *i*-th loan recipient in the *j*-th industry.

[5] For this analysis, SBA utilized four financial ratios from RMA for years 2019–2021: (1) Net Sales/Total Assets; (2) Net Fixed Assets/Tangible Net Worth; (3) Net Sales/Net Fixed Assets; and (4) Profit Before Taxes/Tangible Net Worth. Here ''net sales'' is considered a proxy for receipts and ''profit before taxes a proxy'' for net income, subject to adjustment for taxes. Combining these ratios with receipts allowed the estimation of tangible net worth and net income for recipients to the SBA Business Loan Programs.

$$NI_{i,j} = 0.79 * TNW_{i,j} \text{ (from Step 3)}$$

$$x \left(\frac{Average\ pofit\ before\ taxes}{TNW}\right)_j$$

where $NI_{i,j}$ is an estimate of net income after taxes for the *i*-th loan recipient in the *j*-th industry and $\left(\frac{Average\ pofit\ before\ taxes}{TNW}\right)_j$ is the ratio between average of profit before taxes to tangible net worth for the *j*-th industry.

Step 5: Determine if a loan recipient meets an alternative size standard using the estimates of tangible net worth (and average net income ($NFA/TNW_{i,j}$) and the average net income ($NI_{i,j}$).

whether the i-th applicant meets an alternative size standard:

{*Meets if* $TNW_{i,j}$ ≤$15 *million and* $NI_{i,j}$ ≤$5 *million Does not meet if* $TNW_{i,j}$ > $15 *million or* $NI_{i,j}$>$5 *million or both*

Excluding invalid observations (*i.e.,* those with missing receipts to-job-ratios or missing one or more RMA ratios used to estimate values of tangible net worth and net income), 99.9% of SBA business loan recipients during fiscal years 2021–2022 were found to be at or below the statutory alternative size standard. However, the results do not allow for the estimation of the number of loans in which the lender applied the statutory alternative size standard to approve the loan application.[6]

To assess the percentage of loan recipients that met the industry-based size standard, SBA first converted all industry size standards to receipts equivalent size standards as follows: (i) If an industry has a receipt-based size standard, the receipts equivalent size standard is the receipts-based size standard itself; and (ii) If an industry has an employee-based size standard, the receipts equivalent size standard is obtained by multiplying the employee-based size standard (number of employees) by the ratio of small business receipts to small business number of employees for that industry. For each of the loan recipients, the receipts equivalent size standard for their industry was compared with their estimated receipts in Step 1 above. If an applicant's estimated receipts in Step 1 above was less than or equal to the receipts equivalent size standard for its industry, the applicant is deemed to have met the industry-based size standard. Conversely, if the applicant's estimated receipts was higher than its industry receipts equivalent size standard, the applicant is deemed to have exceeded the industry-based size standard.

Mathematically,

whether the i-th applicant meets the industry-based size standard:

{*Meets if* $Receipts_{i,j}$ ≤ *Receipts equivalent industry - based standard Does not meet if* $Receipts_{i,j}$ > *Receipts equivalent industry-based standard*

The results showed that, excluding invalid observations (*i.e.,* observations with missing receipts-to-employee ratios or invalid NAICS codes with no size standards), 99.6% of SBA loan recipients during fiscal years 2021–2022 were deemed to be at or below their industry size standards. These results, however, do not enable the estimation of how often lenders applied industry-based size standards in approving loan applications.

Table 5, Applicant's Eligibility Under the Statutory Alternative and Industry-Based Size Standards (FY 2021–2022), summarizes the applicant's eligibility results for the statutory alternative size standard and industry based size standard. The data in Table 5 shows that 99.5% of loan recipients (*i.e.,* 117,288/117,882 = 0.995) were found to have met both the industry-based and statutory alternative size standard. Similarly, about 0.4% of loan recipients (*i.e.,* 500/117,882 = 0.004) that exceeded the industry-based size seemed to have qualified under the statutory alternative size standard. There were about 0.1% of loans (*i.e.,* 81/117,882 = 0.001) that seemed to have exceeded the statutory alternative size standard but appeared to have qualified under the industry-based size standard. Overall, 99.9% (*i.e.,* 117,788/117,882 = 0.999) of total loan recipients were deemed small under the statutory alternative size standard and 99.6% (*i.e.,* 117,369/117,882 = 0.996) of loan recipients were deemed small under the industry-based size standard. Only 0.1% of loan recipients were found to have exceeded the statutory alternative size standard and 0.4% of recipients exceeded the industry-based size standard.

[6] The SBA electronic business loan data only contains applicants that were approved for loans. Thus, the available data does not show the number of applicants that were denied for SBA loans based on their size eligibility.

TABLE 5—APPLICANT'S ELIGIBILITY UNDER THE STATUTORY ALTERNATIVE AND INDUSTRY-BASED SIZE STANDARDS

[FY 2021–2022]

		Alternative size standard		Total
		Meets	Does not meet	
Industry size standard	Meets	117,288	81	117,369
	Does not meet	500	13	513
Total		117,788	94	* 117,882

***Note:** This excludes invalid or incomplete observations in the form of invalid NAICS codes or missing RMA or receipts-to-employee ratios to estimate tangible net worth, net income, or receipts equivalent size standards.

Based on the results obtained from this analysis, SBA estimates that about 500 or 0.4% of loan approvals issued during fiscal years 2021–2022 went to firms that exceeded their industry based size standard, thereby implying that these firms were most likely qualified under the statutory alternative size standard. Based on the business loan data for fiscal years 2021–2022, SBA estimates the total value of such loans to be $1 billion, or 1.3% of $79.64 billion in total loans approved during that period. Such a small percentage (0.4%) of loan approvals issued to firms that exceeded their industry-based size standards suggests that a vast majority of small businesses receiving loans through SBA's Business Loan Programs would have qualified under their industry-based size standards and would not be impacted significantly by a modification, if any, to the statutory alternative size standard.

The evaluation of the business loan data for fiscal years 2021–2022 showed that the vast majority of SBA business loans have gone to businesses much smaller than the statutory alternative or industry-based size standard. For example, as shown in Table 6, Distribution of Number of Loans and Loan Amount by Employment Size (FY 2021–2022), 71% of total business loans and 51.5% of loan amount went to businesses that had just 10 or fewer employees (including those with no employees). Similarly, loan recipients with 50 or fewer employees (including those with no employees) accounted for nearly 97% of loans and 92% of the loan amount. The average loan amount increased from less than $200,000 for loan recipients with no employees to about $2.9 million for those with more than 200 employees.

TABLE 6—DISTRIBUTION OF NUMBER OF LOANS AND LOAN AMOUNT BY EMPLOYMENT SIZE

[FY 2021–2022]

Applicant size (Number of employees)	Number of loans			Approved loan amount			Average loan amount ($)
	Count	%	Cum. %	Amount ($ million)	%	Cum. %	
0	11,398	9.6	9.6	$2,230.3	2.8	2.8	$195,673
1 to 10	72,723	61.4	71.0	38,757.1	48.7	51.5	532,941
11 to 25	22,371	18.9	89.9	21,956.8	27.6	79.0	981,483
26 to 50	8,302	7.0	96.9	10,554.4	13.3	92.3	1,271,302
51 to 75	1,902	1.6	98.5	2,948.8	3.7	96.0	1,550,356
76 to 100	890	0.8	99.3	1,446.3	1.8	97.8	1,625,044
101 to 150	507	0.4	99.7	1,003.2	1.3	99.1	1,978,692
151 to 200	204	0.2	99.9	374.4	0.5	99.5	1,835,244
201 to 250	69	0.1	100.0	200.2	0.3	99.8	2,901,916
>250	58	0.0	100.0	167.0	0.2	100.0	2,878,597
Total	118,424	100.0		79,638.3	100.0		672,485

Distributions of number of loans and loan amount by tangible net worth and net income also showed similar patterns in that smaller loan recipients that were way below the size standard accounted for the vast majority of total loans and total loan amount. For example, as shown in Table 7, Distribution of Loans and Loan Amount by Tangible Net Worth (FY 2021–2022), below, loan recipients with less than $250,000 in tangible net worth accounted for 81% of total loans and about 63% of loan amount. Similarly, loan recipients with less than $1 million in tangible net worth accounted for 95% of total loans and about 89% of total loan amount. Finally, about 99.5% of total loans and loan amount went to businesses with less than $15 million in tangible net worth. The average loan amount generally increased with the level of tangible net worth.

TABLE 7—DISTRIBUTION OF LOANS AND LOAN AMOUNT BY TANGIBLE NET WORTH

[FY 2021–2022]

Applicant size ($ millions of tangible net worth)	Number of loans			Approved loan amount			Average loan amount ($)
	Count	%	Cum. %	Amount ($ million)	%	Cum. %	
0	11,330	9.6	9.6	$2,219.7	2.8	2.8	$195,910
0 to 0.1	64,628	54.6	64.1	31,615.8	39.7	42.5	489,196
0.1 to 0.25	19,971	16.9	81.0	16,289.3	20.5	62.9	815,650
0.25 to 0.5	10,448	8.8	89.8	11,922.1	15.0	77.9	1,141,085
0.5 to 0.75	4,051	3.4	93.2	5,478.6	6.9	84.8	1,352,396
0.75 to 1.0	2,229	1.9	95.1	3,163.8	4.0	88.8	1,419,390
1.0 to 2.5	3,723	3.1	98.3	5,920.6	7.4	96.2	1,590,286
2.5 to 5.0	978	0.8	99.1	1,785.4	2.2	98.4	1,825,532
5.0 to 7.5	238	0.2	99.3	456.9	0.6	99.0	1,919,827
7.5 to 10.0	93	0.1	99.4	167.9	0.2	99.2	1,804,951
10.0 to 12.5	65	0.1	99.4	114.5	0.1	99.4	1,760,852
12.5 to 15.0	34	0.0	99.5	61.8	0.1	99.4	1,817,097
15.0 to 20.0	40	0.0	99.5	83.4	0.1	99.5	2,085,250
20.0 to 25.0	18	0.0	99.5	32.5	0.0	99.6	1,804,189
25.0 to 30.0	8	0.0	99.5	21.2	0.0	99.6	2,648,163
>30.0	28	0.0	99.5	41.2	0.1	99.7	1,469,957
NA*	542	0.5	100.0	263.8	0.3	100.0	486,792
Total	118,424	100.0		79,638.3	100.0		672,485

*NA represents observations for which tangible net worth couldn't be estimated due to missing receipts-to-jobs and RMA ratios or invalid NAICS codes.

As shown in Table 8, Distribution of Loans and Loan Amount by Net Income (FY 2021–2022), below, nearly 80% of total loans and 78% of loan amount went to recipients with less than $100,000 in net income. Similarly, 99.2% of total loans and 98.7% of loan amount went to recipients with less than $1 million in net income. Recipients at or below $5 million in net income accounted for 99.5% of total loans and 99.7% of total loan amount.

TABLE 8—DISTRIBUTION OF LOANS AND LOAN AMOUNT BY NET INCOME

[FY 2021–2022]

Applicant size ($ millions of net income)	Number of loans			Approved loan amount			Average loan amount ($)
	Count	%	Cum. %	Amount ($ million)	%	Cum. %	
0	11,330	9.6	9.6	$2,219.7	2.8	2.8	$195,910
0 to 0.1	94,360	79.7	89.2	59,995.2	75.3	78.1	635,812
0.1 to 0.25	8,423	7.1	96.4	10,627.2	13.3	91.5	1,261,693
0.25 to 0.5	2,481	2.1	98.5	3,920.3	4.9	96.4	1,580,116
0.5 to 0.75	677	0.6	99.0	1,312.9	1.6	98.0	1,939,273
0.75 to 1.0	256	0.2	99.2	497.0	0.6	98.7	1,941,401
1.0 to 2.5	308	0.3	99.5	694.8	0.9	99.5	2,255,715
2.5 to 5.0	38	0.0	99.5	92.6	0.1	99.7	2,436,392
5.0 to 7.5	5	0.0	99.5	4.1	0.0	99.7	813,560
7.5 to 10.0	2	0.0	99.5	5.6	0.0	99.7	2,805,850
10.0 to 12.5	1	0.0	99.5	1.0	0.0	99.7	1,000,000
12.5 to 15.0		0.0	99.5	0.0	0.0	99.7	
15.0 to 20.0	1	0.0	99.5	4.2	0.0	99.7	4,160,000
NA*	542	0.5	100.0	263.8	0.3	100.0	486,792
Total	118,424	100.0		79,638.3	100.0		672,485

*NA represents observations for which tangible net worth couldn't be estimated due to missing receipts-to-jobs and RMA ratios or invalid NAICS codes.

The business loan data for fiscal years 2021–2022 shows that the vast majority of loan actions occurred in industries with receipts-based size standards. For example, as shown in Table 9, Distributions of Loans and Loan Amount by Size Standards Type (FY 2021–2022), industries with receipts-based size standards accounted for nearly 87% of total loans and about 83% of loan amount. Industries with employee-based size standards accounted for about 13% of loans and about 17% of loan amount.

TABLE 9—DISTRIBUTIONS OF LOANS AND LOAN AMOUNT BY SIZE STANDARDS TYPE

[FY 2021–2022]

Size standard type	Number of loans		Approved loan amount	
	Count	%	Amount ($ billion)	%
Employee-based	15,682	13.2	13.8	17.3
Receipts-based	102,612	86.6	65.8	82.6
NA *	130	0.1	0.0	0.0
Total	118,424	100.0	79.6	100.0

* NA represents observations for which tangible net worth couldn't be estimated due to missing receipts-to-jobs and RMA ratios or invalid NAICS codes with missing size standards.

The distributions of number of loans and loan amount by NAICS sector are presented in Table 10, Distributions of Loans and Loan Amount by NAICS Sector (FY 2021–2022). Consistent with Table 9, above, sectors with receipts-based size standards account for the largest proportions of loans and loan amount. For example, based on the data for fiscal years 2021–2022, sectors with receipts-based size standards, including Sector 72 (Accommodation and Food Services), Sector 44–45 (Retail Trade), Sector 62 (Health Care and Social Assistance), Sector 23 (Construction), and Sector 81 (Other Services) account for 56% of loans and 58% of loan amount during fiscal years 2021–2022. Among the sectors with employee-based size standards, Sector 31–33 (Manufacturing) accounted for 7.6% of loans and 9.8% of loan amount.

TABLE 10—DISTRIBUTIONS OF LOANS AND LOAN AMOUNT BY NAICS SECTOR

[FY 2021–2022]

Sector code	Sector title	Number of loans		Approved loan amount	
		Count	%	Amount ($million)	%
11	Agriculture, Forestry, Fishing and Hunting.	1,465	1.2	1,050	1.3
21	Mining, Quarrying, and Oil and Gas Extraction.	245	0.2	236	0.3
22	Utilities	190	0.2	98	0.1
23	Construction	2,713	10.7	5,933	7.4
31–33	Manufacturing	8,968	7.6	7,788	9.8
42	Wholesale Trade	5,488	4.6	5,005	6.3
44–45	Retail Trade	5,851	13.4	11,730	14.7
48–49	Transportation and Warehousing	7,254	6.1	2,888	3.6
51	Information	989	0.8	643	0.8
52	Finance and Insurance	2,531	2.1	1,460	1.8
53	Real Estate and Rental and Leasing	3,840	3.2	3,031	3.8
54	Professional, Scientific, and Technical Services.	10,181	8.6	5,505	6.9
55	Management of Companies and Enterprises.	99	0.1	103	0.1
56	Administrative and Support and Waste Management and Remediation Services.	5,811	4.9	2,391	3.0
61	Education Services	1,616	1.4	927	1.2
62	Health Care and Social Assistance	12,205	10.3	8,970	11.3
71	Arts, Entertainment, and Recreation	3,384	2.9	2,079	2.6
72	Accommodation and Food Services	15,039	12.7	13,664	17.2
81	Other services	10,555	8.9	6,138	7.7
Grand Total		118,424	100.0	79,638	100.0

IV. Comparing Industry-Based Size Standards With Statutory Alternative Size Standard

For this, SBA converted all industry-based size standards to tangible net worth and net income equivalents using the following steps:

Step 1: Convert all industry-based size standards to the receipts-equivalent size standard. If an industry has a receipt-based size standard, the receipts-equivalent size standard is the receipts-based size standard itself. If an industry has an employee-based size standard, the receipts-equivalent size standard is obtained by multiplying the employee-based size standard (number of employees) by the ratio of small business receipts to small business number of employees for that industry.

Step 2: Estimate net fixed assets (NFA) using the receipts equivalent size standard for the *j*-th industry.

$$NFA_j = Receipts\ equivalent\ size\ standard_j \,/\, \left(\frac{Net\ sales}{NFA}\right)_j$$

where NFA_j is an estimate of net fixed assets corresponding to the receipts equivalent size standard in the *j*-the industry and $\left(\frac{Net\ sales}{NFA}\right)_j$ is the net sales to net fixed assets ratio in the *j*-th industry from RMA.

Step 3: Estimate tangible net worth (TNW) equivalent of receipts equivalent size standard for the *j*-th industry.

equivalent size standard in the *j*-the industry and $\left(\frac{Net\ sales}{NFA}\right)_j$ is the net sales to net fixed assets ratio in the *j*-th industry from RMA.

Step 3: Estimate tangible net worth (TNW) equivalent of receipts equivalent size standard for the *j*-th industry.

where TNW_j is an estimate of tangible net worth corresponding to the receipts equivalent size standard in the *j*-the industry and $(NFA/TNW)_j$ is the net fixed assets to tangible net worth ratio in the *j*-th industry from RMA.

Step 4: Estimate net income (NI) equivalent of the receipts equivalent size standard for the *j*-th industry.

$$NI_j = 0.79 * TNW_j\ x\ \left(\frac{Average\ pofit\ before\ taxes}{TNW}\right)_j$$

where NI_j is an estimate of net income after taxes corresponding to the receipts equivalent size standard for the *j*-th industry and $\left(\frac{Average\ of\ pofit\ before\ taxes}{TNW}\right)_j$ is the ratio between average of profit before taxes to tangible net worth.

Step 5: Determine whether the industry size standard is lower or higher than the statutory alternative size standard in relative terms using tangible net worth equivalent obtained in Step 3 and net income equivalent from Step 4.

whether the industry size standard f or the j-th industry is lower or highter than the alternative size standard:

{*Lower if* TNW_j ≤$15 *million and* NI_j ≤$5 *million Higher if* TNW_j >$15 *mission or* NI_j >$5 *million or both*

Excluding observations with missing or incomplete information (*i.e.,* observations with missing receipts-to-job ratios or missing one or more of the RMA ratios), above analysis yielded tangible net worth and net income equivalents of the industry-based size standards for 955 industries under NAICS 2022, a distribution of which is shown in Table 11, Comparison Between Industry-Based and Statutory Alternative Size Standards (FY 2021–2022). The results show that whether the industry-based size standard is lower or higher than the statutory alternative size standard in relative terms is contingent on whether the industry has a receipts- or employee-based size standard. For example, in relative terms, for 82.5% of industries with employee-based size standards, the industry based size standard is found to be higher than the tangible net worth ($15 million) and net income ($5 million) based interim statutory alternative size standard. It is quite opposite among the industries with the receipts-based size standards. For nearly 93% of industries that have a receipts-based size standard, the industry size standard is relatively smaller than the statutory alternative size standard.

These results suggest that the statutory alternative size standard provides more benefits to applicants in the receipts-based industries as compared to employee-based industries. Table 12, Comparison Between Industry-Based and Statutory Alternative Size Standards by NAICS Sector (FY 2021–2022), summarizes these results by sector. For the vast majority of industries in such sectors as Mining, Utilities, and Manufacturing which mostly have employee-based size standards, the industry-based size standards are relatively higher than the statutory alternative size standard. Opposite is the case for industries in sectors with receipts-based size standards, such as Agriculture, Retail Trade, Professional and Administrative Support Services, Education Services, Health Care, Accommodation and Food Services, and Other Services where the statutory alternative size standard is relatively higher than the industry-based size standards.

TABLE 11—COMPARISON BETWEEN INDUSTRY-BASED AND STATUTORY ALTERNATIVE SIZE STANDARDS

[FY 2021–2022]

Size standard type	Whether industry size standard is lower or higher than statutory alternative size standard		Total
	Higher	Lower	
Employee-based	392 (82.5%)	83 (17.5%)	475 (100%)
Receipts-based	35 (7.3%)	445 (92.7%)	480 (100%)
Total	427 (44.7%)	528 (55.3%)	955 (100%)

Note: Figures in parentheses are percentages based on row totals.

TABLE 12—COMPARISON BETWEEN INDUSTRY-BASED AND STATUTORY ALTERNATIVE SIZE STANDARDS BY NAICS SECTOR

[FY 2021–2022]

Sector code	Sector title	Whether industry size standard is lower or higher than statutory alternative size standard		Total
		Higher	Lower	
11	Agriculture, Forestry, Fishing and Hunting	0 (0.0%)	63 (100.0%)	63 (100.0%)
21	Mining, Quarrying, and Oil and Gas Extraction	17 (81.0%)	4 (19.0%)	21 (100.0%)
22	Utilities	12 (85.7%)	2 (14.3%)	14 (100.0%)
23	Construction	0 (0.0%)	30 (100.0%)	30 (100.0%)
31–33	Manufacturing	319 (92.2%)	27 (7.8%)	346 (100.0%)
42	Wholesale Trade	22 (31.9%)	47 (68.1%)	69 (100.0%)
44–45	Retail Trade	0 (0.0%)	57 (100.0%)	57 (100.0%)
48–49	Transportation and Warehousing	15 (27.8%)	39 (72.2%)	54 (100.0%)
51	Information	8 (28.6%)	20 (71.4%)	28 (100.0%)
52	Finance and Insurance	0 (0.0%)	16 (100%)	16 (100.0%)
53	Real Estate and Rental and Leasing	10 (41.7%)	14 (58.3%)	24 (100.0%)
54	Professional, Scientific, and Technical Services	3 (6.3%)	45 (93.8%)	48 (100.0%)
55	Management of Companies and Enterprises	0 (0.0%)	2 (100.0%)	2 (100.0%)
56	Administrative and Support and Waste Management and Remediation Services.	0 (0.0%)	44 (100.0%)	44 (100.0%)
61	Education Services	3 (17.6%)	14 (82.4%)	17 (100.0%)
62	Health Care and Social Assistance	3 (7.7%)	36 (92.3%)	39 (100.0%)
71	Arts, Entertainment, and Recreation	9 (36.0%)	16 (64.0%)	25 (100.0%)
72	Accommodation and Food Services	1 (6.7%)	14 (93.3%)	15 (100.0%)
81	Other services	5 (11.6%)	38 (88.4%)	43 (100.0%)
Total		427 (44.7%)	528 (55.3%)	955 (100.0%)

V. Advanced Notice of Proposed Rulemaking (ANPRM)

In 2018, SBA published in the **Federal Register** an advanced notice of proposed rulemaking (ANPRM) seeking public input to assist in establishing a permanent alternative size standard for its 7(a) and CDC/504 Loan Programs (83 FR 12506; March 22, 2018). SBA also invited suggestions on sources of relevant data and information that SBA should evaluate in developing a permanent alternative size standard and in assessing its impact. Specifically, ANPRM sought the comments on the following issues:

1. SBA sought comment on whether the level of the temporary statutory alternative size standard *(i.e.,* $15 million in tangible net worth and $5 million in average net income) is appropriate as a new permanent alternative size standard under the credit environment at that time. SBA asked commenters to provide data and supporting analysis for supporting or not supporting the statutory alternative size standard as a permanent alternative size standard.

2. SBA sought comment on the impact of using an alternative size standard on small businesses seeking loans through its Business Loan Programs, specifically information on industries/sectors where small businesses benefit the most or do not benefit at all from the use of an alternative size standard. SBA also asked for data on the number of

businesses approved for SBA's Business Loans under the interim statutory alternative size standard that otherwise could not have been approved under their industry based size standards.

3. SBA invited suggestions on sources of relevant data and information, especially tangible net worth and average net income of applicants to SBA's Business Loan Programs, that SBA can evaluate to assess the impact of the statutory alternative size standard on small businesses and use in developing a new permanent alternative size standard and in estimating its impact.

4. SBA also sought comments on how the statutory alternative size standard has affected the processes used by lenders participating in the Business Loan Programs and what impacts a permanent alternative size standard would have on application processes and processing times.

Discussion of Comments

SBA received a total of 34 comments on the ANPRM, of which 11 were found to be not pertinent to the scope of the ANPRM. Of the 23 comments that were pertinent, all 23 not only supported the statutory alternative size standard, but also recommended making it the permanent alternative size standard for the SBA's 7(a) and CDC/504 Loan Programs.

Commenters included two associations of lenders offering loans to applicants to the Business Loan Programs—one representing lenders that primarily served applicants to the 7(a) business loan program and other representing mostly CDCs that offered loans under the 504/CDC loan program—and their members supporting their respective position on the ANPRM. Specifically, there were 11 comments (six of which were from different individuals of one 7(a) lender) that supported the position of the association of 7(a) lenders and 8 comments that either supported the position of the association of the CDCs or provided the similar comments as that association. The remainder of commenters consisted of individual lending entities that provided SBA's guaranteed loans. Interestingly, commenters included no small businesses that applied to or received loans from SBA's Business Loan Programs. Below SBA discusses these comments by topic.

Comments on Appropriateness of the Statutory Alternative Size Standard as A Permanent Alternative Size Standard

An association commenter expressed support for establishing a permanent alternative size standard to applicants for the SBA's Loan Programs. In order to provide meaningful comments to the ANPRM, the association conducted an informal survey seeking comments from its 572 members, of which 67 responded. While an overwhelming majority of the respondents (88%) supported making the statutory alternative size standard permanent, three recommended decreasing the standard and one recommended increasing it to $20 million in tangible net worth and $7.5 million in average net income. Based on the input from its members, the association recommended that the statutory alternative size standard should be made permanent because it has not only simplified the loan application process, but it also has enabled a small number of businesses above the industry specific size standards to qualify for SBA's 7(a) financing. Additionally, the association maintained that it is not aware of any negative impacts of using the statutory alternative size standard, such as exclusion of businesses from loan eligibility. However, citing the lack of information the association did not provide any data and analysis to support its position.

Another association stated that making the statutory alternative size standard permanent is vital for allowing small businesses to access credit through the SBA's 504 loan program. The association maintained that the statutory alternative size standard has enabled small businesses that were not otherwise eligible under their industry-based size standards to receive CDC/504 loans. It added that using industry-based size standards in conjunction with the statutory alternative size standard has been beneficial to capturing small businesses that require credit through the CDC/504 Loan Program. As to whether the level of the statutory alternative size standard is still appropriate, the association stated that the current level is sufficient and should remain as is until such time as economic conditions, inflation, and other factors warrant an increase. It expressed concerns with potential unintended consequences of deviating from the statutory alternative size standard. A few other individual lenders also supported making the statutory alternative size standard permanent for SBA's Business Loan Programs.

SBA Response

Section 1116 of the Jobs Act requires SBA to establish a permanent alternative size standard using maximum tangible net worth and average net income for applicants of the SBA's Business Loan Programs. The Jobs Act also established for applicants for the SBA's Business Loan Programs a statutory alternative size standard of not more than $15 million in tangible net worth and of not more than $5 million in the average net income after Federal income taxes (excluding any carry-over losses) of the applicant for the two full fiscal years before the date of the application. SBA agrees with the commenters that the statutory alternative size standard has not only simplified the loan application process but also has enabled some applicants above the industry-based size standard to qualify for SBA's Business Loan Programs. Based on the analysis of its internal business loan data for fiscal years 2021–2022, SBA found that 500 loans totaling more than $1 billion were approved under the statutory alternative size standard which otherwise would not have qualified under the industry-based size standard. SBA agrees with the comment that the interim statutory alternative size standard has not caused any negative impacts such as excluding applicants from loan eligibility. Rather, using the statutory alternative size standard in conjunction industry-based size standards has expanded eligibility for SBA Business Loan Programs, especially for applicants from industries with receipts-based size standards. In absence of its negative impacts on businesses seeking SBA loans, SBA agrees with the commenters that the statutory alternative size standard can serve as a permanent alternative size standard.

Comments Relating to the Impact of Using the Statutory Alternative Size Standard on Small Businesses

An association maintained that the statutory alternative size standard has both simplified the loan application process and allowed a small number of businesses that might not have qualified under the industry based size standards to receive 7(a) financing. Based on input from its members, the association identified various industries/sectors that benefit from the use of the statutory alternative size standard for the SBA's 7(a) loan program. These include manufacturers; distributors; software, technology and professional services; construction; warehousing; retail trade (*e.g.,* car dealers); hospitality industry; and agriculture businesses. Other commenters maintained that healthcare firms and professional organizations have also benefited from the SBA's Business Loan Programs. However, the association indicated that it does not have the data related to the number of

businesses that might have qualified for loans under the statutory alternative size standard, which would not have qualified under the industry- based size standards.

Another association indicated that certified development companies (CDCs) have historically used the alternative size standard to establish eligibility for the CDC/504 program and that only circumstance where the industry-based size standard would be used is when the applicant is too large to qualify under the alternative size standard but would meet the industry based size standard. The association was also unable to offer data on the number of applicants approved under CDC/504 loans under the statutory alternative size standard that could not otherwise be approved under the industry-based size standard because, it stated, most CDCs use the alternative size standard for eligibility purposes and therefore do not capture data relevant to eligibility under the industry-based size standard.

SBA Response

SBA agrees with the commenters that the statutory alternative size standard has not only simplified the loan application process, but it also has enabled some applicants to SBA's Business Loan Programs which might otherwise not have qualified under the industry-based size standards to receive SBA loans. This is consistent with SBA's analysis which showed 500 or 0.4% of loans which would likely not have qualified under the industry-based size standards to qualify under the statutory alternative size standard. SBA agrees with a commenter's list of industries or sectors that have benefited most from the statutory alternative size standard. SBA's analysis of the data for fiscal years 2021–2022 also showed hospitality, health care, construction, manufacturing, retail trade, and professional services industries benefiting most from the statutory alternative size standard.

Comments Pertaining to Data Sources

Based on the input from its members responding to the survey, the above-referenced association suggested a few data sources, including the Risk Management Association (RMA), Moody's, Dun and Bradstreet, PayNet, IBISWorld, Federal tax returns, Survey of Business Owners, SBA's own loan application and oversight data, and the U.S. Business Census. Another commenter also suggested RMA, IBISWorld, and Dun and Bradstreet. A separate association commenter suggested that SBA should use its own data on applicants to the CDC/504 loan program.

SBA Response

In response to the comment, SBA has evaluated the various RMA financial ratios for estimation of tangible net worth and net income for applicants to the SBA's Business Loan Programs. By combining industry ratios from RMA with receipts-to-job ratios from Economic Census tabulations, as discussed previously, SBA was able to estimate tangible net worth and net income for each recipient of SBA's business loans. By combining these results with industry-based size standards, SBA was able to estimate the number of loans that were approved under the statutory alternative size standard which otherwise would not have qualified under the industry-based size standards.

Comments Relating to Impacts of a Permanent Alternative Size Standard on Application Process and Processing Times

Based on the survey responses and anecdotally, an association maintained that the statutory alternative size standard has simplified and streamlined the 7(a) loan application process because it is the same for all businesses and lenders do not have to look up NAICS codes. Citing one lender, the association added that using industry-based size standards takes more time and can be more difficult if the company's operation involves multiple NAICS codes. As to the effects a permanent size standard would have on application processes and processing times, the association noted that because lenders participating in the 7(a) program have treated the current ''temporary'' alternative size standard as if it were permanent, it would not expect a ''permanent'' alternative size standard to significantly alter either application processes or loan processing times.

Another commenter maintained that because most CDCs have historically used the alternative size standard for small business eligibility purposes, a permanent alternative size standard would be ''business as usual'' for the CDC industry with no effect on application processes and processing times.

One commenter indicated that the alternative size standard has aided in streamlining the lending process and served as catalyst to increase lending to small businesses, thereby contributing to the recovery from the 2007–2009 Great Recession.

SBA Response

SBA agrees with the comment that, by avoiding the use of NAICS codes in determining applicants' size eligibility, using the alternative size standard has benefitted lenders in terms of simplifying and streamlining the loan application process. It has also helped relieve applicants of the burden of keeping three years or potentially five years of data to establish eligibility using industry-based size standards.

VI. Appropriateness of Interim Statutory Alternative Size Standard as the Permanent Alternative Size Standard

Section 1116 of the Jobs Act directed SBA to establish an alternative size standard based on tangible net worth and net income for determining size eligibility for applicants to the Agency's 7(a) and CDC/504 Loan Programs. As stated previously, the Jobs Act also established the interim statutory alternative size standard of $15 million tangible net worth and $5 million of net income to remain in effect until SBA establishes a permanent alternative size standard based on tangible net worth and net income.

In the absence of evidence of supporting a different alternative size standard for 7(a) and CDC/504 Loan Programs and in the absence of any negative impacts of using the statutory alternative size standard, SBA is proposing to adopt the statutory alternative size standard of $15 million in tangible net worth and $5 million in net income as the permanent alternative size standard, subject to adjustment for inflation that has occurred since the establishment of the statutory alternative size standard in 2010. Most commenters to the March 2018 ANPRM also recommended adopting the interim statutory alternative size standard as a permanent alternative size standard for SBA's Business Loan Programs. This proposed rule seeks comment and public input on adopting the interim statutory size standard as the permanent alternative size standard. The commenters to the ANPRM maintained that the statutory alternative size standard has enabled applicants that would not have otherwise qualified under the industry-based size standards to receive SBA's financing. The commenters stated that the statutory alternative size standard has also benefited the SBA lenders in terms of simplifying and streamlining the loan application process.

The analytical results presented in the previous sections support using the statutory alternative size standard as a

permanent alternative size standard. Based on the data for fiscal years 2021–2022, nearly all (99.9%) of recipients of loans from SBA's Business Loan Programs were found to be at or below the interim statutory alternative size standard (see Table 5). In comparison, about 95–96% of firms are considered small under the current industry-based size standards. The interim statutory alternative size standard seemed to have enabled 500 applicants that would not have otherwise qualified under the industry-based size standard to receive SBA's loans. The vast majority of business loans and loan amounts went to businesses that were well below the statutory alternative size standard. For example, during fiscal years 2021–2022, loan recipients with tangible net worth of just $1 million or less accounted for 95% of loans and nearly 89% of loan amount (see Table 7). Similarly, 98.5% of loans and 96.4% of loan amount went to businesses with net income of $0.5 million or less (see Table 8). These results indicate that the interim statutory alternative size standard, subject to adjustment for inflation, is serving well its intended purposes in terms of rendering applicants that do not qualify under the industry-based size standard eligible for SBA's Business Loan Programs.

For nearly 93% of industries with receipts-based size standards, in relative terms, the interim statutory alternative size standard was higher than the current industry-based size standard. Industries with receipts-based size standards accounted for the vast majority of loan actions, accounting for 87% of total loans and 83% of loan amount during fiscal years 2021–2022 (see Table 9). Only for 17.5% of the industries with employee-based size standards, the industry-based size standard was, in relative terms, smaller than the statutory alternative size standard. However, industries with employee-based size standards accounted for 13% loans and 17% of loan amount. Applicants in those industries will continue to qualify under the industry-based size standards, many of which have been increased as part of the second five-year review of size standards under Section 1344 of the Jobs Act.

SBA also considered returning the alternative size standard to that adopted by SBA prior to the passage of the Jobs Act (*i.e.,* $8.5 million in tangible net worth and $3 million in net income), but, because the statutory alternative size standard significantly exceeded the prior alternative size standard, using the prior alternative size standard would be counter to Congressional direction. Additionally, the old alternative size standard would have rendered 144 applicants ineligible for SBA's Business Loan Programs which would otherwise have qualified under the interim statutory alternative size standard.

SBA also considered increasing the statutory alternative size standard beyond inflation-adjusted levels of $15 million of tangible net worth and $5 million of net income. However, the analytical results presented and discussed in the previous sections did not indicate that an increase is warranted. Almost all loan recipients under the SBA's Business Loan Programs seemed to be at or below the statutory alternative size standard and the vast majority of loans went to businesses that were significantly below the statutory alternative size standard.

Accordingly, SBA proposes to adopt the statutory alternative size standard as the permanent alternative size standard, subject to inflation adjustment as discussed in the next section.

VII. Inflation Adjustment of Statutory Alternative Size Standard

For the inflation adjustment of the statutory alternative size standard for SBA's Business Loan Programs, SBA has used the inflation adjustment methodology it describes in its ''Size Standards Methodology'' white paper, available at *www.sba.gov/size.* SBA applied the same methodology in its previous inflation adjustments, including the latest inflation adjustment in 2022 (87 FR 69118; November 17, 2022). This methodology can be described in terms of the following steps:

1. Selecting an inflation measure.
2. Selecting the base and end periods.
3. Calculating the inflation rate.
4. Making adjustments to the size standard.

1. Selecting an Inflation Measure

SBA establishes small business size standards to determine the eligibility of businesses for a wide variety of SBA's and other Federal programs. Many businesses participating in those programs are engaged in multiple industries and are producing a wide range of goods and services. Therefore, it is important that the Agency use a broad measure of inflation to adjust its size standards. SBA's preferred measure of inflation has consistently been the chain-type price index for the U.S. Gross Domestic Product (GDP price index), published by the U.S. Department of Commerce, Bureau of Economic Analysis (BEA) on a quarterly basis as part of its National Income and Product Accounts (NIPA), available at *www.bea.gov.*[7]

2. Selecting the Base and End Periods

For this inflation adjustment of the statutory alternative size standard, SBA selected the third quarter of 2010 as the base period because the size standard was enacted on September 27, 2010. SBA selected the fourth quarter of 2022 as the end period because it was the latest quarter for which GDP price index data were available when this rule was developed.

3. Calculating the Rate of Inflation

The GDP price index for the base period (*i.e.,* 3rd quarter of 2010) was 96.312 and, according to the BEA GDP third estimate released on March 30, 2023 (the latest available when this rule was prepared), the GDP price index for the end period (*i.e.,* 4th quarter of 2022) was 129.502. Accordingly, inflation increased 34.46% from the third quarter of 2010 to the fourth quarter of 2022 $(((129.502 \div 96.312) - 1) \times 100\% = 34.46\%)$.

4. Making Adjustments to the Size Standard

Tangible net worth ($15 million) and net income ($5 million) of the interim statutory alternative size standard were adjusted by multiplying their current levels by 1.3446 and rounding the results to the nearest $500,000. The results were $20.169 million for tangible net worth and $6.723 million for net income, which were rounded to $20 million and $6.5 million, respectively. These results are presented in Table 13, Adjustment of Statutory Alternative Size Standard for SBA Business Loan Programs for Inflation.

[7] As part of the 2014 inflation adjustment (79 FR 33647 (June 12, 2014)), SBA reviewed various measures of inflation published by the Federal Government, including the GDP price index, consumer price index (CPI), producer price index (PPI), personal consumption expenditures (PCE) price index, and unit labor cost. Based on that review, SBA determined that the GDP price index is the most appropriate measure of inflation for purposes of adjusting size standards for inflation. Historically, SBA has used the GDP price index for adjusting size standards for inflation.

TABLE 13—ADJUSTMENT OF STATUTORY ALTERNATIVE SIZE STANDARD FOR SBA BUSINESS LOAN PROGRAMS FOR INFLATION

Threshold name and value		Base period and GDP price index		End period and GDP price index		Inflation %	Adjusted threshold (not rounded)	Adjusted threshold (rounded)
Name	Value	Base period	GDP price index	End period	GDP price index			
Tangible net worth (Interim Rule).	$15,000,000	Third quarter of 2010.	96.312	Fourth quarter of 2022.	129.502	34.46	$20,169,138	$20,000,000
Net income (Interim Rule).	5,000,000	Third quarter of 2010.	96.312	Fourth quarter of 2022.	129.502	34.46	6,723,046	6,500,000

VIII. Inflation Adjustment to Surety Bond Guarantee Limits

Section 1695 of the National Defense Authorization Act for Fiscal Year 2013 (''NDAA 2013'') (Pub. L. 112–239; January 2, 2013) increased the SBG guarantee limit to $6.5 million, and up to $10 million for a Federal contract if a Federal contracting officer certifies that such a guarantee is necessary.[8] The act also included a provision to periodically increase the $6.5 million limit for inflation in accordance with 41 U.S.C. 1908.

That provision, 41 U.S.C. 1908, provides that inflation adjustments for acquisition-related dollar thresholds are to be set by the Federal Acquisition Regulatory Council (FAR Council). It also requires that the Consumer Price Index (CPI) is used to measure inflation. The FAR Council is established under 41 U.S.C. 1302 to assist in the direction and coordination of procurement policy and regulatory activities for the Federal Government. The FAR Council is required to adjust acquisition-related dollar thresholds every five years.

Based on CPI, inflation has increased more than 30% since 2013. This has eroded the value of the bonding limits in real terms since the limits were set by Congress in 2013. SBA has an important statutory requirement to adjust the bonding limits in accordance with CPI and the FAR Council. The current limits are $6.5 million and $10 million for Federal contracts if a Federal agency certifies that a greater amount is necessary. SBA has not adjusted its bonding limits since 2013.

The FAR Council has not set a specific threshold in the Federal Acquisition Regulations (FAR) for SBA bonding limits. The FAR Council adjusts the acquisition-related dollar thresholds every five years with the last adjustments occurring in 2015 and 2020. The FAR Council had a $6.5 million acquisition-related threshold in effect in 2013 when the SBA bonding limits were set. In 2015, as part of inflationary adjustments to the acquisition-related dollar thresholds, the FAR Council increased the $6.5 million threshold to $7 million (80 FR 38293; July 2, 2015). Likewise, in 2020, the FAR Council adjusted the $7 million threshold to $7.5 million (85 FR 62485; October 2, 2020). The FAR did not have a $10 million threshold in effect in 2013.

In the absence of a specific FAR threshold for SBA bonding limits, SBA proposes this adjustment which is to follow the FAR adjustment from $6.5 million to $7.5 million in 2020 and then calculate an adjustment from 2020 to 2023 using the same CPI methodology.

SBA is also adjusting the existing limit of $10 million to maintain the same percentage spread (the lower limit is 65% of the upper limit). By adjusting both at the same time, SBA maintains the effectiveness of the necessity provision and avoids the upper limit becoming meaningless, because if only the lower limit is adjusted then at some point it will exceed the necessity limit. This rulemaking fulfills the statutory objective of maintaining the value of monetary-based bonding limits in real (*i.e.,* inflation-adjusted) terms.

The results of the inflation adjustment were $8,764,625 and $13,846,154 million if a Federal agency certifies necessity, which were rounded to $9 million and $14 million, respectively. These results are presented in Table 14, Adjustment of Lower Surety Bond Contract Limit ($6.5 Million) for Inflation Using CPI from 2020 to 2023 and Table 15, Adjustment of Surety Bond Upper Contract Limit ($10 Million) from 2013 to 2023.

TABLE 14—ADJUSTMENT OF SURETY BOND LOWER CONTRACT LIMIT ($6.5 MILLION) FOR INFLATION USING CPI FROM 2020 TO 2023

Threshold name and value		Base period and consumer price index (CPI)		End period and consumer price index (CPI)		Inflation	Adjusted threshold (not rounded)	Adjusted threshold (rounded)
Time period	Value	Base period	CPI *	End period	CPI *			
2013 to 2020	$6,500,000	In 2015, the FAR Council adjusted the $6.5 million threshold to $7 million, and in 2020 adjusted it to $7.5 million.						$7,500,000
2020 to 2023	7,500,000	March 2020	258.124	February 2023	301.648	16.86%	$8,764,625	9,000,000

* **Note:** CPI data downloaded from the U.S. Bureau of Labor Statistics website on March 28, 2023.

[8] Section 508 of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L.111–5; Feb 17, 2009) temporarily increased, from February 17, 2009, through September 30, 2010, the maximum bond amount from $2 million to $5 million. The act also authorized the SBA to guarantee a bond of up to $10 million for Federal contracts if a Federal contracting officer certified that such a guarantee was necessary. Using its rulemaking authority, SBA made ARRA's temporary size standard permanent on August 11, 2010 (76 FR 48549).

TABLE 15—ADJUSTMENT OF SURETY BOND UPPER CONTRACT LIMIT ($10 MILLION) FROM 2013 TO 2023

Current			Adjusted threshold (not rounded)		Adjusted threshold (rounded)
	Value	Spread (%)	Value	Spread (%)	Value
Contract value: Lower limit	$6,500,000	65	$9,000,000	65	$9,000,000
Contract value: Upper limit	10,000,000	100	13,846,154	100	14,000,000

IX. Section-by-Section Analysis

A. Section 121.301(a)

Section 1116 of the Jobs Act established a statutory alternative size standard using maximum tangible net worth of $15 million and maximum net income of $5 million, and it permanently extended the application of the alternative size standard to the applicants to 7(a) Business Loan Program. Prior to the Jobs Act, the alternative size standard applied to 7(a) Business Loan Program on a temporary basis. To recognize that the alternative size standard is no longer temporary, § 121.301(a) is revised as follows: ''For Business Loans and for Disaster Loans (other than physical disaster loans), an applicant business concern must satisfy two criteria:''

B. Section 121.301(b)

For the same reason as for §§ 121.301(a) and 121.301(b) is revised as follows: ''For 7(a) Business Loans and Development Company programs, an applicant must meet one of the following standards:''

C. Section 121.301(e)

The Department of Labor (DOL) no longer issues the ''Area Trends in Employment and Unemployment'' monthly publication, and DOL publishes the list of Labor Surplus Areas (LSAs) annually rather than monthly. To reflect this change, SBA is amending the second sentence in § 121.301(e) as follows: ''The U.S. Department of Labor (DOL) issues the Labor Surplus Area (LSA) list on a fiscal year basis on its website at *www.dol.gov/agencies/eta/lsa*.''

D. Section 115.10 ''Applicable Statutory Limit''

Section 411(a)(1)(A) of the Small Business Investment Act of 1958 established a statutory limit for the maximum amount of a contract for which SBA can guaranty a bond at $6.5 million. It also requires that the $6.5 million limit be adjusted for inflation in accordance with 41 U.S.C. 1908. Section 411(a)(1)(B) established that the $6.5 million limit can be exceeded up to a $10 million maximum if a contracting officer of a Federal agency certifies that such a guaranty is necessary.

To implement the inflation adjustment of the $6.5 million threshold, and to maintain a proportional relationship between the lower contract maximum and the upper contract maximum, the definition of ''Applicable Statutory Limit'' found in § 115.10 is revised by removing $6.5 million and replacing it with $9 million, and by removing $10 million and replacing it with $14 million in § 115.12(e)(3).

For the same reason as for the definition of ''Applicable Statutory Limit'' found in §§ 115.10, and 115.12(e)(3) is revised by removing $6,500,000 and replacing it with $9,000,000, and by removing $10,000,000 and replacing it with $14,000,000.

X. Request for Comments

SBA invites public comments on this proposed rule, especially on the following issues:

1. SBA welcomes comments from interested parties on SBA's size standards methodology for inflation adjustment to the statutory alternative size standard. Specifically, SBA seeks comment on whether the GDP price index is an appropriate measure of inflation for adjusting the alternative size standard. The Agency invites suggestions, along with supporting data and analysis, if a different measure of inflation would be more appropriate.

2. SBA seeks comment on whether the inflation-adjusted level of the interim statutory alternative size standard (*i.e.,* $15 million in tangible net worth and $5 million in average net income, as of 2010) is appropriate as a new permanent alternative size standard under the current credit environment. SBA also invites data and supporting analysis for supporting or not supporting the statutory alternative size standard as a permanent alternative size standard.

3. SBA seeks comment on the impact of using the statutory alternative size standard as the permanent alternative size standard on small businesses seeking loans through its Business Loan Programs. SBA also welcomes data on the number of businesses approved for SBA's Business Loans under the statutory alternative size standard that otherwise could not have been approved under their industry-based size standards.

4. SBA invites suggestions on sources of relevant data and information, especially tangible net worth and average net income of applicants to SBA's Business Loan Programs, that SBA can evaluate to assess the impact on small businesses of using the statutory alternative size standard as the new permanent alternative size standard.

5. SBA invites comments on its methodology for adjusting statutory contract limits for its SBG Program, especially on SBA's approach to adjust the $10 million contract limit for Federal contracts. SBA also seeks comment on impacts the inflationary adjustment for contract limits would have on small businesses seeking surety bonds.

XI. Compliance With Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), Executive Orders 13563, 12988, and 13132, and the Paperwork Reduction Act (44 U.S.C., Ch. 35)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is a significant regulatory action for purposes of Executive Order 12866. This proposed rule would affect applicants for SBA's 7(a) Business and CDC/504 Loan Programs and, and businesses and sureties that use the SBG Program. To help explain the need for this rule and the rule's potential benefits and costs, SBA is providing below a Regulatory Impact Analysis for this rule.

Regulatory Impact Analysis

1. What is the need for this regulatory action?

SBA is required by the Jobs Act to adopt an alternative size standard based on tangible net worth and net income after taxes for its 7(a) and CDC/504 Loan Programs. SBA believes that adopting an alternative size standard is in the best interests of small businesses seeking SBA's financial assistance. SBA's

mission is to aid and assist small businesses through a variety of financial, procurement, business development, and counseling programs. To assist the intended beneficiaries of these programs effectively, SBA establishes distinct definitions (usually referred to as ''size standards'') to determine which businesses are deemed small businesses. One of the SBA's missions has been to provide necessary financing to small businesses that are not able to obtain loans in the commercial market in reasonable terms. Many businesses that have exceeded their industry-based size standards cannot grow and support their employees without additional capital from SBA's financial assistance programs. The alternative size standard established by Congress assisted some small businesses that could not have otherwise qualified under their industry-based size standards.

SBA is required to assess the impact of inflation on its monetary-based size standards at least once every five years (67 FR 3041 (January 23, 2002) and 13 CFR 121.102(c)). Inflation, as measured by the change in GDP price index, has increased more than 34% from the enactment of the interim statutory alternative size standard in 2010. Inflation has caused the statutory alternative size standard to decrease in real terms, thereby forcing some businesses to lose small business status and eligibility for SBA's Business Loan Programs. As stated previously, SBA adjusted its monetary size standards three times since the establishment of the statutory alternative size standard in 2010, but the Agency did not adjust the statutory alternative size standard for SBA's Business Loan Programs. SBA has an important policy objective of maintaining the value of monetary-based size standards in real (*i.e.,* inflation-adjusted) terms, and by adjusting the statutory alternative size standard for inflation this rulemaking fulfils that objective.

The Small Business Act delegates to SBA's Administrator responsibility for establishing definitions for small business. The Act requires that small business definitions vary to reflect industry differences. 15 U.S.C. 632(a). Some businesses in need of financial assistance from SBA's 7(a) and CDC/504 Loan Programs may exceed the applicable size standard for their industries. The alternative size standard, in addition to the industry-based size standards, would apply uniformly across all industries and expand credit opportunities to businesses that are in need of SBA's financial assistance. The inflationary adjustment of the statutory alternative size standard would not affect existing industry-based size standards, but would rather supplement them and make financing available to otherwise eligible applicants that exceed their industry-based size standards.

NDAA 2013 increased the SBG guarantee limit to $6.5 million, and up to $10 million for a Federal contract if a Federal contracting officer certifies that such a guarantee is necessary. The act also included a provision to increase the $6.5 million limit periodically for inflation in accordance with 41 U.S.C. 1908. Based on the CPI, inflation has increased more than 30% since 2013. SBA has not adjusted its bonding limits since 2013. This has eroded the value of the bonding limits in real terms since the limits were set by Congress in 2013. The adjustment of the SBG contract limits will bring them in line with ongoing inflation and current contracting trends and increase contracting opportunities to small businesses.

2. What are the potential benefits and costs of this regulatory action?

The most significant benefit of this regulatory action for businesses is that certain businesses, especially in industries with receipts-based size standards, would gain eligibility for SBA's Business Loan Programs for which they would not otherwise be eligible based on their industry-specific size standards or current alternative size standards. This would allow them to attain financing that may be critical to their continued growth or economic viability, which would enable them to create or support more jobs in the economy.

Table 16, Comparison Between Industry-Based and Inflation-Adjusted Statutory Alternative Size Standard (FY 2021–2022), compares the percentages of industries that have higher industry-based size standards relative to inflation-adjusted statutory size standard by type of size standard. For nearly 96% of industries with receipts-based size standards, the inflation-adjusted alternative size standard is found to be, in relative terms, higher than the industry-based size standards, thereby allowing businesses exceeding industry-based size standards in those industries to qualify for 7(a) and CDC/504 Loan Programs under the inflation-adjusted alternative size standard. The corresponding figure for the interim statutory alternative size standard was nearly 93%. On the other hand, for 77% of industries with employee-based size standards, industry-based size standards were, in relative terms, higher than the inflation-adjusted alternative size standard. That figure for the interim statutory alternative size standard was 82.5%. This suggests that the alternative size standard provides more benefits to businesses in the receipts-based industries than those with employee-based size standards. The higher inflation-adjusted alternative size standard would continue to help businesses above the industry-based size standards to receive SBA's financing.

TABLE 16—COMPARISON BETWEEN INDUSTRY-BASED AND INFLATION-ADJUSTED ALTERNATIVE SIZE STANDARD

[FY 2021–2022]

Size standard type	Whether industry size standard is higher or lower than interim statutory alternative standard (Table 11)		Whether industry size standard is higher or lower than inflation-adjusted statutory alternative standard		Total
	Higher	Lower	Higher	Lower	
Employee-based	392 (82.5%)	83 (17.5%)	366 (77.1%)	109 (22.9%)	475 (100.0%)
Receipts-based	35 (7.3%)	445 (92.7%)	20 (4.2%)	460 (95.8%)	480 (100.0%)
Total	427 (44.7%)	528 (55.3%)	386 (40.4%)	569 (59.6%)	955 (100.0%)

Table 17, Comparison Between Industry-Based and Inflation-Adjusted Statutory Alternative Size Standards by Sector (FY 2021–2022), shows by sector the impacts of inflation adjustment to the statutory alternative size standard

on proportions of industries for which industry-based size standards are higher than the inflation-adjusted alternative size standard. Compared to the interim statutory alternative size standard, the proportions of industries for which alternative size standard is higher than the industry-based size standards are higher under the inflation-adjusted alternative size standard, especially for industries with employee-based size standards. For example, for just 7.8% of industries in manufacturing, the statutory size alternative size standard was higher than the industry-based size standards. That figure increases to 13.3% under the inflation-adjusted size standard. Another example is wholesale trade, where the percentage of industries for which the statutory alternative size standard is higher than the industry-based size standard increases from about 68% under the statutory alternative size standard to about 78% under the inflation-adjusted alternative size standard.

TABLE 17—COMPARISON BETWEEN INDUSTRY-BASED AND INFLATION-ADJUSTED STATUTORY ALTERNATIVE SIZE STANDARDS BY SECTOR

[FY 2021–2022]

Sector code	Sector title	Whether industry size standard is higher or lower than interim statutory alternative standard (Table 12)		Whether industry size standard is higher or lower than inflation-adjusted statutory alternative standard		Total
		Higher	Lower	Higher	Lower	
11	Agriculture, Forestry, Fishing and Hunting.	0 (0.0%)	63 (100.0%)	0 (0.0%)	63 (100.0%)	63 (100.0%)
21	Mining, Quarrying, and Oil and Gas Extraction.	17 (81.0%)	4 (19.0%)	17 (81.0%)	4 (19.0%)	21(100.0%)
22	Utilities	12 (85.7%)	2 (14.3%)	12 (85.7%)	2 (14.3%)	14 (100.0%)
23	Construction	0 (0.0%)	30 (100.0%)	0 (0.0%)	30 (100.0%)	30 (100.0%)
31–33	Manufacturing	319 (92.2%)	27 (7.8%)	300 (86.7%)	46 (13.3%)	346 (100.0%)
42	Wholesale Trade	22 (31.9%)	47 (68.1%)	15 (21.7%)	54 (78.3%)	69 (100.0%)
44–45	Retail Trade	0 (0.0%)	57 (100.0%)	0 (0.0%)	57 (100.0%)	57 (100.0%)
48–49	Transportation and Warehousing	15 (27.8%)	39 (72.2%)	12 (22.7%)	42 (77.8%)	54 (100.0%)
52	Finance and Insurance	0 (0.0%)	16 (100%)	0 (0.0%)	16 (100.0%)	16 (100.0%)
53	Real Estate and Rental and Leasing	10 (41.7%)	14 (58.3%)	6 (25.0%)	18 (75.0%)	24 (100.0%)
54	Professional, Scientific, and Technical Services.	3 (6.3%)	45 (93.8%)	3 (6.3%)	45 (93.8%)	48 (100.0%)
55	Management of Companies and Enterprises.	0 (0.0%)	2 (100.0%)	0 (0.0%)	2 (100.0%)	2 (100.0%)
56	Administrative and Support and Waste Management and Remediation Services.	0 (0.0%)	44 (100.0%)	0 (0.0%)	44 (100.0%)	44 (100.0%)
61	Education Services	3 (17.6%)	14 (82.4%)	2 (11.8%)	15 (88.2%)	17 (100.0%)
62	Health Care and Social Assistance	3 (7.7%)	36 (92.3%)	3 (7.7%)	36 (92.3%)	39 (100.0%)
71	Arts, Entertainment, and Recreation	9 (36.0%)	16 (64.0%)	4 (16.0%)	21 (84.0%)	25 (100.0%)
72	Accommodation and Food Services	1 (6.7%)	14 (93.3%)	0 (0.0%)	15 (100.0%)	15 (100.0%)
81	Other services	5 (11.6%)	38 (88.4%)	4 (9.3%)	39 (90.7%)	43 (100.0%)
Total		427 (44.7%)	528 (55.3%)	386 (40.4%)	569 (59.6%)	955 (100.0%)

SBA cannot make a precise determination of the number of businesses that were approved under the alternative size standard for 7(a) or CDC/504 Business Loans since the enactment of the statutory alternative size standard in 2010, because the Agency does not store the data on whether an applicant for its 7(a) or CDC/504 Loan Program was qualified under its industry-based size standard or under the alternative size standard. The available data show that the alternative size standard established by Congress enabled some small businesses above the industry-based size standards to get SBA's financing. However, SBA is still seeking public comment regarding the regulation's specific impact.

As stated elsewhere, SBA also does not compile the data on average annual receipts, net worth, and net income. The only available data on business size is the number of employees. SBA examined its 7(a) and CDC/504 loan data for fiscal years 2021–2022. Based on this data, SBA estimates that 500 recipients of the SBA Business Loans (or 0.4% of the total loans) that appeared to have exceeded their industry-based size standards were granted 7(a) and CDC/504 loans, implying that most likely they qualified under the statutory alternative size standard. Thus, this result indicates that the higher interim alternative size standard expanded credit availability to more small businesses through SBA's 7(a) and CDC/504 Loan Programs. The even higher inflation-adjusted alternative size standards would further expand the financing to small businesses that would not have otherwise qualified under the interim alternative size standard or under the industry-based size standards. This would lead to more business formation, entrepreneurship, job growth, and community development.

Table 18, Applicant's Eligibility Under the Inflation-Adjusted Statutory Alternative and Industry-Based Size Standards (FY 2021–2022), shows the eligibility of recipients of SBA loans through 7(a) and CDC/504 Programs during fiscal years 2021–2022 under the industry-based and inflation-adjusted alternative size standard. More than 99.5% (*i.e.,* 117,327/117,882 = 0.9953) of loan recipients were found to have met both the industry-based size standards and the inflation-adjusted alternative size standard. As in the case of the statutory alternative size standard, about 500 or 0.4% of loan recipients that did not meet the industry-based size standard met inflation-adjusted alternative size standard. About 0.1% (*i.e.,* 94/117,882 =

0.001) of loan recipients were found to have exceeded the interim statutory alternative size standard. That figure was 0.05% (*i.e.,* 54/117,882 = 0.0005) for the inflation-adjusted alternative size standard. Thus, 40 loan recipients that did not meet the statutory size standard met the inflation-adjusted alternative size standard.

TABLE 18—APPLICANT'S ELIGIBILITY UNDER THE INFLATION-ADJUSTED STATUTORY ALTERNATIVE AND INDUSTRY-BASED SIZE STANDARDS

[FY 2021–2022]

		Interim statutory alternative size standard (Table 5)		Inflation-adjusted alternative size standard		Total
		Meets	Does not meet	Meets	Does not meet	
Industry size standard	Meets	117,288	81	117,327	42	117,369
	Does not meet	500	13	501	12	513
Total		117,788	94	117,828	54	*117,882

* **Note:** This excludes invalid or incomplete observations in the form of invalid NAICS codes or missing RMA or receipts-to-employee ratios to estimate tangible net worth, net income, or receipts equivalent size standard.

Based on the data for 2017 Economic Census, Agricultural Census, and County Business Patterns special tabulations, SBA estimated that about 6,275 businesses that are above the interim statutory alternative size standard would qualify under the inflation-adjusted alternative size standard. About 25 additional SBA Business Loans, totaling up to $50 million, would be made to these newly-qualified businesses using the higher inflation-adjusted alternative size standard. That constitutes less than 0.1% of the loan activity during fiscal years 2021–2022. These results are consistent with results in Tables 7 and 8 (above) which showed that only a very small fraction of the SBA Business Loans and loan amount go to businesses that were close to the tangible net worth and net income thresholds of the statutory size standard. As discussed previously, the results in Tables 7 and 8 (above) showed that the vast majority of SBA Business Loans go to businesses that are significantly below the tangible net worth and net income thresholds of the statutory alternative size standard.

The 7(a) Loan Program, SBA's largest loan program, includes financial help for businesses with special requirements. Small businesses can use SBA's 7(a) guaranteed loans for short and long term working capital, revolving funds based on inventory or receivables, fixed assets, and refinancing. Small businesses can use SBA's CDC/504 loans for the purchase of land, buildings, improvements, and equipment. These loans provide long-term, fixed-rate financing to small businesses to acquire real estate or machinery or equipment for expansion or modernization. The CDC/504 loan proceeds are generally limited to fixed assets and their related soft costs.

Businesses are often denied SBA's loans for reasons unrelated to the use of the loan proceeds, the concern's ability to repay the loan, or other credit based reasons. Rather, they can be denied because they exceed the size standards for their industries. Some business concerns that exceed their industry-based size standards might be eligible for SBA's financial assistance under the alternative size standard that this proposed rule adopts.

Raising the SBG bond guarantee limits would increase contracting opportunities for more small businesses and bring the limits in line with inflation. Due to the lack of data, SBA is unable to estimate the number of additional small businesses that would qualify to apply for bonding through the SBG Program for non-Federal (*e.g.,* state government, local government, private-sector, etc.) contracting because of proposed increases to bond guarantee limits for inflation. Because the construction sector accounts for more than 95% of surety bonds and total value of bonded contracts, to estimate the number of additional small businesses and contracts that would qualify for surety bonds on Federal contracts, SBA analyzed the small business contract awards from FPDS–NG for the construction sector for fiscal years 2021–2022. These results are presented in Table 19, Federal Contracts in Construction for Fiscal Years 2021–2022. Because of the proposed increase to the lower contract limit from $6.5 million to $9 million, without contracting officer's certification, annually up to about 150–155 additional small businesses would be eligible to apply for surety bonds on about 175–180 Federal construction contracts totaling between $1.4 billion and $1.5 billion in value. Similarly, as a result of the proposed increase to the upper contract limit from $10 million to $14 million, with contracting officer's certification, annually up to about 100–110 additional small businesses would be eligible to apply for surety bonds on 110–120 Federal construction contracts totaling between $1.3 billion and $1.4 billion in value. This increase in small business contracting would support job creation and economic growth.

TABLE 19—FEDERAL CONTRACTS IN CONSTRUCTION FOR FISCAL YEARS 2021–2022

Contract limits	Number of small firms	Number of contracts	Total contract value ($ billion)
≤6.5 million	6,100	25,312	10.7
>$6.5 million ≤$9 million	155	179	1.4
>9 million ≤$10 million	45	45	0.4
>$10 million to ≤$14 million	106	115	1.3
>$14 million	142	172	5.3

TABLE 19—FEDERAL CONTRACTS IN CONSTRUCTION FOR FISCAL YEARS 2021–2022—Continued

Contract limits	Number of small firms	Number of contracts	Total contract value ($ billion)
Total	6,547	25,822	19.1

Raising the contract bond limits could lead to larger contracts being guaranteed by the SBA and, as a result, could increase the risk of program losses. To determine if higher contract limits would increase the risk of program losses, SBA analyzed all claim activity from October 1, 2020 to March 31, 2023. These results are presented in Table 20, Net Claims by Contract Size for October 1, 2020 to March 31, 2023. The results showed a positive relationship between contract size and net claims. For example, contracts below $1 million in value accounted for nearly 66% of total claims but accounted for only 29% of net claim amount. On the other hand, contracts above $1 million in value accounted for 34% of claims but accounted for 71% of total net claim amount. Thus, the data suggest that higher contract limits may lead to larger contracts being guaranteed, which in turn may lead to an increase in defaults and, as a result, higher losses. However, SBA is unable to estimate exact losses due to the lack of data to estimate the number of additional surety bonds on non-Federal contracts resulting from increases to contract bond limits.

TABLE 20—NET CLAIMS BY CONTRACT SIZE FOR OCTOBER 1, 2020 TO MARCH 31, 2023

Contract size ($ million)	Number of claims			Net claim		
	Count	%	Cum. %	Amount ($ million)	%	Cum. %
<0.1	12	5.8	5.8	$0.5	0.9	0.9
0.1 to 0.25	32	15.4	21.2	2.3	4.3	5.2
0.25 to 0.5	50	24.0	45.2	4.2	7.9	13.1
0.5 to 1.0	43	20.7	65.9	8.5	16.1	29.3
1.0 to 2.0	44	21.2	87.0	17.7	33.5	62.8
2.0 to 3.0	8	3.8	90.9	5.1	9.6	72.4
3.0 to 4.0	10	4.8	95.7	5.5	10.5	82.9
4.0 to 5.0	7	3.4	99.0	5.0	9.4	92.3
5.0 to 6.5	2	1.0	100.0	4.1	7.7	100.0
Total	208	100.0		52.7	100.0	

Increasing the interim alternative size standard applicable to SBA's 7(a) and CDC/504 Loan Programs for inflation and enabling more small businesses to obtain SBA's financing as a result would entail no additional implementation or operational costs as the necessary administrative and regulatory requirements are already in place. Same holds true for proposed inflationary increases to contract limits for the SBG program.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this proposed rule, if adopted, may have a significant impact on a substantial number of small entities. As described above, this proposed rule could affect small entities seeking assistance through SBA's (7a) and CDC/504 Loan and SBG Programs.

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule addressing the following questions: (1) What are the need for and objective of the proposed rule?; (2) What are SBA's description and estimate of the number of small entities to which the proposed rule would apply?; (3) What are the projected reporting, record keeping, and other compliance requirements of the proposed rule?; (4) What are the relevant Federal Government rules that may duplicate, overlap, or conflict with the proposed rule?; and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

(1) What are the need for and objective of the rule?

Under the Jobs Act, SBA is required to adopt an alternative size standard using maximum tangible net worth and net income for its 7(a) and CDC/504 Loan Programs. The Jobs Act defined an interim statutory alternative standard based on tangible net worth of $15 million and net income of $5 million until the SBA Administrator permanently designates an alternative size standard based on tangible net worth and net income for those programs. Many businesses that exceed their industry-based size standards cannot grow and support their employees and other businesses that depend on them without additional capital from SBA's financial assistance programs. The proposed inflation-adjusted alternative size standard would enable such businesses to qualify for SBA's 7(a) and CDC/504 Loan Programs.

Section 3(a) of Small Business Act (15 U.S.C. 632(a)) gives the SBA's Administrator responsibility to establish and change small business size standards. Within its administrative discretion, SBA implemented a policy in its regulations to review the effect of inflation on size standards at least once every five years (13 CFR 121.102(c)) and make any changes as appropriate. SBA has adjusted its monetary-based size standards three times since the enactment of the interim statutory alternative size standard in 2010. However, SBA did not adjust the statutory alternative in each of those adjustments. Inflation, as measured by the change in GDP price index, has increased more than 34% since 2010. This has eroded the value of the statutory alternative size alternative in real terms. Consequently, many businesses above their industry-based size standards and in need of financial assistance from SBA's 7(a) or CDC/504

Loan Programs may have exceeded the statutory alternative size standard and lost eligibility for benefits of those programs. The inflationary adjustment of the statutory alternative size standard in this proposed rule will enable such businesses to qualify for those programs. The alternative size standard applies uniformly across all industries and does not affect existing size standards by industry. Rather it supplements them, by making more financing available to otherwise ineligible businesses that exceed their industry-based size standard.

Regarding the SBG Program, NDAA 2013 increased the SBG guarantee limit to $6.5 million, and up to $10 million for a Federal contract if a Federal contracting officer certifies that such a guarantee is necessary. The act also included a provision to increase the $6.5 million limit periodically for inflation in accordance with 41 U.S.C. 1908. Based on the CPI, inflation has increased more than 30% since 2013. SBA has not adjusted its bonding limits since 2013. This has eroded the value of the bonding limits in real terms since the limits were set by Congress in 2013. This has adversely impacted small business contractors seeking bonding assistance from the SBA SBG Program. The adjustment of the SBG contract limits will bring them in line with ongoing inflation and current contracting trends and increase contracting opportunities to small businesses.

(2) What are SBA's description and estimate of the number of small entities to which this proposed rule would apply?

This rule would apply to more than 8.1 million employer firms, of which 98.2% are small under industry-based size standards and 92.5% are small under the interim statutory alternative size standard. About 92.6% of firms would qualify as small under the inflation-adjusted alternative size standard. About 6,275 firms that are above the interim statutory alternate size standard would qualify as small under the inflation-adjusted size alternative standard. That is less than 0.1% of firms that are small under the interim statutory alternative size standard.

For the reasons provided elsewhere in this rule, because of lack of relevant data (*e.g.,* receipts, tangible net worth and net income of loan recipients), SBA cannot precisely state the number of businesses that were approved under the alternative size standard for 7(a) or CDC/504 loans and the number of newly-defined small businesses that will qualify under the inflation-adjusted alternative size standard for loans under these programs. However, based on the analysis of the available data for fiscal years 2021–2022, SBA estimates that at least 500 7(a) or CDC/504 loans (or 0.4% of total loans) were likely approved under the alternative size standard that otherwise would not have qualified under the industry-based size standard.

With respect to the SBG program, more than 95% of the bonding activity is concentrated in the construction sector. Based on the 2017 Economic Census, there are 689,260 small employer firms in construction to which this proposed rule would apply. Additionally, about 2.5% of the bonding activity occurs in 11 industries in Sector 56 with more than 209,000 small firms in those industries to which this rule would also apply. More small businesses would qualify to apply for surety bonds as a result of proposed increases to statutory bonding limits.

(3) What are the projected reporting, record keeping, and other compliance requirements of the proposed rule?

A new size standard does not impose any additional reporting, record keeping, or compliance requirements on small entities. Revising size standards alters the access to SBA programs that assist small businesses, but does not impose a regulatory burden as the size standards neither regulate nor control business behavior.

(4) What are the relevant Federal Government rules that may duplicate, overlap, or conflict with the rule?

This proposed rule does not overlap with other Federal rules because it is limited to SBA's own 7(a) and CDC/504 Loan Programs.

(5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

There are no alternatives to establishing a size standard for the Agency's 7(a) and CDC/504 Loan Programs based on an applicant's tangible net worth and net income because this is a statutory requirement. Specifically, the Jobs Act directs the Agency to use a firm's tangible net worth of not more than $15 million and average net income after Federal income taxes (excluding any carry-over losses) for the two full fiscal years immediately before its application is not more than $5 million until the Administrator adopts a different, permanent alternative size standard based on net worth and net income measures. SBA has proposed to make the interim statutory alternative size standard as a permanent alternative size standard, subject to adjustment for inflation that has occurred since the standard's establishment in 2010. SBA has requested information from the public on using the interim statutory alternative size standard as the permanent alternative size standard and on adjusting it for inflation.

Executive Order 13563

A description of the need for this proposed regulatory action and its associated benefits and costs associated with this action, including possible impacts that relate to Executive Order 13563 are included above in the Regulatory Impact Analysis. This proposed rule will, if adopted, further expand the benefits of the Jobs Act which also increased the upper limits of loans available under the 7(a) and CDC/504 Loan Programs, without restricting their access and availability to qualified entities. By increasing the SBG statutory contract limits would increase contracting opportunities to small businesses.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. This rule does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined this rulemaking will not have substantial, direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rulemaking will not impose any new reporting or record keeping requirements.

List of Subjects

13 CFR Part 115 and 13 CFR Part 121

Administrative practice and procedure, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping

requirements, Bonding, Surety, Small businesses.

For the reasons set forth in the preamble, SBA proposes to amend 13 CFR part 115 and 13 CFR part 121 as follows:

■ 1. The authority citation for part 115 continues to read as follows:

Authority: 5 U.S.C. app 3; 15 U.S.C. 636i, 687b, 687c, 694a, and 694b note.

PART 115—SURETY BOND GUARANTEE

■ 2. Amend § 115.10 by revising the definition of ''Applicable Statutory Limit'' to read as follows:

§ 115.10 Definitions.

Applicable Statutory Limit means the maximum amount, set forth below, of any Contract or Order for which SBA is authorized to guarantee, or commit to guarantee, a Bid Bond, Payment Bond, Performance Bond, or Ancillary Bond:

(1) $9 million (as adjusted for inflation in accordance with 41 U.S.C. 1908);

(2) $14 million if a contracting officer of a Federal agency certifies, in accordance with section 115.12(e)(3), that such guarantee is necessary; or

(3) if SBA is guaranteeing the bond in connection with a procurement related to a major disaster pursuant to section 12079 of Public Law 110–246, see section 115.12(e)(4).

■ 3. Amend § 115.12 by revising paragraph (e)(3) to read as follows:

§ 115.12 General program policies and provisions.

* * * * *

(e) * * *

(3) *Federal Contracts or Orders in excess of $9,000,000* (*as adjusted for inflation in accordance with section 1908 of title 41, United States Code*). SBA is authorized to guarantee bonds on Federal Contracts or Orders greater than $9,000,000 (as adjusted for inflation in accordance with 41 U.S.C. 1908), but not exceeding $14 million, upon a signed certification of a Federal contracting officer that the SBA guarantee is necessary. The certification must be either express mailed to SBA, Office of Surety Guarantees, 409 Third Street SW, Washington, DC 20416 or sent by email to *suretybonds@sba.gov,* and include the following additional information:

(i) Name, address and telephone number of the small business;

(ii) Offer or Contract number and brief description of the contract; and

(iii) Estimated Contract value and date of anticipated award determination.

* * * * *

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 4. The authority citation for Part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(a)(36), 662, 694a(9), and 9012.

■ 5. Amend § 121.301 by revising paragraphs (a), (b), (b)(2), and (e) to read as follows:

§ 121.301 What size standards and affiliation principles are applicable to financial assistance programs?

* * * * *

(a) For Business Loans (other than for 7(a) Business Loans)) and for Disaster Loans (other than physical disaster loans), an applicant business concern must satisfy two criteria:

* * * * *

(b) For 7(a) Business Loans and Development Company programs, an applicant business concern must meet one of the following standards:

(1) * * *

(2) Including its affiliates, tangible net worth not in excess of $20 million, and average net income after Federal income taxes (excluding any carry over losses) for the preceding two completed fiscal years not in excess of $6.5 million. * * *

* * * * *

(e) The applicable size standards for purposes of SBA's financial assistance programs, excluding the Surety Bond Guarantee assistance program, are increased by 25% whenever the applicant agrees to use all of the financial assistance within a labor surplus area. The U.S. Department of Labor (DOL) issues the Labor Surplus Area (LSA) list on a fiscal year basis on its website at *www.dol.gov/agencies/eta/lsa.*

* * * * *

Isabella Casillas Guzman,

Administrator.

[FR Doc. 2023–15899 Filed 7–27–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1642; Project Identifier MCAI–2023–00183–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 supersede Airworthiness Directive (AD) 2022–18–14, which applies to certain Airbus SAS Model A330–200 series, A330–200 Freighter series, A330–300 series, A330–800 series, and A330–900 series airplanes. AD 2022–18–14 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2022–18–14, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would continue to require the actions in AD 2022–18–14, and would require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in two European Union Aviation Safety Agency (EASA) ADs, which are 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 September 11, 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–2023–1642; 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–2023–1642.

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

FOR FURTHER INFORMATION CONTACT: Tim Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3667; email: *timothy.p.dowling@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–2023–1642; Project Identifier MCAI–2023–00183–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 Tim Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3667; email: *timothy.p.dowling@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 issued AD 2022–18–14, Amendment 39–22165 (87 FR 56566, September 15, 2022) (AD 2022–18–14), for certain Airbus SAS Model A330–201, –202, –203, –223, and –243 airplanes; Model A330–223F and –243F airplanes; Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; Model A330–841 airplanes; and Model A330–941 airplanes. AD 2022–18–14 was prompted by MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2021–0261, dated November 22, 2021 (EASA AD 2021–0261) (which prompted FAA AD 2022–18–14), to correct an unsafe condition.

AD 2022–18–14 requires revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations. The FAA issued AD 2022–18–14 to address fatigue cracking, accidental damage, and corrosion in principal structural elements; such fatigue cracking, accidental damage, and corrosion could result in reduced structural integrity of the airplane.

Actions Since AD 2022–18–14 Was Issued

Since the FAA issued AD 2022–18–14, EASA superseded EASA AD 2021–0261 and issued EASA AD 2022–0187, dated September 13, 2022 (EASA AD 2022–0187), for all Airbus SAS Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, –343, –841 and –941 airplanes. EASA AD 2022–0187 states that new or more restrictive airworthiness limitations have been developed.

EASA also issued EASA AD 2023–0015, dated January 19, 2023 (EASA AD 2023–0015), for all Airbus SAS Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes. EASA AD 2023–0015 states that new or more restrictive airworthiness limitations have been developed. EASA AD 2023–0015 also states that it requires certain tasks also required by EASA AD 2022–0187, and invalidates (terminates) the tasks that are also required by EASA AD 2022–0187. Therefore, for this proposed AD, where EASA AD 2023–0015 affects the same airworthiness limitations as those in EASA AD 2022–0187, the airworthiness limitations referenced in EASA AD 2023–0015 would prevail.

Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after November 18, 2022, must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability.

The FAA is proposing this AD to address fatigue cracking, accidental damage, and corrosion in principal structural elements; such fatigue cracking, accidental damage, and corrosion could result in reduced structural integrity of the airplane. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1642.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0187 and EASA AD 2023–0015. This service information specifies new or more restrictive airworthiness limitations for airplane structures. These documents are distinct since they apply to different airplane configurations.

This proposed AD would also require EASA AD 2021–0261, which the Director of the Federal Register approved for incorporation by reference as of October 20, 2022 (87 FR 56566, September 15, 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**.

FAA's Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI 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 design.

Proposed AD Requirements in This NPRM

This proposed AD would retain all of the requirements of AD 2022–18–14. This proposed AD would also require

revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, which are specified in EASA AD 2022–0187 and EASA AD 2023–0015 already described, as proposed for incorporation by reference. Any differences with EASA AD 2022–0187 and EASA AD 2023–0015 are identified as exceptions in the regulatory text of this AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (m)(1) 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 retain the IBR of EASA AD 2021–0261, and incorporate EASA AD 2022–0187 and EASA AD 2023–0015 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0261, EASA AD 2022–0187, and EASA AD 2023–0015 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 2021–0261, EASA AD 2022–0187, or EASA AD 2023–0015 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 2021–0261, EASA AD 2022–0187, or EASA AD 2023–0015. Service information required by EASA AD 2021–0261, EASA AD 2022–0187, or EASA AD 2023–0015 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2023–1642 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in the AMOCs paragraph under ''Additional AD Provisions.'' This new format includes a ''New Provisions for Alternative Actions and Intervals'' paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action or interval.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 120 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2022–18–14 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new proposed actions to be $7,650 (90 work-hours × $85 per work-hour).

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:

■ a. Removing Airworthiness Directive (AD) 2022–18–14, Amendment 39–22165 (87 FR 56566, September 15, 2022); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2023–1642; Project Identifier MCAI–2023–00183–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 11, 2023.

(b) Affected ADs

This AD replaces AD 2022–18–14, Amendment 39–22165 (87 FR 56566, September 15, 2022) (AD 2022–18–14).

(c) Applicability

This AD applies to Airbus SAS airplanes, identified in paragraphs (c)(1) through (5) of this AD, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before November 18, 2022.

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

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

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

(4) Model A330–841 airplanes.

(5) Model A330–941 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking, accidental damage, and corrosion in principal structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Revision of the Existing Maintenance or Inspection Program, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2022–18–14, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before November 2, 2021, except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0261, dated November 22, 2021 (EASA AD 2021–0261). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2021–0261, With No Changes

This paragraph restates the exceptions specified in paragraph (j) of AD 2022–18–14, with no changes.

(1) Where EASA AD 2021–0261 refers to its effective date, this AD requires using October 20, 2022 (the effective date of AD 2022–18–14).

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2021–0261 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2021–0261 specifies revising ''the AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after October 20, 2022 (the effective date of AD 2022–18–14).

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA 2021–0261 is at the applicable ''associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2021–0261, or within 90 days after October 20, 2022 (the effective date of AD 2022–18–14), whichever occurs later.

(5) This AD does not require incorporating Section 4, ''Damage Tolerant-Airworthiness Limitations Items-Tasks Beyond MPPT,'' of ''the ALS'' specified in EASA AD 2021–0261.

(6) The provisions specified in paragraphs (4) and (5) of EASA AD 2021–0261 do not apply to this AD.

(7) The ''Remarks'' section of EASA AD 2021–0261 does not apply to this AD.

(i) Retained Restrictions on Alternative Actions and Intervals With a New Exception

This paragraph restates the requirements of AD 2022–18–14, with a new exception. Except as required by paragraph (j) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0261.

(j) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0187, dated September 13, 2022 (EASA AD 2022–0187); and EASA AD 2023–0015, dated January 19, 2023 (EASA AD 2023–0015); as applicable. Where EASA AD 2023–0015 affects the same airworthiness limitations as those in EASA AD 2022–0187, the airworthiness limitations referenced in EASA AD 2023–0015 prevail.

(k) New Exceptions to EASA AD 2022–0187 and to EASA AD 2023–0015

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2022–0187 and of EASA AD 2023–0015.

(2) Paragraph (3) of EASA AD 2022–0187 and of EASA AD 2023–0015 specifies revising ''the AMP'' within 12 months after the respective EASA AD's effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2022–0187 and of EASA AD 2023–0015 is at the applicable ''associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2022–0187 and of EASA AD 2023–0015, or within 90 days after the effective date of this AD, whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraphs (4) and (5) of EASA AD 2022–0187.

(5) Where EASA AD 2022–0187 defines ''The ALS,'' replace the text ''Airbus A330 Airworthiness Limitations Section (ALS) Part 2 Revision 05,'' with ''Airbus A330 Airworthiness Limitations Section (ALS) Part 2 Revision 05 Issue 02.''

(6) This AD does not adopt the provisions specified in paragraph (4) of EASA AD 2023–0015.

(7) This AD does not require incorporating Section 4, ''Damage Tolerant-Airworthiness Limitations Items-Tasks Beyond MPPT,'' of ''the ALS'' specified in EASA AD 2022–0187 and in EASA AD 2023–0015.

(8) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0187 and of EASA AD 2023–0015.

(l) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2022–0187 and of EASA AD 2023–0015.

(m) 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 (n) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(ii) The AMOC specified in letter AIR–676–19–120, dated March 5, 2019, approved previously for AD 2018–24–04, Amendment 39–19508 (83 FR 60756, November 27, 2018), is approved as an AMOC for the corresponding provisions of 2022–0187 and EASA AD 2023–0015 that are required by paragraph (j) of this AD for Model A330–200 and A330–300 series airplanes modified from a passenger to freighter configuration under the provisions of FAA Supplemental Type Certificate ST04038NY.

(iii) The AMOC specified in letter AIR–731A–20–179, dated May 11, 2020, approved previously for AD 2019–23–02 Amendment 39–19795 (84 FR 64725, November 25, 2019), is approved as an AMOC for the corresponding provisions of EASA AD 2022–0187 and of EASA AD 2023–0015 that are required by paragraph (j) of this AD for Model A330–200 and A330–300 series airplanes modified from a passenger to freighter configuration under the provisions of FAA Supplemental Type Certificate ST04038NY.

(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.

(n) Additional Information

For more information about this AD, contact Tim Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3667; email: *timothy.p.dowling@faa.gov.*

(o) 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.

(3) The following service information was approved for IBR on [DATE 35 DAYS AFTER PUBLICATION OF THE FINAL RULE].

(i) European Union Aviation Safety Agency (EASA) AD 2022–0187, dated September 13, 2022.

(ii) European Union Aviation Safety Agency (EASA) AD 2023–0015, dated January 19, 2023.

(4) The following service information was approved for IBR on October 20, 2022 (87 FR 56566, September 15, 2022).

(i) European Union Aviation Safety Agency (EASA) AD 2021–0261, dated November 22, 2021.

(ii) [Reserved]

(5) For EASA AD 2021–0261, EASA AD 2022–0187, and EASA AD 2023–0015, 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 these EASA ADs on the EASA website at *ad.easa.europa.eu.*

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

(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 July 21, 2023.

Victor Wicklund,

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

[FR Doc. 2023–15999 Filed 7–27–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1641; Project Identifier MCAI–2023–00598–T]

RIN 2120–AA64

Airworthiness Directives; ATR—GIE Avions de Transport Régional Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2021–10–20, which applies to certain ATR–GIE Avions de Transport Régional Model ATR42–500 and ATR72–212A airplanes. AD 2021–10–20 requires revising the existing aircraft flight manual (AFM) and applicable corresponding operational procedures to update a systems limitation, limiting dispatch with certain equipment inoperative, performing an operational test of a certain contactor and an electrical test of a certain battery toggle switch, and performing corrective actions if necessary. Since the FAA issued AD 2021–10–20, new procedures for modifying the wiring and replacing the battery toggle switch have been developed that would terminate the AD requirements. This proposed AD would continue to require certain actions in AD 2021–10–20, and would require modifying the battery toggle switch wiring and replacing the battery toggle switch, and would revise the applicability to include additional airplanes, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). 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 September 11, 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–2023–1641; 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 the EASA AD identified in this NPRM, you may 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: *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2023–1641.
- 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: Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3220; email: *shahram.daneshmandi@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–2023–1641; Project Identifier MCAI–2023–00598–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 Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3220; email: *shahram.daneshmandi@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

The FAA issued AD 2021–10–20, Amendment 39–21553 (86 FR 26373, May 14, 2021) (AD 2021–10–20), for certain ATR–GIE Avions de Transport Régional Model ATR42–500 and ATR72–212A airplanes. AD 2021–10–20 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued Emergency AD 2021–0120–E, dated May 3, 2021, to correct an unsafe condition.

AD 2021–10–20 requires revising the existing AFM and applicable corresponding operational procedures to update a systems limitation, limiting dispatch with certain equipment inoperative, performing an operational test of a certain contactor and an electrical test of a certain battery toggle switch, and performing corrective actions if necessary. The FAA issued AD 2021–10–20 to address reports of temporary loss of all display units and the integrated electronic standby instrument (IESI), which could result in loss of control of the airplane.

Actions Since AD 2021–10–20 Was Issued

The preamble to AD 2021–10–20 explained that the FAA considered the requirements ''interim action'' and was considering further rulemaking. The FAA has now determined that further rulemaking is indeed necessary, and this proposed AD follows from that determination.

Since the FAA issued AD 2021–10–20, EASA superseded EASA Emergency AD 2021–0120–E, dated May 3, 2021, and issued EASA AD 2023–0078R1, dated April 20, 2023 (EASA AD 2023–0078R1) (also referred to as the MCAI), to correct an unsafe condition for all ATR–GIE Avions de Transport Régional Model ATR42–400 and –500 airplanes and ATR72–101, –102, –201, –202, –211, –212, –212A airplanes. Model ATR42–400 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability. The MCAI states that new modification instructions have been published that would terminate the requirements of AD 2021–10–20, and expands the applicability to include Model ATR72–101, –102, –201, –202, –211, and –212 airplanes. Temporary loss of all display units and the IESI, if not corrected, could result in loss of control 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–2023–1641.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2021–10–20, this proposed AD would retain certain requirements of AD 2021–10–20. Those requirements are referenced in EASA AD 2023–0078R1, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0078R1 specifies procedures for revising the existing AFM to update a systems limitation for the transformer rectifier unit (TRU), limiting dispatch with certain equipment inoperative (which can be done by amending the operator's minimum equipment list (MEL)), performing an operational test of the contactor FIN 1PA for discrepancies (*i.e.,* a lack of power supply to DU 4 or a static inverter 1 INV FAULT not being displayed on 29VU), replacing the battery toggle switch FIN 7PA, modifying the wiring, and performing corrective actions. Corrective actions include replacing the contactor FIN 1PA and restoring wiring. EASA AD 2023–0078R1 also prohibits the installation of affected parts.

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

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI 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 design.

Proposed AD Requirements in This NPRM

This proposed AD would retain certain requirements of AD 2021–10–20. This proposed AD would add airplanes to the applicability and require accomplishing the actions specified in EASA AD 2023–0078R1 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Compliance With MEL Revision

EASA AD 2023–0078R1 requires operators to ''inform all flight crews'' of revisions to the existing AFM and MEL, and thereafter to ''operate the aeroplane accordingly.'' However, this proposed AD would not specifically require those actions as those actions are already required by FAA regulations.

FAA regulations require operators furnish to pilots any changes to the AFM (for example, 14 CFR 121.137), and to ensure the pilots are familiar with the AFM (for example, 14 CFR 91.505). As with any other flightcrew training requirement, training on the updated AFM content is tracked by the operators and recorded in each pilot's training record, which is available for the FAA to review. FAA regulations also require pilots to follow the procedures in the existing AFM including all updates. 14 CFR 91.9 requires that any person operating a civil aircraft must comply with the operating limitations specified in the AFM. FAA regulations (14 CFR 121.628(a)(2)) require operators to provide pilots with access to all of the

information contained in the operator's MEL. Furthermore, 14 CFR 121.628(a)(5) requires airplanes to be operated under all applicable conditions and limitations contained in the operator's MEL. Therefore, including a requirement in this proposed AD to operate the airplane according to the revised AFM and MEL would be redundant and unnecessary.

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 2023–0078R1 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0078R1 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 2023–0078R1 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 2023–0078R1. Service information required by EASA AD 2023–0078R1 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–1641 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 21 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2021–10–20	3 work-hours × $85 per hour = $255	$0	$255	$3,825
New proposed actions	10 work-hours × $85 per hour = $850	0	850	17,850

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:

■ a. Removing Airworthiness Directive 2021–10–20, Amendment 39–21553 (86 FR 26373, May 14, 2021); and

■ b. Adding the following new Airworthiness Directive:

ATR–GIE Avions de Transport Régional: Docket No. FAA–2023–1641; Project Identifier MCAI–2023–00598–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 11, 2023.

(b) Affected ADs

This AD replaces AD 2021–10–20, Amendment 39–21553 (86 FR 26373, May 14, 2021) (AD 2021–10–20).

(c) Applicability

This AD applies to all ATR–GIE Avions de Transport Régional Model ATR42–500, and ATR72–101, –102, –201, –202, –211, –212, and –212A airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code: 24, Electrical Power.

(e) Unsafe Condition

This AD was prompted by reports of temporary loss of all display units and the integrated electronic standby instrument (IESI). The FAA is issuing this AD to address temporary loss of all display units and the IESI, which could result in loss of control 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, European Union Aviation Safety Agency (EASA) AD 2023–0078R1, dated April 20, 2023 (EASA AD 2023–0078R1).

(h) Exceptions to EASA AD 2023–0078R1

(1) Where EASA AD 2023–0078R1 refers to ''05 May 2021 [the effective date of EASA AD 2021–0120–E],'' this AD requires using May 14, 2021 (the effective date of AD 2021–10–20).

(2) Where EASA AD 2023–0078R1 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where paragraphs (1), (2), and (5) of EASA AD 2023–0078R1 specify to ''inform all flight crews, and, thereafter, operate the aeroplane accordingly,'' this AD does not require those actions as those actions are already required by existing FAA operating regulations (see 14 CFR 91.9, 91.505, and 121.137).

(4) Where paragraph (4) of EASA AD 2023–0078R1 specifies actions if ''discrepancies are detected,'' for this AD a ''discrepancy'' is defined as a lack of power supply to DU 4 or a INV FAULT is not triggered.

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0078R1.

(i) No Reporting Requirement

Although certain service information referenced in EASA AD 2023–0078R1 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) 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 (k) 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 ATR–GIE Avions de Transport Régional's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Additional Information

For more information about this AD, contact Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3220; email *shahram.daneshmandi@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 this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2023–0078R1, dated April 20, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0078R1, 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 July 21, 2023.

Victor Wicklund,

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

[FR Doc. 2023–15987 Filed 7–27–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1639; Project Identifier MCAI–2023–00109–T]

RIN 2120–AA64

Airworthiness Directives; MHI RJ Aviation ULC (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 all MHI RJ Aviation ULC Model CL–600–2B19 (Regional Jet Series 100 & 440), CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2C11 (Regional Jet Series 550), CL–600–2D15 (Regional Jet Series 705), CL–600–2D24 (Regional Jet Series 900), and CL–600–2E25 (Regional Jet Series 1000) airplanes. This proposed AD was prompted by reports of power control unit (PCU) rod end fractures due to pitting corrosion, and a determination that new or more restrictive airworthiness limitations are necessary. This proposed AD would, for certain airplanes, require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. This proposed AD would also require accomplishing certain aircraft maintenance manual (AMM) tasks and corrective actions following short-term or long-term storage. 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 September 11, 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–2023–1639; 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 MHI RJ Aviation Group, Customer Response Center, 3655 Ave. des Grandes-Tourelles, Suite 110, Boisbriand, Québec J7H 0E2 Canada; North America toll-free telephone 833–990–7272 or direct-dial telephone 450–990–7272; fax 514–855–8501; email *thd.crj@mhirj.com;* website *mhirj.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: 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–2023–1639; Project Identifier MCAI–2023–00109–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to 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–2023–03, dated January 20, 2023 (Transport Canada AD CF–2023–03) (also referred to as the MCAI), to correct an unsafe condition for all MHI RJ Aviation ULC Model CL–600–2B19 (Regional Jet Series 100 & 440), CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2C11 (Regional Jet Series 550), CL–600–2D15 (Regional Jet Series 705), CL–600–2D24 (Regional Jet Series 900), and CL–600–2E25 (Regional Jet Series 1000) airplanes. The MCAI states that in-service reports of PCU rod end fractures due to pitting corrosion led to the issuance of Transport Canada AD CF–2018–29, dated November 2, 2018 (which corresponds to FAA AD 2019–19–08, Amendment 39–19744 (84 FR 60902, November 12, 2019) (AD 2019–19–08). AD 2019–19–08 requires detailed inspections of the elevator PCU rod ends and applicable corrective actions, and prohibits using certain aircraft maintenance manual tasks. Pitting corrosion can cause the PCU end rod spherical bearing to seize, potentially inducing a bending moment on the PCU output rod. The bending moment will eventually fracture the rod end. This condition, if not corrected, could lead to a disconnect between the PCU and the elevator or rudder control surface, resulting in potential loss of the control surface function or inadequate flutter suppression. Since Transport Canada AD CF–2018–29 was issued, MHI RJ conducted further safety analyses and determined that new or more restrictive airworthiness limitations are necessary for the operational check of each individual rudder PCU and elevator PCU. Additionally, Transport Canada determined that certain return-to-service AMM tasks are needed following short-term or long-term airplane storage.

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–2023–1639.

Related Service Information Under 1 CFR Part 51

The FAA reviewed MHI RJ Temporary Revisions ALI–0757 and ALI–0759, both dated September 24, 2021. This service information specifies new or more restrictive airworthiness limitations for the elevator and rudder PCUs.

The FAA also reviewed the following service information. This service information specifies, among other tasks, operational tests of the rudder control and elevator control systems, and detailed inspections of the rudder PCU rod end spherical ball and elevator PCU rod end spherical ball, and corrective actions. Corrective actions include making sure that the applicable parts are moving or rotating correctly. These documents are distinct since they apply to different airplane models in different configurations.

- Subject 27–23–01, Power Control Unit (PCU)—Rudder, Chapter 27—Flight Controls, MHI RJ CRJ700/900/1000 Aircraft Maintenance Manual, Part 2, CSP B–001, Revision 71, dated December 16, 2022.
- Subject 27–33–01, Power Control Unit (PCU)—Elevator, Chapter 27, Flight Controls, MHI RJ CRJ700/900/1000 Aircraft Maintenance Manual, Part 2, CSP B–001, Revision 71, dated December 16, 2022.
- Task 27–21–00–710–805, Operational Test of the Rudder Control System, Subject 27–21–00, Rudder Control System, Chapter 27, Flight Controls, of MHI RJ CRJ200 Aircraft Maintenance Manual, CSP A–001, Revision 66, dated October 10, 2022.
- Task 27–23–01–220–801, Detailed Inspection of the Rudder PCU Rod End Spherical Ball, Subject 27–23–01, Power Control Unit (PCU), Rudder, Chapter 27, Flight Controls, of MHI RJ CRJ200 Aircraft Maintenance Manual, CSP A–001, Revision 66, dated October 10, 2022.
- Task 27–31–00–710–803, Operational Test of the Elevator Control System, Subject 27–31–00, Elevator Control System, Chapter 27, Flight Controls, of MHI RJ CRJ200 Aircraft Maintenance Manual, CSP A–001, Revision 66, dated October 10, 2022.
- Task 27–33–01–220–801, Detailed Inspection of the Elevator PCU Rod End Spherical Ball, Subject 27–33–01, Power Control Unit (PCU), Elevator, Chapter 27, Flight Controls, of MHI RJ CRJ200 Aircraft Maintenance Manual, CSP A–001, Revision 66, dated October 10, 2022.

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**.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to

incorporate new or more restrictive airworthiness limitations. This proposed AD would also require accomplishing certain AMM tasks and corrective actions following short-term or long-term storage.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j)(1) of this proposed AD.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1,125 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 8 work-hours × $85 per hour = $680	$0	Up to $680	Up to $765,000.

The FAA has determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the agency estimates the average total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

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:

MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.): Docket No. FAA–2023–1639; Project Identifier MCAI–2023–00109–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 11, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all MHI RJ Aviation ULC (Type Certificate previously held by Bombardier, Inc.) airplanes identified in paragraphs (c)(1) through (6) of this AD, certificated in any category.

(1) Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes.

(2) Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes.

(3) Model CL–600–2C11 (Regional Jet Series 550) airplanes.

(4) Model CL–600–2D15 (Regional Jet Series 705) airplanes.

(5) Model CL–600–2D24 (Regional Jet Series 900) airplanes.

(6) Model CL–600–2E25 (Regional Jet Series 1000) airplanes.

(d) Subject

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

(e) Reason

This AD was prompted by reports of power control unit (PCU) rod end fractures due to pitting corrosion and a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fractured PCU rod ends. This condition, if not addressed, could lead to a disconnect between the PCU and the elevator or rudder control surface, resulting in potential loss of the control surface function or inadequate flutter suppression.

(f) Compliance

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

(g) Required Actions for Model CL–600–2B19 Airplanes

For Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes: Within 60 days after the effective date of this AD, when returning an airplane from long-term storage (storage lasting more than 28 days), do the actions specified in paragraphs (g)(1) through (4) of this AD. Do all applicable corrective actions before further flight.

(1) Accomplish an operational test and applicable corrective actions, in accordance with Task 27–21–00–710–805, Operational Test of the Rudder Control System, Subject 27–21–00, Rudder Control System, Chapter 27, Flight Controls, of MHI RJ CRJ200 Aircraft Maintenance Manual, CSP A–001, Revision 66, dated October 10, 2022.

(2) Accomplish an operational test and applicable corrective actions, in accordance with Task 27–31–00–710–803, Operational Test of the Elevator Control System, Subject 27–31–00, Elevator Control System, Chapter 27, Flight Controls, of MHI RJ CRJ200 Aircraft Maintenance Manual, CSP A–001, Revision 66, dated October 10, 2022.

(3) Accomplish a detailed inspection and applicable corrective actions, in accordance with Task 27–23–01–220–801, Detailed Inspection of the Rudder PCU Rod End Spherical Ball, Subject 27–23–01, Power Control Unit (PCU), Rudder, Chapter 27, Flight Controls, of MHI RJ CRJ200 Aircraft Maintenance Manual, CSP A–001, Revision 66, dated October 10, 2022.

(4) Accomplish a detailed inspection and applicable corrective actions in accordance with Task 27–33–01–220–801, Detailed Inspection of the Elevator PCU Rod End Spherical Ball, Subject 27–33–01, Power Control Unit (PCU), Elevator, Chapter 27, Flight Controls, of MHI RJ CRJ200 Aircraft Maintenance Manual, CSP A–001, Revision 66, dated October 10, 2022.

(h) Required Actions for Model CL–600–2C10, CL–600–2C11, CL–600–2D15 and CL–600–2D24 Airplanes

For Model CL–600–2C10 (Regional Jet Series 700, 701, & 702); CL–600–2C11 (Regional Jet Series 550); CL–600–2D15 (Regional Jet Series 705); and CL–600–2D24 (Regional Jet Series 900) airplanes: Accomplish the actions required by paragraphs (h)(1) through (3) of this AD, as applicable.

(1) Within 60 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in MHI RJ Temporary Revisions ALI–0757 and ALI–0759, both dated September 24, 2021. The initial compliance time for doing the tasks is within 400 flight hours or 6 months, whichever occurs first after the effective date of this AD; or within 60 days after the effective date of this AD; whichever occurs latest.

(2) Within 60 days after the effective date of this AD, when returning an airplane from short-term storage (storage lasting 28 days or less), do the actions specified in paragraphs (h)(2)(i) and (ii) of this AD. Do all applicable corrective actions before further flight.

(i) Accomplish an operational test and applicable corrective actions, in accordance with Task 27–23–01–710–801, Operational Test of the Rudder PCU, Subject 27–23–01, Power Control Unit (PCU), Rudder, Chapter 27, Flight Controls, of MHI RJ CRJ700/900/1000 Aircraft Maintenance Manual, Part 2, CSP B–001, Revision 71, dated December 16, 2022.

(ii) Accomplish an operational test and applicable corrective actions in accordance with Task 27–33–01–710–802, Operational Test of the Elevator Power-Control Units (PCUs), Subject 27–33–01, Power Control Unit (PCU), Elevator, Chapter 27, Flight Controls, of MHI RJ CRJ700/900/1000 Aircraft Maintenance Manual, Part 2, CSP B–001, Revision 71, dated December 16, 2022.

(3) Within 60 days after the effective date of this AD, when returning an airplane from long-term storage (storage lasting more than 28 days), do the actions specified in paragraphs (h)(3)(i) through (iv) of this AD. Do all applicable corrective actions before further flight.

(i) Accomplish an operational test and applicable corrective actions, in accordance with Task 27–23–01–710–801, Operational Test of the Rudder PCU, Subject 27–23–01, Power Control Unit (PCU), Rudder, Chapter 27, Flight Controls, of MHI RJ CRJ700/900/1000 Aircraft Maintenance Manual, Part 2, CSP B–001, Revision 71, dated December 16, 2022.

(ii) Accomplish an operational test and applicable corrective actions in accordance with Task 27–33–01–710–802, Operational Test of the Elevator Power-Control Units (PCUs), Subject 27–33–01, Power Control Unit (PCU), Elevator, Chapter 27, Flight Controls, of MHI RJ CRJ700/900/1000 Aircraft Maintenance Manual, Part 2, CSP B–001, Revision 71, dated December 16, 2022.

(iii) Accomplish a detailed inspection and applicable corrective actions in accordance with Task 27–23–01–220–802, Detailed Inspection of the Rudder PCU Rod End Spherical Ball, Subject 27–23–01, Power Control Unit (PCU), Rudder, Chapter 27, Flight Controls, of MHI RJ CRJ700/900/1000 Aircraft Maintenance Manual, Part 2, CSP B–001, Revision 71, dated December 16, 2022.

(iv) Accomplish a detailed inspection and applicable corrective actions, in accordance with Task 27–33–01–220–801, Detailed Inspection of the Elevator PCU Rod End Spherical Ball, Subject 27–33–01, Power Control Unit (PCU), Elevator, Chapter 27, Flight Controls, of MHI RJ CRJ700/900/1000 Aircraft Maintenance Manual, Part 2, CSP B–001, Revision 71, dated December 16, 2022.

(i) Required Actions for Model CL–600–2E25 Airplanes

For Model CL–600–2E25 (Regional Jet Series 1000) airplanes: Accomplish the actions specified in paragraphs (i)(1) through (3) of this AD, as applicable.

(1) Within 60 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in MHI RJ Temporary Revisions ALI–0757 and ALI–0759, both dated September 24, 2021. The initial compliance time for doing the tasks is within 400 flight hours or 6 months, whichever occurs first after the effective date of this AD; or within 60 days after the effective date of this AD; whichever occurs latest.

(2) Within 60 days after the effective date of this AD, when returning an airplane from short-term storage (storage lasting 28 days or less): Accomplish an operational test and applicable corrective actions in accordance with Task 27–33–01–710–802, Operational Test of the Elevator Power-Control Units (PCUs), Subject 27–33–01, Power Control Unit (PCU), Elevator, Chapter 27, Flight Controls, of MHI RJ CRJ700/900/1000 Aircraft Maintenance Manual, Part 2, CSP B–001, Revision 71, dated December 16, 2022. Do all applicable corrective actions before further flight.

(3) Within 60 days after the effective date of this AD, when returning an airplane from long-term storage (storage lasting more than 28 days), do the actions specified in paragraphs (i)(3)(i) and (ii) of this AD. Do all applicable corrective actions before further flight.

(i) Accomplish an operational test and applicable corrective actions, in accordance with Task 27–33–01–710–802, Operational Test of the Elevator Power-Control Units (PCUs), Subject 27–33–01, Power Control Unit (PCU), Elevator, Chapter 27, Flight Controls, of MHI RJ CRJ700/900/1000 Aircraft Maintenance Manual, Part 2, CSP B–001, Revision 71, dated December 16, 2022.

(ii) Accomplish a detailed inspection and applicable corrective actions, in accordance with Task 27–33–01–220–801, Detailed Inspection of the Elevator PCU Rod End Spherical Ball, Subject 27–33–01, Power Control Unit (PCU), Elevator, Chapter 27, Flight Controls, of MHI RJ CRJ700/900/1000 Aircraft Maintenance Manual, Part 2, CSP B–001, Revision 71, dated December 16, 2022.

(j) No Alternative Actions or Intervals

After the existing maintenance or inspection program has been revised as required by paragraphs (h)(1) and (i)(1) of this AD, no alternative actions (*e.g.,* inspections), or intervals may be used unless the actions, and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

(j) Other FAA 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 manager, International Validation Branch, mail it to the address identified in paragraph (j)(2) of this AD or email to: *9-AVS-AIR-730-AMOC@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, International Validation Branch, FAA; or Transport Canada; or MHI RJ Aviation ULC's Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Additional Information

(1) Refer to Transport Canada AD CF–2023–03, dated January 20, 2023, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–1639.

(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.*

(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 this AD specifies otherwise.

(i) MHI RJ Temporary Revision ALI–0757, dated September 24, 2021.

(ii) MHI RJ Temporary Revision ALI–0759, dated September 24, 2021.

(iii) Subject 27–23–01, Power Control Unit (PCU)—Rudder, Chapter 27—Flight Controls, MHI RJ CRJ700/900/1000 Aircraft Maintenance Manual, Part 2, CSP B–001, Revision 71, dated December 16, 2022.

(iv) Subject 27–33–01, Power Control Unit (PCU)—Elevator, Chapter 27, Flight Controls, MHI RJ CRJ700/900/1000 Aircraft Maintenance Manual, Part 2, CSP B–001, Revision 71, dated December 16, 2022.

(v) Task 27–21–00–710–805, Operational Test of the Rudder Control System, Subject 27–21–00, Rudder Control System, Chapter 27, Flight Controls, of MHI RJ CRJ200 Aircraft Maintenance Manual, CSP A–001, Revision 66, dated October 10, 2022.

(vi) Task 27–23–01–220–801, Detailed Inspection of the Rudder PCU Rod End Spherical Ball, Subject 27–23–01, Power Control Unit (PCU), Rudder, Chapter 27, Flight Controls, of MHI RJ CRJ200 Aircraft Maintenance Manual, CSP A–001, Revision 66, dated October 10, 2022.

(vii) Task 27–31–00–710–803, Operational Test of the Elevator Control System, Subject 27–31–00, Elevator Control System, Chapter 27 Flight Controls, of MHI RJ CRJ200 Aircraft Maintenance Manual, CSP A–001, Revision 66, dated October 10, 2022.

(viii) Task 27–33–01–220–801, Detailed Inspection of the Elevator PCU Rod End Spherical Ball, Subject 27–33–01, Power Control Unit (PCU), Elevator, Chapter 27, Flight Controls, of MHI RJ CRJ200 Aircraft Maintenance Manual, CSP A–001, Revision 66, dated October 10, 2022.

(3) For service information identified in this AD, contact MHI RJ Aviation Group, Customer Response Center, 3655 Ave. des Grandes-Tourelles, Suite 110, Boisbriand, Québec J7H 0E2 Canada; North America toll-free telephone 833–990–7272 or direct-dial telephone 450–990–7272; fax 514–855–8501; email *thd.crj@mhirj.com;* website *mhirj.com.*

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

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

Issued on July 21, 2023.

Victor Wicklund,

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

[FR Doc. 2023–15986 Filed 7–27–23; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 308

RIN 3084–AA78

Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992

AGENCY: Federal Trade Commission.

ACTION: Proposed rule; withdrawal.

SUMMARY: On March 12, 1997, the Federal Trade Commission initiated a review of the effectiveness of its Pay-Per-Call Rule. The Commission sought comment on whether to expand the scope of this rule to cover audio information and entertainment services accessed by dialing telephone numbers that begin with numbers other than ''900.'' After receiving a small number of comments in favor of this approach, the Commission published a notice of proposed rulemaking to revise this rule on October 30, 1998. While comments received during this review were supportive, technological changes have muted the impact of the proposed revisions and the Commission is withdrawing this proposed rulemaking.

DATES: The proposed rule documents published on March 12, 1997 (62 FR 11750), October 30, 1998 (63 FR 58523), and January 4, 1999 (64 FR 61) are withdrawn as of July 28, 2023.

FOR FURTHER INFORMATION CONTACT: Frances Kern (202–326–2391), Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On March 12, 1997, the Federal Trade Commission (''Commission'') published a document in the **Federal Register** initiating a review of the effectiveness of the Pay-Per-Call Rule. 62 FR 11750. Among other things, the Pay-Per-Call Rule requires disclosures about the cost of telephone-based entertainment or information services that consumers access by dialing a 900 number and mandates that consumers be given the opportunity to hang up the phone before being charged. *See* 16 CFR 308.1 through 308.8. The Commission also sought comment on whether to expand the scope of the rule to cover audio information and entertainment services accessed by dialing telephone numbers that begin with numbers other than ''900''.

After receiving a small number of comments in favor of this approach, the Commission published a notice of proposed rulemaking (''NPRM'') to amend the rule on October 30, 1998. 63 FR 58523. Following two additional rounds of public comment and a two-day public workshop on the proposed changes, support to amend the Pay-Per-Call Rule proved limited.[1] Additionally, technological changes have muted the impact of the proposed amendments. Not only did the use of 900 numbers decline precipitously after issuance of the NPRM,[2] ultimately resulting in the major U.S. telecommunications providers of 900-number services discontinuing those services,[3] but such reduction in use likewise diminished the necessity of Commission enforcement of the Rule. The Commission last brought an action under the rule in 2003.[4] Accordingly, the review of the Pay-Per-Call Rule begun on March 12, 1997, is terminated, and the Commission withdraws this proposed rulemaking.

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2023–15998 Filed 7–27–23; 8:45 am]

BILLING CODE 6750–01–P

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[1] On January 4, 1999, the Commission extended the comment period and announced changes to the dates of the public workshops held as a part of this rulemaking review. 64 FR 61.

[2] Indeed, the services previously offered through 900 numbers for a fee often came to be found for free on the internet. *See* Steven Melendez, *How Dialing 1–900 in the '90s Foreshadowed the Internet,* FAST COMPANY, Nov. 23, 2015, *https://www.fastcompany.com/3053732/how-dialing-1-900-in-the-90s-foreshadowed-the-internet.*

[3] AT&T, Sprint, and Verizon/MCI stopped providing 900-number services in 2004, 2008, and 2013, respectively. *See* Federal Communications Commission, *Comments Invited on Application of MCI Communications Services, Inc. d/b/a Verizon Business Services to Discontinue Domestic Telecommunications Services,* WC Docket No. 13–139, DA 13–1256 (May 30, 2013); Federal Communications Commission, Order, *In re Section 63.71 Application of Sprint Communications Company L.P. for Authority to Discontinue Domestic Telecommunications Services,* WC Docket No. 08–116, DA 08–2557 (Nov. 24, 2008); Federal Communications Commission, Memorandum Opinion and Order, *In re AT&T Communications' Application to Discontinue Domestic Telecommunications Services,* Comp. Pol. File No. 645, DA 03–3743 (Nov. 21, 2003).

[4] *Federal Trade Commission* v. *Alyon Technologies, Inc.,* ECF No. 1, No. 03–cv–1297 (N.D. Ga. May 13, 2003). The Department of Justice, acting on referral from the Commission, last brought a claim under the Rule in 2004. *See U.S.* v. *Telemarketing, Inc.,* ECF No. 1, No. 04–cv–1083 (N.D. Cal. Mar. 18, 2004).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2022–0982; FRL–11119–01–R4]

Air Plan Approval and Air Quality Designation; KY; Redesignation of the Northern Kentucky Portion of the Cincinnati, OH–KY 2015 8-Hour Ozone Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On September 21, 2022, the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet (Cabinet), Division of Air Quality (DAQ), submitted a request for the Environmental Protection Agency (EPA) to redesignate the Northern Kentucky portion (hereinafter referred to as the ''Northern Kentucky Area'' or ''Area'') of the Cincinnati, Ohio-Kentucky, 2015 8-hour ozone nonattainment area (hereinafter referred to as the ''Cincinnati OH–KY Area'') to attainment for the 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS or standards) and to approve a State Implementation Plan (SIP) revision containing a maintenance plan for the Area. The Cabinet submitted this request and SIP revision through a letter dated September 20, 2022, and supplemented it on November 22, 2022. EPA is proposing to approve the Commonwealth's plan for maintaining attainment of the 2015 8-hour ozone standard in the Northern Kentucky Area, including the motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO_X) and volatile organic compounds (VOCs) for the years of 2026 and 2035 for the Area, to incorporate the maintenance plan into the SIP, and to redesignate the Area to attainment for the 2015 8-hour ozone NAAQS. EPA previously approved the redesignation request and maintenance plan for the Ohio portion of the Cincinnati, OH–KY Area. EPA is also notifying the public of the status of EPA's adequacy determination for the MVEBs for the Area.

DATES: Comments must be received on or before August 28, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2022–0982 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* 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. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Evan Adams, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9009. Mr. Adams can also be reached via electronic mail at *adams.evan@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Summary of EPA's Proposed Action

EPA is proposing to take the following separate but related actions addressing the September 20, 2022, submittal, as supplemented on November 22, 2022: [1] (1) to approve Kentucky's plan for maintaining the 2015 ozone NAAQS (maintenance plan), including the associated MVEBs, for the Northern Kentucky Area and incorporate the plan into the SIP, and (2) to redesignate the Northern Kentucky Area to attainment for the 2015 8-hour ozone NAAQS. EPA is also notifying the public of the status of EPA's adequacy determination for the MVEBs for the Northern Kentucky Area. The Northern Kentucky Area is composed of portions of Boone, Campbell, and Kenton Counties in Kentucky. The Cincinnati, OH–KY Area is composed of the Northern Kentucky Area and the counties of Butler, Clermont, Hamilton, and Warren in Ohio. These proposed actions are summarized below and described in greater detail through this notice of proposed rulemaking.

EPA is proposing to approve Kentucky's maintenance plan for its portion of the Cincinnati, OH–KY Area as meeting the requirements of section 175A (such approval being one of the Clean Air Act (CAA or Act) criteria for redesignation to attainment status) and incorporate it into the SIP. The maintenance plan is designed to keep the Cincinnati, OH–KY Area in attainment of the 2015 8-hour ozone NAAQS through 2035. The maintenance plan includes 2026 and 2035 MVEBs for NO_X and VOC for the Northern Kentucky Area for transportation conformity purposes. EPA is proposing to approve these MVEBs and incorporate them into the SIP.

EPA also proposes to determine that the Northern Kentucky Area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. Accordingly, EPA is proposing to approve a request to change the legal designation of the portions of Boone, Campbell, and Kenton Counties in Kentucky's portion of the Cincinnati, OH–KY Area, as found at 40 CFR 81.318, from nonattainment to attainment for the 2015 8-hour ozone NAAQS.

EPA is also notifying the public of the status of EPA's adequacy process for the MVEBs for the Northern Kentucky Area. The Adequacy comment period began on September 28, 2022, with EPA's posting of the availability of Kentucky's submission on EPA's Adequacy website (*https://www.epa.gov/state-and-local-transportation/state-implementation-plans-sip-submissions-currently-under-epa*). The Adequacy comment period for these MVEBs closed on October 28, 2022. No comments, adverse or otherwise, were received during the Adequacy comment period. Please see section VII of this notice of proposed rulemaking for further explanation of this process and for more details on MVEBs.

In summary, this notice of proposed rulemaking is in response to Kentucky's September 20, 2022, redesignation request and associated SIP submission that addresses the specific issues summarized above and the necessary

[1] EPA received the September 21, 2022, submission under a cover letter dated September 20, 2022. For clarity, throughout this notice, EPA will refer to the September 21, 2022, submission by its cover letter date of September 20, 2022.

elements described in section 107(d)(3)(E) of the CAA for redesignation of the Kentucky portion of the Cincinnati, OH–KY Area to attainment for the 2015 8-hour ozone NAAQS and the associated MVEBs.

II. Background

On October 1, 2015, EPA revised both the primary and secondary NAAQS for ozone to a level of 0.070 parts per million (ppm) to provide increased protection of public health and the environment. *See* 80 FR 65292 (October 26, 2015). The 2015 ozone NAAQS retains the same general form and averaging time as the 0.075 ppm NAAQS set in 2008 but is set at a more protective level. Under EPA's regulations at 40 CFR part 50, the 2015 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.070 ppm. See Appendix U of 40 CFR part 50. This 3-year average is referred to as the design value.

Upon promulgation of a new or revised ozone NAAQS, section 107(d) of the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS (or that contributes to ambient air quality in a nearby area that is violating the NAAQS). As part of the designations process for the 2015 8-hour ozone NAAQS, the Cincinnati, OH–KY Area was designated as a ''Marginal'' ozone nonattainment area, effective August 3, 2018. *See* 83 FR 25776 (June 4, 2018). Areas that were designated as Marginal ozone nonattainment areas were required to attain the 2015 8-hour ozone NAAQS no later than August 3, 2021, based on 2018, 2019, and 2020 monitoring data. *See* 40 CFR 51.1303. EPA reclassified the Northern Kentucky Area to Moderate on October 7, 2022, after failing to attain by the attainment date.[2] *See* 87 FR 60897 (October 7, 2022) and 40 CFR 81.318. The October 7, 2022, action requires Moderate areas to attain the 2015 8-hour ozone NAAQS as expeditiously as practicable, but no later than August 3, 2024, six years after the effective date of the initial nonattainment designations. *See* 40 CFR 51.1303.

[2] EPA proposed to reclassify the Cincinnati, OH–KY Area as a Moderate nonattainment area on April 13, 2022. However, prior to finalizing the reclassification, EPA redesignated the Ohio portion of the Cincinnati OH–KY Area to attainment for the 2015 8-hour ozone NAAQS. *See* 87 FR 35104 (June 9, 2022). EPA finalized the reclassification of the Kentucky portion of the Cincinnati OH–KY Area on October 7, 2022 (87 FR 60897).

III. Criteria for Redesignation

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation providing that: (1) the EPA Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and (5) the State containing such area has met all requirements applicable to the area for purposes of redesignation under Section 110 and part D of the CAA.

EPA provided guidance on redesignations in the General Preamble for the Implementation of title I of the CAA Amendments of 1990 on April 16, 1992 (57 FR 13498) and supplemented that guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. ''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990;
2. ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereinafter referred to as the ''Calcagni Memorandum'');
5. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. ''Technical Support Documents (TSDs) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
7. ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993 (hereinafter referred to as the ''Shapiro Memorandum'');
8. ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;
9. ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994 (hereinafter referred to as the ''Nichols Memorandum''); and
10. ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Kentucky's SIP Submittal

On September 20, 2022, and supplemented on November 22, 2022, Kentucky requested that EPA redesignate the Northern Kentucky Area to attainment for the 2015 8-hour ozone NAAQS and approve the associated SIP revision submitted on the same date containing a maintenance plan for the Area. EPA's evaluation indicates that the Northern Kentucky Area meets the requirements for redesignation as set forth in CAA section 107(d)(3)(E), including the maintenance plan requirements under CAA section 175A and associated MVEBs. As a result of these proposed findings, EPA is proposing to take the actions summarized in Section I of this notice. EPA's analysis and rationale for this proposal is provided below.

V. EPA's Analysis of Kentucky's SIP Submittal

As stated above, in accordance with the CAA, EPA proposes to approve the 2015 8-hour ozone NAAQS maintenance plan, including the associated MVEBs, and incorporate it into the Kentucky SIP, and redesignate the Northern Kentucky Area to attainment for the 2015 8-hour ozone NAAQS. The five redesignation criteria provided under CAA section 107(d)(3)(E) are discussed in greater detail for the Area in the following paragraphs of this section.

Criterion (1)—The Cincinnati, OH–KY Area Has Attained the 2015 8-Hour Ozone NAAQS

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS. *See*

CAA section 107(d)(3)(E)(i). For ozone, an area may be considered to be attaining the 2015 8-hour ozone NAAQS if it meets the 2015 8-hour ozone NAAQS, as determined in accordance with 40 CFR 50.19 and Appendix U of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain the 2015 8-hour ozone NAAQS, the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area must not exceed 0.070 ppm. Based on the data handling and reporting convention described in 40 CFR part 50, Appendix U, the 2015 8-hour ozone NAAQS are attained if the design value is 0.070 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

EPA reviewed complete, quality-assured, and certified ozone monitoring data from monitoring stations in the Cincinnati, OH–KY Area for the 2015 8-hour ozone NAAQS for 2019 through 2021 and has determined that the design values for each monitor in the Area are equal to or less than the standard of 0.070 ppm for that time period. Based on this air quality monitoring data, EPA is proposing to determine that the Cincinnati, OH–KY Area has attained the 2015 8-hour ozone NAAQS. The fourth-highest 8-hour ozone values at each monitor for 2019 through 2021 and the 3-year averages of these values (*i.e.,* design values), are summarized in Table 1, below.

TABLE 1—2019–2021 OZONE CONCENTRATIONS FOR THE CINCINNATI, OH–KY AREA

[ppm] [3]

AQS site code	County and state	Annual 4th-highest daily maximum 8-hr ozone concentration			Design value
		2019	2020	2021	2019–2021
21–015–0003	Boone, KY	0.062	0.062	0.061	0.061
21–037–3002	Campbell, KY	0.062	0.063	0.064	0.063
39–017–0018	Butler, OH	0.067	0.070	0.064	0.067
39–017–0023	Butler, OH	0.067	0.067	0.066	0.066
39–017–9991	Butler, OH	0.065	0.064	0.063	0.064
39–025–0022	Clermont, OH	0.071	0.064	0.065	0.066
39–061–0006	Hamilton, OH	0.072	0.070	0.070	0.070
39–061–0010	Hamilton, OH	0.067	0.070	0.064	0.067
39–061–0040	Hamilton, OH	0.071	0.068	0.069	0.069
39–165–0007	Warren, OH	0.070	0.071	0.069	0.070

The highest 3-year design value for 2019–2021 for the Cincinnati, OH–KY Area is 0.070 ppm at the Hamilton County, Ohio site (39–061–0006) and at the Warren County, Ohio site (39–165–0007),[4] which meets the NAAQS.

EPA will not take final action to approve the redesignation of the Kentucky portion of the Cincinnati, OH–KY Area if the 3-year design value exceeds the NAAQS prior to EPA finalizing the redesignation. Preliminary 2022 ozone monitoring data currently indicates attaining 2022 design values for the Cincinnati, OH–KY Area. As discussed in more detail below, Kentucky has committed to continue monitoring in this Area in accordance with 40 CFR part 58.

Criterion (2)—Kentucky Has a Fully Approved SIP Under Section 110(k) for the Northern Kentucky Area; and Criterion (5)—Kentucky Has Met All Applicable Requirements Under Section 110 and Part D of Title I of the CAA

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the State has met all applicable requirements under section 110 and part D of title I of the CAA, *see* CAA section 107(d)(3)(E)(v) and that the State has a fully approved SIP under section 110(k) for the area, *see* CAA section 107(d)(3)(E)(ii). EPA proposes to find that Kentucky has met all applicable SIP requirements for the Northern Kentucky Area under section 110 of the CAA (general SIP requirements) for purposes of redesignation. Additionally, EPA proposes to find that Kentucky has met all applicable SIP requirements for purposes of redesignation under part D of title I of the CAA in accordance with section 107(d)(3)(E)(v), and proposes to determine that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained which requirements are applicable to the Area and, if applicable, that they are fully approved under section 110(k). SIPs must be fully approved only with respect to requirements that were due prior to submittal of the complete redesignation request.

a. The Northern Kentucky Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

General SIP requirements. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: submittal of a SIP that has been adopted by the State after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (NSR permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

[3] Final air quality design values for all criteria pollutants, including ozone, are available at *https://www.epa.gov/aqs.*

[4] The design value for an area is the highest 3-year average of the annual fourth-highest daily maximum 8-hour concentration recorded at any monitor in the area.

Section 110(a)(2)(D)(i)(I) of the Act, referred to as the ''good neighbor provision'' or the ''interstate transport provision,'' requires that SIPs contain measures to prevent sources in a State from significantly contributing to air quality problems in another State. To implement this provision, EPA has required certain States to establish programs to address the interstate transport of air pollutants. The section 110(a)(2)(D)(i)(I) requirements for a State are not linked with a particular nonattainment area's designation and classification in that State. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a State regardless of the designation of any one particular area in the State. Thus, EPA does not believe that the CAA's interstate transport requirements should be construed to be applicable for purposes of redesignation.

In addition, EPA believes other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's attainment status are not applicable requirements for purpose of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.,* for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* 61 FR 53174 (October 10, 1996) and 62 FR 24826 (May 7, 1997) (Reading, Pennsylvania, proposed and final rulemakings); 61 FR 20458 (May 7, 1996) (Cleveland-Akron-Loraine, Ohio, final rulemaking); and 60 FR 62748, (December 7, 1995) (Tampa, Florida, final rulemaking)). *See also* 65 FR 37890 (June 19, 2000) (discussion on this issue in Cincinnati, Ohio, redesignation) and 66 FR 50399 (October 19, 2001) (Pittsburgh, Pennsylvania, redesignation).

Title I, part D, applicable SIP requirements. Section 172(c) of the CAA sets forth the basic requirements of attainment plans for nonattainment areas that are required to submit them pursuant to section 172(b). Subpart 2 of part D, which includes section 182 of the CAA, establishes specific requirements for ozone nonattainment areas depending on the area's nonattainment classification. As provided in subpart 2, a Marginal ozone nonattainment area must submit an emissions inventory that complies with section 172(c)(3), but the specific requirements of section 182(a) apply in lieu of the demonstration of attainment (and contingency measures) required by section 172(c). *See* 42 U.S.C. 7511a(a). A Moderate area must meet the Marginal area requirements of section 182(a) and additional requirements specific to Moderate (and higher) areas under section 182(b), as well as the general requirements of 172(c). A thorough discussion of the requirements contained in sections 172(c) and 182 can be found in the General Preamble for Implementation of Title I. *See* 57 FR 13498 (April 16, 1992).

Under its longstanding interpretation of the CAA, EPA has interpreted section 107(d)(3)(E) to mean, as a threshold matter, that the part D provisions which are ''applicable'' and which must be approved in order for EPA to redesignate an area include only those which came due prior to a State's submittal of a complete redesignation request. *See* Calcagni Memorandum. *See also* Shapiro Memorandum; 60 FR 12459, 12465–66 (March 7, 1995) (Final Redesignation of Detroit-Ann Arbor, Michigan,); 68 FR 25418, 25424–27 (May 12, 2003) (Final Redesignation of St. Louis, Missouri); and *Sierra Club* v. *EPA,* 375 F. 3d 537, 541 (7th Cir. 2004) (upholding EPA's redesignation rulemaking applying this interpretation and expressly rejecting Sierra Club's view that the meaning of ''applicable'' under the statute is ''whatever should have been in the plan at the time of attainment'' rather than ''whatever actually was in the plan and already implemented or due at the time of attainment'').[5] For the Northern Kentucky Area, no section 182(b) Part D Moderate nonattainment area requirements for the 2015 8-hour ozone standard were due at the time that Kentucky submitted its redesignation request on September 20, 2022; therefore these requirements are not applicable for the purposes of redesignation. *See* Section II, above (discussing the reclassification of the Northern Kentucky Area to Moderate on October 7, 2022). In addition, as discussed below, several of the Part D requirements under 182(a) are otherwise not applicable for the purposes of redesignation and several of the requirements have already been satisfied by the Commonwealth.

Section 182(a) Requirements. Section 182(a)(1) requires States to submit a comprehensive, accurate, and current inventory of actual emissions from sources of VOC and NO_X emitted within the boundaries of the ozone nonattainment area. This required submission was due by August 3, 2020, for the Northern Kentucky Area. *See* 40 CFR 51.1315(a). Kentucky provided an emissions inventory for the Area to EPA in a December 22, 2021, SIP submission, and EPA approved the emissions inventory in an action published on September 30, 2022. *See* 87 FR 59320.

Under section 182(a)(2)(A), states with ozone nonattainment areas that were designated prior to the enactment of the 1990 CAA amendments were required to submit, within six months of classification, all rules and corrections to existing VOC reasonably available control technology (RACT) rules that were required under section 172(b)(3) of the CAA (and related guidance) prior to the 1990 CAA amendments. The Area is not subject to the section 182(a)(2) RACT ''fix up'' requirement for the 2015 ozone NAAQS because it was designated as nonattainment for this standard after the enactment of the 1990 CAA amendments. Furthermore, the Commonwealth complied with this requirement under the 1-hour ozone NAAQS for the Northern Kentucky portion of the Cincinnati, OH–KY Area. *See* 59 FR 32343 (June 23, 1994).

Section 182(a)(2)(B) requires each State with a Marginal or higher ozone nonattainment area classification that implemented, or was required to implement, a vehicle inspection and maintenance (I/M) program prior to the 1990 CAA amendments to submit a SIP revision providing for an I/M program no less stringent than that required prior to the 1990 amendments or already in the SIP at the time of the amendments, whichever is more stringent. The Northern Kentucky Area is not subject to the section 182(a)(2)(B) requirement because the Area was designated as nonattainment for the 2015 8-hour ozone standard after the enactment of the 1990 CAA amendments.

Regarding the permitting and offset requirements of section 182(a)(2)(C) and section 182(a)(4), Kentucky currently has a fully approved part D NSR program in place. However, EPA has determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without

[5] Applicable requirements of the CAA that become due after the area's submittal of a complete redesignation request remain applicable until a redesignation is approved but are not required as a prerequisite to redesignation. See Calcagni Memorandum; CAA section 175A(c).

part D NSR, because PSD requirements will apply after redesignation. A more detailed rationale for this view is described in the Nichols Memorandum. Kentucky's PSD program will become applicable in the Northern Kentucky Area upon redesignation to attainment.

Section 182(a)(3) requires States to submit periodic inventories and emissions statements. Section 182(a)(3)(A) requires States to submit a periodic inventory every three years. As discussed below in the section of this notice titled *Verification of Continued Attainment,* the Commonwealth will continue to update its emissions inventory at least once every three years. Under section 182(a)(3)(B), each State with an ozone nonattainment area must submit a SIP revision requiring emissions statements to be submitted to the State by certain sources within that nonattainment area. Kentucky provided a SIP revision to EPA on October 16, 2020, addressing the section 182(a)(3)(B) emissions statements requirements for the Northern Kentucky Area, and on April 26, 2022, EPA published a final rule approving that SIP revision. *See* 87 FR 24429 (April 26, 2022).

Section 182(b) Requirements. Section 182(b) of the CAA, found in subpart 2 of Part D, establishes additional requirements for Moderate (and higher) ozone nonattainment areas. As noted above, no section 182(b) Moderate nonattainment area requirements for the 2015 8-hour ozone standard, including RACT under section 182(b)(2), were due at the time that Kentucky submitted its redesignation request on September 20, 2022; therefore, these requirements are not applicable for the purposes of redesignation.

Section 176 Conformity Requirements. Section 176(c) of the CAA requires States to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects that are developed, funded, or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA interprets the conformity SIP requirements[6] as not applying for the purposes of evaluating a redesignation request under section 107(d) because State conformity rules are still required after redesignation and Federal conformity rules apply where State rules have not been approved. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); *see also* 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida).[7]

Thus, for the reasons discussed above, EPA proposes to find that the Northern Kentucky Area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of title I of the CAA.

b. The Northern Kentucky Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the applicable Kentucky SIP for the Northern Kentucky Area under section 110(k) of the CAA for all requirements applicable for purpose of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request, *see* Calcagni Memorandum at p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–90 (6th Cir. 1998); and *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action. *See* 68 FR 25426 (May 12, 2003) (including citations therein). Kentucky has adopted and submitted, and EPA has fully approved at various times, provisions addressing various SIP elements applicable for the ozone NAAQS. *See* 85 FR 33021 (June 1, 2020) and 85 FR 54507 (September 2, 2020). As discussed above, EPA believes that the section 110 elements that are neither connected with nonattainment plan submissions, nor linked to an area's nonattainment status, are not applicable requirements for purposes of redesignation and believes that Kentucky has met all part D requirements applicable for purpose of this redesignation.

Criterion (3)—The Air Quality Improvement in the Cincinnati, OH–KY Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, applicable Federal air pollution control regulations, and other permanent and enforceable reductions. *See* CAA section 107(d)(3)(E)(iii). EPA has preliminarily determined that Kentucky has demonstrated that the observed air quality improvement in the Cincinnati, OH–KY Area is due to permanent and enforceable reductions in emissions resulting from Federal measures and from State measures adopted into the SIP and is not the result of unusually favorable weather conditions or reduced transportation or economic slowdown related to the COVID–19 pandemic.[8]

State measures adopted into the SIP and Federal measures enacted in recent years have resulted in permanent emission reductions. Kentucky's September 20, 2022, submittal identifies SIP-approved State measures, some of which implement Federal requirements, that have been implemented to date. Those measures specifically regulate cement kilns and open burning, as well as a variety of other sources, as explained in the following paragraphs.

Cement Kilns. Kentucky adopted regulation 401 Kentucky Administrative Regulation (KAR) 51:170 to regulate NO_X emissions from cement kilns, setting a limit of 6.6 pounds per ton of clinker produced, averaged over a 30-day period. Kentucky has regulations in Chapters 59 and 61 of Title 401 of the Kentucky Administrative Regulations

[6] CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the MVEBs that are established in control strategy SIPs and maintenance plans.

[7] Kentucky has an approved conformity SIP for the Northern Kentucky Area. *See* 75 FR 20780 (April 21, 2010).

[8] Kentucky provided average temperature data from 2005 to 2021 and relative humidity data for 2005 to 2020. *See* section C and Appendix C of the State's redesignation request and SIP revision for further information. The meteorological data do not suggest conditions favorable to reduced ozone levels during 2019 through 2021. Furthermore, the Commonwealth explains that COVID–19 did not influence emissions for a long enough time to affect the Cincinnati OH–KY Area's design value. The monitoring data also shows that the one-year 4th maximum 8-hour observations did not dramatically change between 2019 and 2021. Also, traffic pattern data in the Commonwealth show a decrease in traffic volumes that lasted less than four months in 2020 (*i.e.,* March 2020–June 2020) and less than three months in 2021(*i.e.,* January 2021–March 2021). *See* Figures 4 and 5 of the Commonwealth's September 20, 2022, redesignation request and SIP revision.

(KAR) which limit NO_X and VOC emissions for new and existing sources in various source categories.

Open Burning Bans. EPA first incorporated regulation 401 KAR 63:005 Open Burning into the Kentucky SIP on July 12, 1982 (47 FR 30059), with the latest incorporation on October 17, 2007 (72 FR 58759). This regulation prohibits most types of open burning from May through September of each year in areas that have been or are currently in violation of the ozone NAAQS within Kentucky.

Other Sources. Kentucky has regulations in Chapters 59 and 61 of Title 401 of the KAR which limit NOx and VOC emissions for new and existing sources in various source categories.

Additionally, Federal measures enacted in recent years have also resulted in permanent emission reductions in the Northern Kentucky Area. The Federal measures that have been implemented include the following:

Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards. Implementation began in 2004 and as newer, cleaner cars enter the national fleet, these standards continue to significantly reduce NO_X emissions.[9] These standards require all passenger vehicles in any manufacturer's fleet to meet an average standard of 0.07 grams of NO_X per mile. Additionally, in January 2006, the sulfur content of gasoline was required to be on average 30 ppm which assists in lowering the NO_X emissions. EPA expects that these standards will reduce NO_X emissions from cars by approximately 77 percent, and approximately 86 percent for minivans, light trucks, and small SUVs by 2030, translating to nearly 3 million tons annually by 2030.[10]

Tier 3 Motor Vehicle Emission and Fuel Standards. Implementation began in 2017 and will continue to phase in through 2025.[11] These standards set new vehicle emissions standards and lower the allowed sulfur content of gasoline in order to reduce air pollution from passenger cars and trucks. Tailpipe and evaporative emissions will be reduced for passenger cars, light-duty trucks, medium-duty passenger vehicles, and some heavy-duty vehicles. The Tier 3 vehicle standards for light-duty vehicles, light-duty trucks, and medium-duty passenger vehicles will be a fleet average standard of 0.03 gram of non-methane organic gases (NMOG) + NO_X per mile as measured on the Federal Test Procedure (FTP), and a fleet average standard 0.05 gram of NMOG + NO_X per mile as measured on the Supplemental Federal Test Procedure (SFTP). The Tier 3 vehicle standards for heavy-duty pickup trucks and vans will be 0.178 gram per mile of non-methane organic gases (NMOG) + NO_X for Class 2b vehicles and 0.247 gram per mile of NMOG + NO_X for Class 3 vehicles, as measured on the FTP. This standard required Federal gasoline to meet an annual average standard of 10 ppm of sulfur by January 1, 2017. The Tier 3 tailpipe standards for light-duty vehicles will reduce the fleet average standards for the sum of NMOG and NO_X, NMOG + NO_X, by approximately 80 percent from the current fleet average standards, and will reduce the per-vehicle particulate matter (PM) standards by 70 percent. The Tier 3 program for heavy-duty vehicles will reduce the fleet average standards for NMOG + NO_X and PM by approximately 60 percent from the current fleet average standards. The Tier 3 program is also reducing the evaporative VOCs by approximately 50 percent from the current standards, and these standards apply to all light-duty and on-road gasoline-powered heavy-duty vehicles.

Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements. EPA issued this rule in 2001. *See* 66 FR 5002 (January 18, 2001). This rule includes standards limiting the sulfur content of diesel fuel, which went into effect in 2004. A second phase took effect in 2007, which further reduced the highway diesel fuel sulfur content to 15 ppm, leading to additional reductions in combustion NO_X and VOC emissions. EPA expects that this rule will achieve a 95 percent reduction in NO_X emissions from diesel trucks and buses and will reduce NO_X emissions by 2.6 million tons by 2030 when the heavy-duty vehicle fleet is completely replaced with newer heavy-duty vehicles that comply with these emission standards.

National Greenhouse Gas (GHG) Emission Standards for Passenger Cars and Light Trucks. In 2010 and 2012, EPA issued rulemakings for Federal GHG and fuel economy standards that apply to light-duty cars and trucks in model years 2012–2016 (Phase 1) and 2017–2025 (Phase 2). The final standards are projected to result in an average industry fleet-wide level of 163 grams/mile in carbon dioxide which is equivalent to 54.5 miles per gallon if achieved exclusively through fuel economy improvements. The fuel economy standards result in less fuel being consumed and, therefore, slightly less VOC emissions released.

EPA issued the Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule on March 20, 2020, as an update to Phase 2. This new standard sets fuel economy and CO_2 standards that increase 1.5 percent in stringency each year from model years 2021 through 2026 and applies to passenger cars and light trucks. On February 8, 2021, the D.C. Circuit issued an order granting the Federal Government's motion to stay litigation over the SAFE Vehicles Rule (*Union of Concerned Scientists* v. *NHTSA,* Case No. 19–1230 (D.C. Cir.)).

On December 30, 2021, EPA published the *Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards (Revised 2023 GHG Standards). See* 86 FR 74434. The Revised 2023 GHG Standards revised, and made more stringent, the GHG standards to be more stringent than the SAFE rule standards in each model year from 2023 through 2026. The action also includes temporary targeted flexibilities to address the lead time of the final standards and to incentivize the production of vehicles with zero and near-zero emissions technology and EPA made technical amendments to clarify and streamline regulations. These standards will result in a reduction in GHG emissions. They will also result in a net reduction in NOx emissions by 2050.

National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units.[12] The Mercury and Air Toxics Standard (MATS) and the new source performance standard (NSPS) were published in 2012. *See* 77 FR 9304 (February 16, 2012). MATS was promulgated to reduce emissions of heavy metals, including mercury (Hg), arsenic (As), chromium (Cr), and nickel (Ni); and acid gases, including hydrochloric acid (HCl) and hydrofluoric acid (HF) from new and existing coal and oil-fired electric utility steam generating units (EGUs). The MATS compliance date for new sources

[9] U.S. EPA, Control of Air Pollution from New Motor Vehicles: Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements. *See* 65 FR 6697 (February 10, 2000).

[10] EPA, Regulatory Announcement, EPA420–F–99–051 (December 1999), available at: *https://nepis.epa.gov/Exe/ZyPDF.cgi/P1001Z9W.PDF?Dockey=P1001Z9W.PDF.*

[11] *See* 79 FR 23414.

[12] Kentucky's submittal refers to these as *Utility Mercury Air Toxics Standards (MATS) and New Source Performance Standards (NSPS).*

was April 16, 2012, and April 16, 2015, for existing sources.

National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters; National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.[13] The NESHAP for industrial, commercial, and institutional boilers (40 CFR part 63 subpart DDDDD) and the NESHAP for Reciprocating Internal Combustion Engines (RICE) (40 CFR part 63 subpart ZZZZ) are projected to reduce VOC emissions. The former applies to boiler and process heaters located at major sources of hazardous air pollutants (HAPs) that burn natural gas, fuel oil, coal, biomass, refinery gas, or other gas and had a compliance deadline of January 31, 2016. The latter applies to existing, new, or reconstructed stationary RICE located at major or area sources of HAPs, excluding stationary RICE being tested at a stationary RICE test cell, and has various compliance dates from August 16, 2004, to October 19, 2013, depending on the type of source and date of construction or reconstruction.

Nonroad Spark-Ignition Engines and Recreational Engines Standards. On November 8, 2002 (67 FR 68242), EPA adopted emission standards for large spark-ignition engines such as those used in forklifts and airport ground service equipment; recreational vehicles such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines. These emission standards were phased in from model year 2004 through 2012. When fully implemented by 2030, EPA estimates an overall 75 percent reduction in VOC emissions and an 82 percent reduction in NO_X emissions. These controls reduce ambient concentrations of ozone, carbon monoxide, and fine particulate matter.

Category 3 Marine Diesel Engine Standards. On April 30, 2010 (75 FR 22896), EPA issued emission standards for marine compression-ignition engines at or above 30 liters per cylinder. Tier 2 emission standards applied beginning in 2011 and are expected to result in a 15 to 25 percent reduction in NOx emissions from these engines. Final Tier 3 emission standards applied beginning in 2016 and are expected to result in approximately an 80 percent reduction in NOx from these engines.

[13] The Kentucky submittal refers to these as the *Boiler and Reciprocating Internal Combustion Engine (RICE) National Emissions Standards for Hazardous Air Pollutants (NESHAP).*

Transportation Rulemakings. In any given location, ozone pollution levels are impacted by a combination of background ozone concentration, local emissions, and emissions from upwind sources resulting from ozone transport. Downwind States' ability to meet health-based air quality standards such as the NAAQS is challenged by the transport of ozone pollution across State borders. *See, e.g.,* 87 FR 20036 (April 6, 2022). EPA acknowledges the historical account in Kentucky's September 20, 2022, submittal and the historical account of national interstate transport rules and associated NO_X ozone season trading programs [14] that addressed interstate transport for previous 1979 1-hour, 1997 8-hour and the 2008 8-hour ozone NAAQS. These programs have provided some benefits in the form of NOx ozone season emission reductions for certain sources in the Commonwealth and regionally.

EPA proposes to find that the improvements in air quality in the Northern Kentucky Area are due to real, permanent and enforceable reductions in NO_X and VOC emissions resulting from the Federal and SIP-approved State measures discussed above.

[14] Kentucky's September 21, 2022, redesignation request identifies the following control measures for NO_X: October 27, 1998, NO_X SIP Call (63 FR 57356), 2005 Clean Air Interstate Rule (CAIR) (70 FR 25162), and 2011 Cross-State Air Pollution Rule (CSAPR) (76 FR 48208) and 2016 CSAPR Update (81 FR 74504). The NO_X SIP Call (including the NO_X Budget Trading Program) and CAIR were established to reduce NO_X ozone season emissions from EGUs and large non-EGUs for the 1-hour 1979 and 8-hour 1997 ozone standards. *See* 67 FR 17624 (April 11, 2002), 74 FR 54755 (October 23, 2009) and 72 FR 56623 (October 4, 2007). The NO_X SIP call NO_X Budget trading program provided NO_X emission reduction for EGUs and non-EGUs for older ozone NAAQS. Kentucky's redesignation request is not relying on this the NO_X SIP Call NO_X budget trading program for the purpose of demonstrating permanent and enforceable measures that attribute to the demonstration of attainment for the current and more stringent 2015 8-hour ozone standard. Kentucky's submission explicitly states that NO_X reductions achieved as a result of CAIR are not reflected in the emissions inventory and projections for the Kentucky portion of the Area. Specifically, Kentucky's redesignation request is not relying on CAIR to demonstrate attainment of the 2015 ozone NAAQS for the Northern Kentucky Area. The group of CSAPRs addressed the 1997 ozone and $PM_{2.5}$ standards, 2006 $PM_{2.5}$ and 2008 ozone NAAQS. *See* 76 FR 48208 (August 8, 2011) and 81 FR 74504 (October 26, 2016). However, the NO_X ozone season trading programs for these trading programs were not adopted into the Kentucky's SIP. EPA notes that the CAIR and the NO_X SIP Call NO_X Budget Trading programs are no longer federally enforceable due to subsequent NAAQS interstate transport obligations and legal challenges (*North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008). However, the State still has ongoing NO_X SIP call obligations pursuant to 40 CFR 51.121.

Criterion (4)—The Northern Kentucky Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA. *See* CAA section 107(d)(3)(E)(iv). In conjunction with its request to redesignate the Northern Kentucky Area to attainment for the 2015 8-hour ozone NAAQS, Kentucky submitted a SIP revision to provide for the maintenance of the 2015 8-hour ozone NAAQS for at least 10 years after the effective date of redesignation to attainment. EPA has made the preliminary determination that this maintenance plan meets the requirements for approval under section 175A of the CAA.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Pursuant to section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the remainder of the 20-year period following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures as EPA deems necessary to assure prompt correction of any future 2015 8-hour ozone violations. The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five requirements: the attainment emissions inventory, maintenance demonstration, monitoring plan, verification of continued attainment, and a contingency plan. As discussed more fully below, EPA has preliminarily determined that Kentucky's maintenance plan includes all the necessary components and is thus proposing to approve it as a revision to the Kentucky SIP.

b. Attainment Emissions Inventory

As discussed above, the Northern Kentucky Area has an attaining design value for the 2015 8-hour ozone NAAQS based on quality-assured monitoring data for the 3-year period from 2019–

2021.[15] The Northern Kentucky Area's preliminary 2020–2022 design value currently indicates that the area will likely continue to attain the 2015 ozone NAAQS. Kentucky selected 2019 as the attainment emissions inventory year for developing a comprehensive emissions inventory for NO_X and VOC, from which projected emissions could be developed for 2026 and 2035. The attainment inventory identifies a level of emissions in the Area that is sufficient to attain the 2015 8-hour ozone NAAQS. Kentucky began development of the attainment inventory by first generating a baseline emissions inventory for the Area. The 2019 attainment year emissions were projected to 2035 for EGU point sources, non-EGU point sources, area sources, non-road mobile sources, and on-road mobile sources. The Commonwealth projected summer day emissions inventories using projected rates of growth in population, traffic, economic activity, and other parameters. In addition to comparing the final year of the plan (2035) to the 2019 attainment year, Kentucky compared interim years to the attainment year to demonstrate that these years are also expected to show continued maintenance of the 2015 8-hour ozone standard.

The emissions inventory is composed of four major types of sources: Point, non-point, on-road, and non-road mobile. Complete descriptions of how the Commonwealth developed these inventories are in Appendices B and C of the September 20, 2022, SIP submittal. Kentucky's emissions inventory for the Northern Kentucky Area provides 2014 and 2019 anthropogenic emissions data for NO_X and VOC for the following general source categories: point (EGUs and non-EGUs), area, non-road mobile, on-road mobile. All emissions information provided is based on the partial county boundaries, through the applicable census tracts, that comprise the Northern Kentucky Area. Table 2, below, provides a summary of the 2019 emissions inventory.

TABLE 2—2019 EMISSIONS FOR THE NORTHERN KENTUCKY AREA

[Tons per average summer day (tpsd)][16]

County *	Point **		Area		Non-road mobile		On-road mobile	
	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC
Boone	5.99	2.75	2.54	7.29	0.74	1.49	4.67	1.34
Campbell	0.29	0.40	0.92	2.23	0.38	0.52	2.19	0.79
Kenton	0.28	0.43	1.53	4.11	0.57	0.74	5.45	1.58

* Nonattainment portion of each county.
** Includes aircraft emissions.

Point Sources

Point sources are large, stationary, identifiable sources of emissions that release pollutants into the atmosphere. The inventory contains actual point source emissions data from the years 2014 and 2019 for facilities located within the nonattainment boundary for the Kentucky portion of the Area based on the Kentucky Emissions Inventory database. Kentucky obtained this data from Kentucky State emissions inventory databases (KYEIS) for EGU and non-EGU stationary sources with emissions equal to or exceeding 250 tons per year of VOC or 2,500 tons per year of NO_X in Boone, Campbell and Kenton Counties in Kentucky.

Area Sources

Area (*i.e.,* non-point) sources are small emission stationary sources which, due to their large number, collectively have significant emissions (*e.g.,* dry cleaners, service stations). For area and non-road sources, the 2014 base year inventory was developed using the 2014v7.1 (version 2014fd) modeling platform. The Emissions Modeling platform 2016v2 (versions 2016j, 2023j, 2026j, and 2023fj) was used to project the inventories for 2023, 2026, and 2032.. The 2014v7.1 modeling platform was selected to represent actual emissions data in the base year of 2014. The 2016v2 modeling platform was used since it included the best available inventory for the projected years. The 2016v1 emissions modeling platform is a product from the National Emissions Inventory Collaborative, a collaboration between State and regional air agencies, EPA, and Federal Land Management agencies, and includes a full suite of 2016 emissions and projection year (2023 and 2028) inventories, ancillary emission data, and scripts and software for preparing the emissions for air quality modeling. The 2016v2 emissions modeling platform was developed by EPA as an update to the 2016v1 platform because new data, model versions, and methods became available following the release of 2016v1.[17] In addition, 2016v2 makes use of a new inventory method for solvents, includes minor corrections to the wildfire inventory, and corrects for double counting of the airport emissions. The commercial marine vessel and rail inventories are consistent with the 2016v1 inventories. The 2016v2 platform includes emissions for the years 2016, 2023, 2026, and 2032.

The 2014 base year emissions were derived from 2014 emissions from the 2014v7.1 (2014fd) platform, without modification. The 2019 attainment year emissions were derived by interpolating between the 2016 and projected 2026 emissions from the 2016v2 (2016fd and 2023fd) platform. Kentucky used census tract population data to determine an approximate percentage that accounts for sources in the nonattainment portion of each county. Since only a portion of each county is contained in the Northern Kentucky Area, the emissions from each partial county were determined by multiplying the emissions for the entire county by the percentage of the county that is in the nonattainment area. Emissions from the county portions were then projected out to the appropriate future years.

[15] Final air quality design values for all criteria pollutants, including ozone, are available at *https://www.epa.gov/air-trends/aqs.* These design values are calculated in accordance with 40 CFR part 50.

[16] The Commonwealth calculated the tons per summer day by selecting July as the representative month. Point source emissions were calculated as the ratio of the average July day (obtained from the modeling platform) to annual emissions for all point sources. The remaining source category emissions were derived from the July monthly emissions from the modeling platform and then divided by 31 to calculate the daily or tons per summer day emission.

[17] The 2016v2 platform incorporates emissions based on MOVES3, the 2017 NEI nonpoint inventory, the Western Regional Air Partnership oil and gas inventory, and updated inventories for Canada and Mexico.

On-Road Mobile Sources

On-road mobile sources include vehicles used on roads for transportation of passengers or freight. The 2019 on-road emissions provided in the Kentucky submittal and all projected year inventories were developed using the most recent information from the travel demand model (TDM) designed by the Ohio-Kentucky-Indiana Regional Council of Governments (OKI) and data obtained from MOVES3 (Motor Vehicle Emissions Simulator). The 2019 on-road mobile source (on-road) emissions data provided in the Kentucky submittal were developed by the Ohio-Kentucky-Indiana Regional Council of Governments (OKI) from emission factors produced by EPA's Motor Vehicle Emissions Simulator (MOVES3) software program and data extracted from the region's updated travel-demand model. OKI is the metropolitan planning organization for the Greater Cincinnati area. This updated data for mobile source emissions is in Appendix C.

Non-Road Mobile Sources

Non-road mobile sources include vehicles, engines, and equipment used for construction, agriculture, recreation, and other purposes that do not use roadways (*e.g.,* lawn mowers, construction equipment, and railroad locomotives). The non-road emissions data provided by Kentucky in the submittal were derived by interpolating between the 2016 and projected 2026 emissions from EPA's 2016v2 emissions platform. Kentucky used census tract population data to determine an approximate percentage that accounts for sources in the nonattainment portion of each county. Since only a portion of each county is contained in the Northern Kentucky Area, the emissions from each partial county were determined by multiplying the emissions for the entire county by the percentage of the county that is in the nonattainment area. Emissions from the county portions were then projected out to the appropriate future years.

The 2019 attainment year inventories for all source categories, as well as the projected inventories for other years, were developed consistent with EPA guidance and are summarized in Tables 3 through 6 of the following subsection discussing the maintenance demonstration.

c. Maintenance Demonstration

The redesignation request includes a maintenance plan which includes the following features:

(i) Shows compliance with and maintenance of the 2015 8-hour ozone NAAQS by providing information to support the demonstration that current and future emissions of NO_X and VOC remain at or below 2019 emissions levels.

(ii) Uses 2019 as the attainment year and includes future emissions inventory projections for 2026 and 2035. The 2019 emissions were obtained from Kentucky databases. The 2026 emissions were derived from 2026 EPA-projected emissions from the 2016v2 (2026fj) emissions modeling platform without modification. The 2035 on-road emissions were obtained from MOVES3. The 2035 emissions for area, non-road, and non-EGUs were derived by extrapolating from the 2016v2 (2032fj) emissions modeling platform for 2032 using the TREND function in Microsoft Excel. The 2035 projected emissions for EGUs were derived by extrapolating from the 2030 EPA-projected emissions from the 2016v2 (2030fj) emissions modeling platform using the TREND function in Microsoft Excel. If the TREND function resulted in a negative value, the emissions were assumed to be the same as 2030. If a 2030 projection was missing, the emissions were assumed to be the same as in 2026.

(iii) Identifies an ''out year'' at least 10 years after the time necessary for EPA to review and approve the maintenance plan. Per 40 CFR part 93, NO_X and VOC MVEBs were established for the last year (2035) of the maintenance plan. MVEBs were also established for an interim year of 2026 (see Section VI, of this preamble).[18]

(iv) Provides actual (2019) and projected emissions inventories, in tons per summer day (tpsd), for each county, as well as the total emissions for each county in the Kentucky portion of the Cincinnati, OH-KY Area. See Tables 3 through 6, below.

TABLE 3—2026 PROJECTED EMISSIONS FOR THE NORTHERN KENTUCKY AREA

[tpsd]

County *	Point **		Area		Non-road		On-road	
	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC
Boone	2.13	1.68	3.22	8.21	0.58	1.28	2.65	1.03
Campbell	0.28	0.42	0.70	2.22	0.29	0.40	0.94	0.51
Kenton	0.29	0.64	1.22	4.21	0.41	0.71	2.44	1.02

* Nonattainment portion of each county.
** Includes aircraft emissions.

TABLE 4—2035 PROJECTED EMISSIONS FOR THE NORTHERN KENTUCKY AREA

[tpsd]

County *	Point **		Area		Non-road		On-road	
	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC
Boone	2.35	1.68	3.85	8.99	0.54	1.25	2.00	0.86
Campbell	0.28	0.42	0.58	2.22	0.26	0.37	0.57	0.36
Kenton	0.30	0.64	1.06	4.28	0.37	0.72	1.64	0.72

* Nonattainment portion of each county.
** Includes aircraft emissions.

[18] Kentucky interpolated 2019 emissions using the TREND function based on the 2017 NEI emissions and 2023, 2028, and 2032 projected emissions. Emissions from 2017 as well as projections from all future years were chosen to interpolate 2019 by using just the two closest years (2017 and 2023).

TABLE 5—TOTAL NO_X EMISSIONS INVENTORIES FOR THE NORTHERN KENTUCKY AREA

[tpsd]

County *	2019	2026	2035
Boone	13.94	8.58	8.74
Campbell	3.78	2.21	1.69
Kenton	7.83	4.36	3.37
Total	25.55	15.15	13.80

* Nonattainment portion of each county.

TABLE 6—TOTAL VOC EMISSIONS INVENTORIES FOR THE NORTHERN KENTUCKY AREA

[tpsd]

County *	2019	2026	2035
Boone	12.87	12.20	12.78
Campbell	3.94	3.55	3.37
Kenton	6.86	6.58	6.38
Total	23.67	22.33	22.53

* Nonattainment portion of each county.

In situations where local emissions were the primary contributor to nonattainment, such as the Northern Kentucky Area, if the future projected emissions in the nonattainment area remain at or below the baseline emissions in the nonattainment area, then the related ambient air quality standard should not be exceeded in the future. Kentucky has projected emissions as described previously and determined that emissions in the Northern Kentucky Area will remain below those in the attainment year inventory for the duration of the maintenance plan.

As discussed in Section VI, of this preamble, a safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. Kentucky selected 2019 as the attainment emissions inventory year for the Northern Kentucky Area and calculated safety margins for 2026 and 2035. The Commonwealth has allocated a portion of the safety margin to the 2026 and 2035 MVEBs for the Northern Kentucky Area.

The Commonwealth has decided to allocate a portion of the available safety margin to the 2026 and 2035 MVEBs to allow for, among other things, unanticipated growth in vehicle miles travelled and changes and uncertainty in vehicle mix assumptions that will influence the emission estimations. This allocation and the resulting available safety margin for the Northern Kentucky Area are discussed further in Section VI, of this preamble, along with the MVEBs to be used for transportation conformity purposes.

d. Monitoring Network

There currently are two ozone monitors in the Northern Kentucky Area and eight in the Ohio portion of the Cincinnati, OH-KY Area. Kentucky will continue to operate an ambient air quality monitoring network in the Northern Kentucky Area in compliance with 40 CFR part 58 and has thus addressed the requirement for the monitoring. EPA approved Kentucky's 2022 ambient air monitoring network plan on October 25, 2022.

e. Verification of Continued Attainment

Kentucky, through the Cabinet, has the legal authority to enforce and implement the maintenance plan for the Area. This includes the authority to adopt, implement, and enforce any subsequent emissions control contingency measures determined to be necessary to correct future ozone attainment problems.

Additionally, under the Air Emissions Reporting Requirements (AERR) (40 CFR part 51, subpart A), every three years the Cabinet is required to develop a comprehensive, annual, statewide emissions inventory that is due 12 to 18 months after the completion of the inventory year. The Cabinet will update the AERR inventory every three years and will use the update emissions inventory to track the progress of maintenance of the NAAQS. The maintenance plan States that emissions information will be compared to the 2019 attainment year and the 2035 projected maintenance year inventories to assess emission trends, as necessary, and to assure continued compliance with the standard.

f. Contingency Measures in the Maintenance Plan

Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the State will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and a procedure for adoption and implementation, and a time limit for action by the State. A State should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a State will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

In the September 20, 2022, submittal, Kentucky states that, at a minimum, contingency measures must include all measures with respect to the control of ozone contained in the SIP for the Area before the redesignation, that all such measures are in effect for the Area, and that it will continue to implement these measures The contingency measures in the maintenance plan include a two-tiered triggering mechanism to determine when contingency measures are needed and a process of developing and implementing appropriate control measures.

Kentucky's first-tier response is an ''indicator'' response. An indicator

response is triggered if (1) there is an annual fourth high monitored value of 0.071 ppm or greater in a single ozone season or (2) periodic emission inventory updates reveal excessive or unanticipated growth greater than 10 percent in ozone precursor emissions within the Cincinnati OH-KY Area. For the indicator response, Kentucky will evaluate existing control measures to see if further emission reduction measures should be implemented. Kentucky commits to implementing necessary controls as expeditiously as possible, but no later than 12 months from the conclusion of the most recent ozone season (October 31).

Kentucky refers to the second-tier response as an ''action level response.'' The action level response is triggered if a three-year average of the fourth highest monitored value of 0.071 ppm or greater (*i.e.,* a violation of the 2015 ozone NAAQS). For an action level response, Kentucky commits to determining additional control measures needed to assure future attainment of the 2015 ozone NAAQS. This will be done in conjunction with the metropolitan planning organization or regional council of governments, and appropriate contingency measures will be implemented within 24 months of a triggered violation.

Kentucky commits to adopt, within nine months, one or more of the following contingency measures to re-attain the standard in the event of a monitored violation; however, it reserves the right to implement other contingency measures if new control programs should be developed and deemed more advantageous for the Area:

- Implementation of a program to require additional emission reductions on stationary sources;
- Restriction of certain roads or lanes to, or construction of such roads or lanes for use by, passenger buses or high-occupancy vehicles;
- Trip-reduction ordinances;
- Employer-based transportation management plans, including incentives;
- Programs to limit or restrict vehicle use in downtown areas, or other areas of emission concentration, particularly during periods of peak use; and
- Programs for new construction and major reconstructions of paths or tracks for use by pedestrians or by non-motorized vehicles when economically feasible and in the public interest.

EPA preliminarily finds that the maintenance plan adequately provides the five basic required components of a maintenance plan: the attainment emissions inventory, maintenance demonstration, monitoring plan, verification of continued attainment, and a contingency plan. Therefore, EPA proposes to find that the maintenance plan SIP revision submitted by Kentucky for the Northern Kentucky Area meets the requirements of section 175A of the CAA and is approvable.

VI. EPA's Analysis of Kentucky's Proposed NO_X and VOC MVEBs

Under section 176(c) of the CAA, new transportation plans, programs, and projects, such as the construction of new highways, must ''conform'' to (*i.e.,* be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or any interim milestones. If a transportation plan does not conform, most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously designated nonattainment for a particular NAAQS but have since been redesignated to attainment with an approved maintenance plan for that NAAQS.

Under the CAA, States are required to submit at various times control strategy SIPs and maintenance plans for nonattainment areas. These control strategy SIPs (including reasonable further progress and attainment demonstration requirements) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, a MVEB must be established for the last year of the maintenance plan. A State may adopt MVEBs for other years as well. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. *See* 40 CFR 93.101. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule. *See* 58 FR 62188. The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB.

After interagency consultation with the transportation partners for the Cincinnati OH-KY Area, Kentucky developed MVEBs for NO_X and VOC for the Northern Kentucky Area. Kentucky developed these MVEBs for the last year of the maintenance plan, in this case 2035, and for the interim year of 2026. The 2035 MVEBs reflect the total projected on-road emissions for 2035, plus an allocation from the available NO_X and VOC safety margins. Under 40 CFR 93.101, the term ''safety margin'' is the difference between the attainment level (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The safety margin can be allocated to the transportation sector; however, the total emissions must remain below the attainment level. The NO_X and VOC MVEBs and allocation from the safety margin were developed in consultation with the transportation partners and were added to account for uncertainties in population growth, changes in model vehicle miles traveled, and new emission factor models. The NO_X and VOC MVEBs for the Area are identified in Tables 8 and 9, below.

Kentucky, in consultation with the transportation partners for the Cincinnati OH-KY Area, chose to allocate a portion of the available safety margins to the 2026 and 2035 NO_X and VOC MVEBs for the Area. Kentucky allocated 15 percent (0.90 tpsd) and (0.38 tpsd) of the on-road emissions totals to the 2026 NO_X and VOC MVEBs, respectively. Likewise, Kentucky allocated 15 percent (0.63 tpsd) and (0.29 tpsd) of the on-road emissions totals to the 2035 NO_X and VOC MVEBs, respectively. The total remaining 2035 NO_X and VOC safety margins after allocations are 10.22 tpsd and 0.47 tpsd, respectively. See Tables 7 through 9, below, for additional information.

TABLE 7—SAFETY MARGINS FOR THE NORTHERN KENTUCKY AREA

[tpsd]

Year	NO_X	VOC
2026	10.40	1.34
2035	11.75	1.14

TABLE 8—NO_X ON-ROAD EMISSIONS AND MVEBS (2026 AND 2035) FOR THE NORTHERN KENTUCKY AREA

[tpsd]

NO_X on-road emissions	2026	2035
Boone	2.65	2.00
Campbell	0.94	0.57
Kenton	2.44	1.64
Totals	6.02	4.21
NO_X Safety Margin Allocated to MVEB	0.90	0.63
NO_X MVEBs	6.92	4.84

TABLE 9—VOC ON-ROAD EMISSIONS AND MVEBS (2026 AND 2035) FOR THE NORTHERN KENTUCKY AREA

[tpsd]

VOC on-road emissions	2026	2035
Boone	1.03	0.86
Campbell	0.51	0.36
Kenton	1.02	0.74
Totals	2.56	1.96
VOC Safety Margin Allocated to MVEBs	0.38	0.29
VOC MVEBs	2.94	2.25

Kentucky, in consultation with the transportation partners for the Cincinnati OH-KY Area, chose to allocate a portion of the available safety margins (Table 7) to the 2026 and 2035 NO_X and VOC MVEBs for the Area. Kentucky allocated 15 percent (0.90 tpsd) and (0.38 tpsd) of the on-road emissions totals to the 2026 NO_X and VOC MVEBs, respectively. Likewise, Kentucky allocated 15 percent (0.63 tpsd) and (0.29 tpsd) of the on-road emissions totals to the 2035 NO_X and VOC MVEBs, respectively. The total remaining 2035 NO_X and VOC safety margins after allocations are 10.22 tpsd and 0.47 tpsd, respectively.

Through this proposed rulemaking, EPA is proposing to approve the MVEBs for NO_X and VOC for years 2026and 2035 for the Area because EPA has determined that the Area maintains the 2015 8-hour ozone NAAQS with the emissions at the levels of the budgets. If the MVEBs for the Area are approved or found adequate (whichever comes first), they must be used for future conformity determinations.

VII. EPA's Adequacy Determination for the Proposed NO_X and VOC MVEBs

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA may affirmatively find the MVEB contained therein adequate for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB must be used by State and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining adequacy of a MVEB are set out in 40 CFR 93.118(e)(4). The process for determining adequacy consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy determination. This process for determining the adequacy of submitted MVEBs for transportation conformity purposes was initially outlined in EPA's May 14, 1999, guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' EPA adopted regulations to codify the adequacy process in the Transportation Conformity Rule Amendments in an action titled ''New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change,'' on July 1, 2004. *See* 69 FR 40004. Additional information on the adequacy process for transportation conformity purposes is available in the proposed rule titled ''Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes.'' *See* 68 FR 38974 (June 30, 2003).

As discussed earlier, Kentucky's maintenance plan includes NO_X and VOC MVEBs for the Northern Kentucky Area for the interim year 2026 and for 2035, the last year of the maintenance plan. EPA reviewed the NO_X and VOC MVEBs through the adequacy process described in Section I.

EPA intends to make its determination on the adequacy of the 2026 and 2035 MVEBs for the Area for transportation conformity purposes in the near future by completing the adequacy process that was started on September 28, 2022. If EPA finds the 2026 and 2035 MVEBs adequate or approves them, the new MVEBs for NO_X and VOC must be used for future transportation conformity determinations. For required regional emissions analysis years, the applicable budgets established in this maintenance plan that involve 2026 through 2034, the new 2026 MVEBs will be used, and for years 2035 and beyond, the applicable budgets will be the new 2035 MVEBs established in the maintenance plan.

VIII. Effect of EPA's Proposed Actions

EPA's proposed actions establish the basis upon which EPA may take final action on the issues being proposed for approval. Approval of Kentucky's redesignation request would change the legal designation of the portions of Boone, Campbell, and Kenton Counties in the Northern Kentucky Area, found at 40 CFR part 81, from nonattainment to attainment for the 2015 8-hour ozone NAAQS. Approval of Kentucky's associated SIP revision would also incorporate a plan for maintaining the 2015 8-hour ozone NAAQS in the Area through 2035 into the Kentucky SIP. The maintenance plan establishes NO_X and VOC MVEBs for 2026 and 2035 for the Area and includes contingency

measures to remedy any future violations of the 2015 8-hour ozone NAAQS and procedures for evaluating potential violations.

IX. Proposed Actions

EPA is proposing to: (1) Approve the maintenance plan for the Northern Kentucky Area, including the NO_X and VOC MVEBs for 2026 and 2035, and incorporate it into the Kentucky SIP, and (2) approve Kentucky's redesignation request for the 2015 8-hour ozone NAAQS for the Area. Further, as part of this proposed action, EPA is also describing the status of its adequacy determination for the NO_X and VOC MVEBs for the 2026 and 2035 in accordance with 40 CFR 93.118(f)(1). Within 24 months from the effective date of EPA's adequacy determination for the MVEBs or the effective date for the final rule for this action, whichever is earlier, the transportation partners will need to demonstrate conformity to the new NO_X and VOC MVEBs pursuant to 40 CFR 93.104(e)(3). If finalized, approval of the redesignation request would change the official designation of a portion of Boone, Campbell, and Kenton Counties in Kentucky for the 2015 8-hour ozone NAAQS from nonattainment to attainment, as found at 40 CFR part 81.

X. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by State law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. These actions merely propose to approve State law as meeting Federal requirements and do not impose additional requirements beyond those imposed by State law. For that reason, these proposed actions:

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian Tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rules do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The Cabinet and District did not evaluate environmental justice considerations as part of its redesignation request or SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ as part of Kentucky's redesignation request or SIP submittal in these proposed actions. Consideration of EJ is not required as part of these proposed actions, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Jeaneanne Gettle,
Acting Regional Administrator, Region 4.

[FR Doc. 2023–16223 Filed 7–27–23; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 23–244; RM–11955; DA 23–622; FR ID 157779]

Television Broadcasting Services Knoxville, Tennessee

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Tennessee TV, LLC (Petitioner), the licensee of WKNX–TV, channel 7, Knoxville, Tennessee. The Petitioner requests the substitution of channel 21 for channel 7 at Knoxville in the Table of Allotments.

DATES: Comments must be filed on or before August 28, 2023 and reply comments on or before September 11, 2023.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the Petitioner as follows: Coe W. Ramsey, Esq., Brooks, Pierce, McLendon, Humphrey and Leonard, L.L.P, Wells Fargo Capitol Center, Suite 1700, Raleigh, NC 27601.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647; or Joyce Bernstein, Media Bureau, at *Joyce.Bernstein@fcc.gov.*

SUPPLEMENTARY INFORMATION: In support, the Petitioner states that WKNX–TV's proposed channel substitution would serve the public interest by resolving current reception challenges within the Station's existing service area. Viewers within the Station's currently authorized channel 7 service area have experienced difficulty receiving the Station's signal, particularly since the June 12, 2009 digital transition. Petitioner further states that the Commission has recognized that VHF channels pose challenges for their use in providing digital television service, including propagation characteristics that allow undesired signals and noise to be receivable at relatively far distances and large variability in the performance of indoor antennas available to viewers, with most antennas performing very poorly on high VHF channels. The Petitioner's engineering analysis shows that the 50,322 persons currently located in the loss area along the eastern, southern, and western fringes of the proposed channel 21 facility would continue to be within the noise limited contour of least five other full power or Class A television stations, including four other Knoxville television stations.

This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 23–244; RM–11955; DA 23–622, adopted July 20, 2023, and released July 20, 2023. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed 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). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a Notice of Proposed Rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in Section 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a).

See Sections 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622, in the table in paragraph (j), under Tennessee, revise the entry for Knoxville to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(j) * * *

Community	Channel No.
* * * * *	
Tennessee	
* * * * *	
Knoxville	10, 15, 21, 26, *29, 34.
* * * * *	

[FR Doc. 2023–16040 Filed 7–27–23; 8:45 am]

BILLING CODE P

Notices

Federal Register

Vol. 88, No. 144

Friday, July 28, 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

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; 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; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and 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.

Comments regarding this information collection received by August 28, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: 7 CFR part 210, National School Lunch Program.

OMB Control Number: 0584–0006.

Summary of Collection: Section 10 of the Child Nutrition Act of 1966 (42 U.S.C. 1779) requires the Secretary of Agriculture to prescribe such regulations as deemed necessary to carry out this Act and the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1751 *et seq.*). The NSLA, as amended, authorizes the National School Lunch Program (NSLP) to safeguard the health and well-being of the Nation's children and provide free or reduced-price school lunches to eligible students through subsidies to schools. As required, the Secretary of Agriculture issued 7 CFR part 210, which sets forth policies and procedures for the administration and operation of the NSLP.

Need and Use of the Information: This ongoing information collection is required to administer and operate this program in accordance with the NSLA. The Program is administered at the State agency and school food authority (SFA)/local education agency (LEA) levels and States, SFAs/LEAs, and schools under this Act are required to keep accounts and records as may be necessary to enable FNS to determine whether the program is in compliance with this Act and the regulations. Program operations include the submission of applications and agreements and monthly reports of program participation and numbers of meals served submitted from monthly claims for reimbursement. Records maintained include documentation of payment of monthly claims, annual data from Program monitoring reviews, and menu and food production records. In addition to reporting and maintaining records, the States and SFAs/LEAs have publication notification requirements as well. State agencies must post summaries of the most recent administrative review results of SFAs on their websites. LEAs must inform the public annually about the content and implementation of local school wellness policies and must conduct triennial assessments of schools' compliance with the local school wellness policies and inform the public about the progress. FNS uses this information to properly monitor State agency and SFA/LEA compliance.

Description of Respondents: State, local, or Tribal government.

Number of Respondents: 115,935.

Frequency of Responses: Recordkeeping; Reporting; Third party disclosure: On occasion, Quarterly, Monthly, and Annually.

Total Burden Hours: 9,808,701.

Food and Nutrition Service

Title: 7 CFR part 245, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools.

OMB Control Number: 0584–0026.

Summary of Collection: The Richard B. Russell National School Lunch Act (NSLA), Child Nutrition Act of 1966 (42 U.S.C. 1779), and Title 7 CFR part 245, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools, set forth Program requirements for State agencies, local education agencies (LEAs)/school food authorities (SFAs), and households. 7 CFR part 245 and section 9 of the NSLA require Program participants and administrators of the School Breakfast Program (SBP), National School Lunch Program (NSLP), or Special Milk Program (SMP) to determine children's eligibility for free and reduced price meals and/or free milk. Also established in 7 CFR part 245 and section 9 of the NSLA are Program procedures and Federal requirements that prevent physical segregation, or other discrimination against, or overt identification of, children unable to pay the full price for meals or milk. All schools and institutions opting to participate in the SBP, NSLP, or the SMP are required to make free or reduced price meals or free milk available to all eligible enrolled children.

Need and Use of the Information: FNS collects information for this collection, which contains both mandatory and required to obtain or retain benefit requirements, from State agencies, LEAs/SFAs, and households. The information collected from the State agencies and the LEAs/SFAs ensures that eligibility determinations are made, that applications are verified, that eligibility and other records are maintained, and that public notification is provided concerning the programs. The information collected from the households is used to determine eligibility for free and reduced price meal benefits and participation in the

Special Milk Program and to verify eligibility determinations. FNS uses the information to estimate and report the burden that Program requirements have on State and local levels, comply with Federal requirements, understand the administrative and operational costs associated with Program eligibility criteria, to monitor the number of children directly certified and the number participating in the school meal programs, to monitor the number of household applications that are submitted, and to monitor the number of schools operating under Provision 1, 2, or 3 or the Community Eligibility Provision which enable schools to serve all enrolled students free meals at no charge. Households are required to complete applications and respond to verification in order to receive program benefits.

Description of Respondents: Individuals or households; State, local, or Tribal government.

Number of Respondents: 3,571,312.

Frequency of Responses: Recordkeeping; Reporting; Third Party Disclosure: Annually.

Total Burden Hours: 660,799.

Food and Nutrition Service

Title: Child and Adult Care Food Program (CACFP) National Disqualified List.

OMB Control Number: 0584–0584.

Summary of Collection: The Food and Nutrition Service administers the Child Nutrition Act of 1966, as amended (42 U.S.C. 1771, *et seq.*). Section 243(c) of Public Law 106–224, the Agricultural Risk Protection Act of 2000, amended section 17(d)(5) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766 (d)(5)(E)(i) and (ii)) by by requiring the Department of Agriculture to maintain a list of institutions, day care home providers, and individuals that have been terminated or otherwise disqualified from CACFP participation. The law also requires the Department to make the list available to State agencies for their use in reviewing applications to participate and to sponsoring organizations to ensure that they do not employ as principals any persons who are disqualified from the program. This statutory mandate has been incorporated into § 226.6(c)(7) of the Program regulations.

Need and Use of the Information: The Food and Nutrition Service (FNS) uses forms FNS–843 Report of Disqualification from Participation—Institution and Responsible Principals/Individuals and FNS–844 Report of Disqualification from Participation—Individually Disqualified Responsible Principal/Individual or Day Care Home Provider to collect and maintain the disqualification data. The State agencies use these forms, which are accessed through a web-based National Disqualification List (NDL) system, to collect the contact information and the disqualification information and reasons on all individuals and institutions that have been disqualified and are therefore ineligible to participate in CACFP. The information is collected from State agencies as the disqualifications occur so that the list is kept current. By maintaining the web-based system, the Department ensures program integrity by making the NDL data available to sponsoring organizations and State agencies so that no one who has been disqualified can participate in CACFP. Without this data collection, State agencies would not be able to prevent individuals and institutions disqualified in other States from reapplying to participate in CACFP.

Description of Respondents: State, local, or Tribal government.

Number of Respondents: 56.

Frequency of Responses: Reporting: On occasion; Other (as needed).

Total Burden Hours: 784.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–16031 Filed 7–27–23; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket ID NRCS–2023–0015]

Information Collection Request; Conservation Outreach, Education, and Technical Assistance

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act requirement, the Natural Resources Conservation Service (NRCS), Outreach and Partnership Division (OPD) is requesting comments from all interested individuals and organizations on a new information collection request associated with Conservation Outreach, Education, and Technical Assistance. The approved recipients will report the equity information to NRCS OPD on the underserved producers and communities who receive conservation assistance and students who are interested to pursue agriculture, natural resources and related sciences careers.

DATES: We will consider comments that we receive by September 26, 2023.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments, identified by Docket ID: NRCS–2023–0015 in the Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jill Howard; by telephone: 701–214–8874; or by email: *jill.howard@usda.gov*. Individuals who require alternative means for communication should contact the USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

Title: Conservation Outreach, Education, and Technical Assistance.

OMB Control Number: 0578–XXXX.

Type of Request: New.

Abstract: NRCS OPD is administrating the Equity in Conservation Outreach cooperative agreements. As the primary goal of NRCS, in collaboration with partners, is to expand conservation assistance to historically underserved producers and underserved communities and to provide opportunities for students to pursue careers in agriculture, natural resources, and related sciences.

After the cooperative agreements are awarded, the cooperators will be required to provide performance reports to provide information as specified in the general terms and conditions in the executed cooperative agreement. Recipients will report semi-annually. In order to evaluate the impact and effectiveness of the agreement via standardized metrics, NRCS OPD is offering a performance reporting template as a supplement to the required performance report.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hours is the estimated average time per responses multiplied by the estimated total annual of responses annually.

Estimate of Average Time To Respond: The reporting burden for collecting information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data

needed, and completing and reviewing the collection of information.

Type of Respondents: OPD Cooperative Agreement Recipients.

Estimated Number of Respondents: 150.

Estimated Average Number of Responses per Respondent: 2.

Estimated Total Annual Responses: 300.

Estimated Total Annual Burden on Respondents: 1,200.

NRCS is requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of burden of the collection of information including the validity of the methodology and assumptions used;

(3) Evaluate the quality, utility and clarity of the information technology; and

(4) Minimize the burden of the information collection on those who respond through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses where provided, will be made a matter of public record. Comments will be summarized and included in the request for OMB approval.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Agencies, offices, and 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 or 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.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or email: *OAC@usda.gov*.

USDA is an equal opportunity provider, employer, and lender.

Terry Cosby,

Chief, Natural Resources Conservation Service.

[FR Doc. 2023–16060 Filed 7–27–23; 8:45 am]

BILLING CODE 3410–16–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meetings

TIME AND DATE:

Thursday, October 26, 2023, 2 p.m. ET (2 hours)

Thursday, January 25, 2024, 2 p.m. ET (2 hours)

Thursday, April 25, 2024, 2 p.m. ET (2 hours)

Thursday, July 25, 2024, 2 p.m. ET (2 hours)

PLACE: The meetings will be held virtually via ZOOM. Links are below and will be available at: *www.csb.gov.*

October 26, 2023: *https://www.zoomgov.com/j/1612673871*

January 25, 2024: *https://www.zoomgov.com/j/1611905290*

April 25, 2024: *https://www.zoomgov.com/j/1608469619*

July 25, 2024: *https://www.zoomgov.com/j/1608520161*

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

The Chemical Safety and Hazard Investigation Board (CSB) will convene public meetings on October 27, 2023; January 25, 2024; April 25, 2024; and, July 25, 2024, at 2 p.m. ET. These meetings serve to fulfill the CSB's requirement to hold a minimum of four public meetings for Fiscal Year 2024 pursuant to 40 CFR 1600.5(c). The Board will review the CSB's progress in meeting its mission and as appropriate highlight safety products newly released through investigations and safety recommendations.

CONTACT PERSON FOR FURTHER INFORMATION:

Hillary Cohen, Communications Manager, at *public@csb.gov* or (202) 446–8094. Further information about these public meetings can be found on the CSB website at: *www.csb.gov.*

Additional Information:

Background

The CSB is an independent Federal agency charged with investigating incidents and hazards that result, or may result, in the catastrophic release of extremely hazardous substances. The agency's Board Members are appointed by the President and confirmed by the Senate. CSB investigations look into all aspects of chemical accidents and hazards, including physical causes such as equipment failure as well as inadequacies in regulations, industry standards, and safety management systems.

Public Participation

The meetings are free and open to the public. These meetings will only be available via ZOOM. Close captions (CC) will be provided. At the close of each meeting, there will be an opportunity for public comment. To submit public comments for the record please email the agency at *public@csb.gov.*

Dated: July 26, 2023.

Tamara Qureshi,

Assistant General Counsel, Chemical Safety and Hazard Investigation Board.

[FR Doc. 2023–16148 Filed 7–26–23; 11:15 am]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

The Nomination of Individuals to the Federal Economic Statistics Advisory Committee

AGENCY: Bureau of Economic Analysis, Census Bureau, Department of Commerce.

ACTION: Notice of request for nominations.

SUMMARY: The Under Secretary for Economic Affairs requests the

nomination of individuals to the Federal Economic Statistics Advisory Committee (FESAC or the Committee). The Under Secretary for Economic Affairs, in coordination with the Directors of the Bureau of Economic Analysis (BEA) and the Census Bureau, as well as the Commissioner of the Department of Labor's Bureau of Labor Statistics (BLS), will consider nominations received in response to this notice, as well as from other sources.

DATES: Nominations for FESAC will be accepted on an ongoing basis and will be considered as and when vacancies arise.

ADDRESSES: Please submit nominations by email to *Gianna.marrone@bea.gov* (subject line ''FESAC Nomination'').

FOR FURTHER INFORMATION CONTACT: Gianna Marrone, Committee Management Official, Department of Commerce, Bureau of Economic Analysis, telephone 301–278–9282, email: *gianna.marrone@bea.gov.*

SUPPLEMENTARY INFORMATION: FESAC was established in accordance with the Federal Advisory Committee Act (Title 5, U.S.C., App. 2). The following sections provide information about the Committee, membership to the Committee, and the Committee's nomination process.

Objectives and Scope of FESAC Activities

The Committee advises the Directors of BEA and the Census Bureau, as well as the Commissioner of BLS, on statistical methodology and other technical matters related to the design, collection, tabulation, and analysis of Federal economic statistics.

Description of the FESAC Member Duties

The Committee functions solely as an advisory committee to the senior officials of BEA, the Census Bureau, and BLS (the agencies). Important aspects of the Committee's responsibilities include, but are not limited to:

a. Recommending research to address important technical problems arising in the field of Federal economic statistics;

b. Identifying areas in which better coordination of the agencies' activities would be beneficial;

c. Exploring ways to enhance the agencies' economic indicators to improve their timeliness, accuracy, and specificity to meet changing demands and future data needs;

d. Improving the means, methods, and techniques to obtain economic information needed to produce current and future economic indicators; and

e. Coordinating, in its identification of agenda items, with other existing academic advisory committees chartered to provide agency-specific advice, for the purpose of avoiding duplication of effort.

The Committee meets once or twice a year, budget permitting. Additional meetings may be held as deemed necessary by the Under Secretary for Economic Affairs or the Designated Federal Official. All Committee meetings are open to the public in accordance with the Federal Advisory Committee Act.

FESAC Membership

The Committee will comprise approximately sixteen members who serve at the pleasure of the Secretary of Commerce. Members shall be appointed by the Under Secretary for Economic Affairs in consultation with the agencies. Committee members shall be professionals in appropriate disciplines, including economists, statisticians, survey methodologists, computer scientists, data scientists, and behavioral scientists who are experts in their fields and are recognized for their scientific, professional, and operational achievements and objectivity. Membership will represent data users with expertise from the public sector, academia, and the private sector. Members will be chosen to achieve a balanced membership that will meet the needs of the agencies.

Members shall serve as Special Government Employees (SGEs) and shall be subject to the applicable ethics rules.

A FESAC member term is three years. Members may serve more than one term as described in the FESAC Charter, available at: *https://apps.bea.gov/fesac/.*

Compensation for Members

Members of the Committee serve without compensation but may be reimbursed for Committee-related travel and lodging expenses.

Solicitation of Nominations

The Committee is currently filling one or more positions on FESAC.

The Under Secretary of Economic Affairs, in consultation with the agencies, will consider nominations of all qualified individuals to ensure that the Committee includes the areas of experience noted above. Individuals may nominate themselves or other individuals. Professional associations and organizations also may nominate one or more qualified persons for Committee membership. Nominations shall state that the nominee is willing to serve as a Committee member and carry out the affiliated duties. A nomination package should include the following information for each nominee:

1. A letter of nomination stating the name, affiliation, and contact information for the nominee, the basis for the nomination (*i.e.,* what specific attributes recommend the nominee for service in this capacity), and the nominee's field(s) of expertise;

2. A biographical sketch of the nominee;

3. A copy of the nominee's curriculum vitae; and

4. The name, return address, email address, and daytime telephone number at which the nominator can be contacted.

The Committee aims to have a balanced representation among its members, considering such factors as geography, age, sex, race, ethnicity, technical expertise, community involvement, and knowledge of programs and/or activities related to FESAC. Individuals will be selected based on their expertise in or representation of specific areas as needed by FESAC.

All nomination information should be provided in a single, complete package. Interested applicants should send their nomination packages to Gianna Marrone, Committee Management Official, at *Gianna.Marrone@bea.gov* (subject line ''FESAC Nomination'').

Authority: Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App.

Dated: July 25, 2023.

Gianna Marrone,

Bureau of Economic Analysis, Alternate Designated Federal Official, Federal Economic Statistics Advisory Committee.

[FR Doc. 2023–16043 Filed 7–27–23; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Renewing Temporary Denial of Export Privileges

Empresa de Transporte Aéreocargo del Sur, S.A., a/k/a Aerocargo del Sur Transportation Company, a/k/a EMTRASUR, Avenida Intercomunal, Edificio Sede, Sector 6.3, Maiquetia, Distrito Federal, Venezuela, Avenida Lecuna Torre Oeste Piso 49, Libertador, Caracas, Venezuela

Pursuant to section 766.24 of the Export Administration Regulations, 15 CFR parts 730–774 (2021) (''EAR'' or

''the Regulations''),[1] I hereby grant the request of the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, through its Office of Export Enforcement (''OEE''), to renew the temporary denial order (''TDO'') issued in this matter on January 26, 2023. I find that renewal of this order is necessary in the public interest to prevent an imminent violation of the Regulations.

I. Procedural History

On August 2, 2022, I signed an order denying the export privileges of Venezuela-based cargo airline Empresa de Transporte Aéreocargo del Sur, S.A., a/k/a Aerocargo del Sur Transportation Company, a/k/a EMTRASUR (''EMTRASUR'') for a period of 180 days on the ground that issuance of the order was necessary in the public interest to prevent an imminent violation of the Regulations. The order was issued *ex parte* pursuant to section 766.24(a) of the Regulations and was effective upon issuance.[2] This temporary denial order was subsequently renewed in accordance with section 766.24(d) of the Regulations.[3] The renewal order issued on January 26, 2023 and was effective upon issuance.[4]

On July 3, 2023, BIS, through OEE, submitted a written request for renewal of the TDO that issued on January 26, 2023. The written request was made more than 20 days before the TDO's scheduled expiration. A copy of the renewal request was sent to EMTRASUR in accordance with sections 766.5 and 766.24(d) of the Regulations. No opposition to the renewal of the TDO has been received.

II. Renewal of the TDO

A. Legal Standard

Pursuant to section 766.24, BIS may issue an order temporarily denying a respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an ''imminent violation'' of the Regulations, or any order, license or authorization issued thereunder. 15 CFR 766.24(b)(1) and 766.24(d). ''A violation may be 'imminent' either in time or degree of likelihood.'' 15 CFR 766.24(b)(3). BIS may show ''either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.'' *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge ''is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]'' *Id.* A ''lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.'' *Id.*

B. The TDO and BIS's Request for Renewal

OEE's request for renewal is based upon the facts underlying the issuance of the initial TDO and evidence developed during this investigation, which demonstrate continued disregard for U.S. export controls and the terms of a preexisting TDO. As noted in OEE's initial request for a temporary denial order, EMTRASUR is a subsidiary of Consorcio Venezolano de Industrias Aeronauticas Y Servicios Aereos, S.A., a/k/a CONVIASA (''CONVIASA''), a Venezuelan state-owned airline. On or about February 7, 2020, U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') added CONVIASA to the list of Specially Designated Nationals (''SDN'') pursuant to Executive Order (E.O.) 13884.[5]

The initial TDO, issued on August 2, 2022, was based on evidence that EMTRASUR engaged in conduct prohibited by a TDO that had been previously issued against Iranian airline Mahan Air a/k/a Mahan Airlines a/k/a Mahan Airways (''Mahan Air'') and the Regulations when EMTRASUR, through its parent company, acquired custody and/or control from Mahan Air of a U.S-origin Boeing 747 aircraft bearing manufacturer's serial number 23413 (''MSN 23413''), an item subject to the EAR and classified under ECCN 9A991, in or around October 2021.[6]

Moreover, the initial TDO, issued on August 2, 2022, was also based on evidence that EMTRASUR had continued to use MSN 23413 on flights into Iran and Russia in violation of General Prohibition 10, which (among other restrictions) prohibits the continued use of an item that was known to have been exported or reexported in violation of the EAR.[7] *See* General Prohibition 10 of the EAR at 15 CFR 736.2(b)(10). There are no license exceptions available for this General Prohibition.[8] As also noted in OEE's initial request, MSN 23413 was detained by Argentinian authorities on or about June 8, 2022, where it presently remains. On or about August 2, 2022, the United States Department of Justice transmitted a request to Argentinian authorities for the seizure of MSN 23413 following the unsealing of a seizure warrant in the U.S. District Court for the District of Columbia.

In its request for renewal of the August 2, 2022 TDO, as well as the most recent request submitted on July 3, 2023, BIS offered evidence demonstrating that EMTRASUR's acquisition of MSN 23413 from Mahan Air was in violation of the TDO previously issued against Mahan Air and the Regulations. Specifically, BIS's

[1] On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 (''ECRA''). While section 1766 of ECRA repeals the provisions of the Export Administration Act, 50 U.S.C. app. 2401 *et seq.* (''EAA''), (except for three sections which are inapplicable here), section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.* (''IEEPA''), and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders. 50 U.S.C. 4820(a)(5).

[2] The TDO was published in the **Federal Register** on August 5, 2022. *See* 87 FR 47964 (August 5, 2022).

[3] Section 766.24(d) provides that BIS may seek renewal of a temporary denial order for additional 180-day renewal periods, if it believes that renewal is necessary in the public interest to prevent an imminent violation. Renewal requests are to be made in writing no later than 20 days before the scheduled expiration date of a temporary denial order.

[4] The January 26, 2023 renewal order was published in the **Federal Register** on January 31, 2023. *See* 88 FR 6231 (January 31, 2023).

[5] *See https://home.treasury.gov/news/press-releases/sm903.*

[6] Mahan Air's status as a denied person was most recently renewed by BIS through a TDO issued on May 5, 2023. *See* 88 FR 30078 (May 10, 2023). The May 5, 2023 renewal order summarizes the initial TDO issued against Mahan in March 2008 and the other renewal orders issued prior to May 5, 2023. *See id.*

[7] Publicly available flight tracking information demonstrates, for instance, that EMTRASUR operated MSN 23413 on multiple flights between Caracas, Venezuela and Tehran, Iran between February 19, 2022 and May 25, 2022. In addition, EMTRASUR operated MSN 23413 on flights between Tehran, Iran and Moscow, Russia on May 24, 2022 and May 25, 2022.

[8] Section 736.2(b)(10) of the EAR provides: General Prohibition Ten—Proceeding with transactions with knowledge that a violation has occurred or is about to occur (Knowledge Violation to Occur). You may not sell, transfer, export, reexport, finance, order, buy, remove, conceal, store, use, loan, dispose of, transport, forward, or otherwise service, in whole or in part, any item subject to the EAR and exported or to be exported with knowledge that a violation of the Export Administration Regulations, the Export Administration Act or any order, license, License Exception, or other authorization issued thereunder has occurred, is about to occur, or is intended to occur in connection with the item. Nor may you rely upon any license or License Exception after notice to you of the suspension or revocation of that license or exception. There are no License Exceptions to this General Prohibition Ten in part 740 of the EAR.

ongoing investigation has uncovered evidence that certain of MSN 23413's parts, including spare parts which appear to be U.S-origin, bear the markings and logos of Mahan and/or CONVIASA. This evidence further demonstrates that EMTRASUR's acquisition and operation of the aircraft violated the TDO issued against Mahan Air; as a result, any attempts by EMTRASUR to operate the aircraft or to return it to Venezuela, as well as any efforts EMTRASUR may take to maintain it, would violate General Prohibition 10.

Moreover, as detailed in the January 26, 2023 renewal order, BIS's investigation indicates that Venezuelan parties took affirmative actions to secure the release of the aircraft from its detention in Argentina, even after the issuance of the August 2, 2022, TDO against EMTRASUR. In its most recent request for renewal, BIS has offered evidence that on May 3, 2023, United States District Judge Randolph D. Moss of the United States District Court for the District of Columbia issued a final order of forfeiture as to the aircraft, vesting all rights to MSN 23413 with the United States. *See United States* v. *Boeing 747–300 Aircraft,* No. 1:22–cv–3208, Dkt. 11 (D.D.C. May 3, 2023). Notwithstanding this order, however, the aircraft remains in Argentina and has not yet been recovered by the United States government.

Based upon the violations by EMTRASUR, its disregard for the Regulations and the previously-issued TDO against Mahan Air, and the potential release of the MSN 23413 from detention, there are concerns of future violations of the EAR. These concerns are heightened because any subsequent actions taken with regard to MSN 23413 may violate the EAR, including, but not limited to, its refueling, maintenance, repair, or the provision of spare parts or services.

III. Findings

Under the applicable standard set forth in section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS convincingly demonstrates that EMTRASUR has acted in violation of the Regulations and the TDO; that such violations have been significant, deliberate and covert; and that given the foregoing and the nature of the matters under investigation, there is a likelihood of imminent violations. Therefore, renewal of the TDO is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should avoid dealing with EMTRASUR in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

IV. Order

It is therefore ordered:

First, Empresa de Transporte Aéreocargo del Sur, S.A., a/k/a Aerocargo del Sur Transportation Company, a/k/a EMTRASUR, Avenida Intercomunal, Edificio Sede, Sector 6.3, Maiquetia, Distrito Federal, Venezuela, and Avenida Lecuna Torre Oeste Piso 49, Libertador, Caracas, Venezuela, and when acting for or on its behalf, any successors or assigns, agents, or employees may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license (except directly related to safety of flight), license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations, or engaging in any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of EMTRASUR any item subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by EMTRASUR of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby EMTRASUR acquires or attempts to acquire such ownership, possession or control except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from EMTRASUR of any item subject to the EAR that has been exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

D. Obtain from EMTRASUR in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by EMTRASUR, or service any item, of whatever origin, that is owned, possessed or controlled by EMTRASUR if such service involves the use of any item subject to the EAR that has been or will be exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to EMTRASUR by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

In accordance with the provisions of sections 766.24(e) of the EAR, EMTRASUR may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by EMTRASUR as provided in section 766.24(d), by

filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to EMTRASUR and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for 180 days.

Dated: July 25, 2023.

Matthew S. Axelrod,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2023–16035 Filed 7–27–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–844]

Steel Concrete Reinforcing Bar From Mexico: Amended Final Results of Antidumping Duty Administrative Review; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is amending the final results of the administrative review of the antidumping duty order on steel concrete reinforcing bar (rebar) from Mexico to correct a ministerial error. The period of review is November 1, 2020, through October 31, 2021.

DATES: Applicable July 28, 2023.

FOR FURTHER INFORMATION CONTACT: Kyle Clahane, 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) 482–5449.

SUPPLEMENTARY INFORMATION:

Background

On June 9, 2023, Commerce published the final results of the 2020–2021 administrative review of rebar from Mexico.[1] Additionally, on June 9, 2023, Commerce informed interested parties that it had disclosed all calculations for the *Final Results* and provided them with the opportunity to submit ministerial error comments.[2] Subsequently, on June 14, 2023, Commerce received a timely-filed allegation from the Rebar Trade Action Coalition and its individual members (collectively, the petitioner), regarding the calculation of the final weighted-average dumping margin for Deacero S.A.P.I. de C.V. (Deacero)/Ingeteknos Estructurales, S.A. de C.V. (Ingetek) (collectively, Deacero Group).[3] No other interested party submitted comments.

Legal Framework

Section 751(h) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.224(f) define a ''ministerial error'' as including ''errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other unintentional error which the administering authority considers ministerial.'' With respect to final results of administrative reviews, 19 CFR 351.224(e) provides that Commerce ''will analyze any comments received and, if appropriate, correct any ministerial error by amending . . . the final results of review . . .''.

Ministerial Error

The petitioner alleges that, in the final results of the review, Commerce made inadvertent errors with respect to the treatment of Ingetek's home market sales databases, and with respect to the treatment of missing payment dates that were factored into the calculation of U.S. credit expenses, which it claims resulted in an incorrect weighted-average dumping margin calculated for Deacero Group.

We have analyzed the allegations and find that the petitioner made a timely allegation concerning a ministerial error within the meaning of section 751(h) of the Act and 19 CFR 351.224(f) pertaining to use of Ingetek's home market sales dabases, but that the petitioner's allegation alleging a ministerial error in calculating U.S. credit expenses is untimely.

Accordingly, we have revised the margin calculations such that normal value is based on the intended treatment of Deacero Group's home market sales, but have made no modification to our calculation of U.S. credit expenses.

Details of Commerce's analysis of the petitioner's ministerial error allegations are included in the Ministerial Error Allegation Memorandum.[4] The Ministerial Error Allegation Memorandum is a public document and is available via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.*

Accordingly, pursuant to 19 CFR 351.224(e), Commerce is amending the *Final Results* to reflect the correction of this ministerial error in the calculation of the weighted-average dumping margin for Deacero Group, which changes from 2.30 percent to 2.49 percent.[5] Furthermore, we are amending the weighted-average dumping margin for the companies not selected for individual examination in this review. The weighted-average dumping margin for the non-examined companies is based on the weighted-average dumping margins calculated for the mandatory respondents, Deacero Group and Grupo Acerero S.A. de C.V. (Acerero), which changes from 5.78 percent to 5.93 percent.[6]

Amended Final Results of Review

As a result of correcting the ministerial error, Commerce determines that the following weighted-average dumping margins exist for the period November 1, 2020, through October 31, 2021:

Producer or exporter	Weighted-average dumping margin (percent)
Deacero S.A.P.I. de C.V./Ingeteknos Estructurales, S.A. de C.V	2.49
Grupo Acerero S.A. de C.V.[7]	16.28
ArcelorMittal Mexico SA de CV	5.93

[1] *See Steel Concrete Reinforcing Bar from Mexico: Final Results of Antidumping Duty Administrative Review; 2020–2021,* 88 FR 37849 (June 9, 2023) (*Final Results*), and accompanying Issues and Decision Memorandum.

[2] *See* Memorandum, ''Deadline for Ministerial Error Comments,'' dated June 9, 2023.

[3] *See* Petitioner's Letter, ''Ministerial Error Comments on Deacero's Final Margin Calculations,'' dated June 14, 2023.

[4] *See* Memorandum, ''Ministerial Error Allegation,'' dated concurrently with this notice (Ministerial Error Allegation Memorandum).

[5] *Id.*

[6] *See* Memorandum, ''Amended Non-Examined Company Rate Calculation,'' dated concurrently with this notice.

Producer or exporter	Weighted-average dumping margin (percent)
Grupo Simec/Aceros Especiales Simec Tlaxcala, S.A. de C.V./Compania Siderurgica del Pacifico S.A. de C.V./Fundiciones de Acero Estructurales, S.A. de C.V./Grupo Chant S.A.P.I. de C.V./Operadora de Perfiles Sigosa, S.A. de C.V./Orge S.A. de C.V./Perfiles Comerciales Sigosa, S.A. de C.V./RRLC S.A.P.I. de C.V./Siderúrgicos Noroeste, S.A. de C.V./Siderurgica del Occidente y Pacifico S.A. de C.V./Simec International, S.A. de C.V./Simec International 6 S.A. de C.V./Simec International 7 S.A. de C.V./Simec International 9 S.A. de C.V	5.93

Disclosure

We will disclose the calculations performed for these amended final results to parties to this segment of the proceeding within five days of the date of the publication of these amended final results, pursuant to 19 CFR 351.224(b).

Assessment Rate

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these amended final results of the administrative review.

In accordance with 19 CFR 351.212(b)(1), for Deacero Group and Acerero, we calculated importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales for each importer to the total entered value of the sales for each importer. Where an importer-specific antidumping duty assessment rate is zero or *de minimis,* within the meaning of 19 CFR 351.106(c)(1), Commerce will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's ''automatic assessment'' will apply to entries of subject merchandise made during the period of review produced by either Deacero Group or Acerero for which the examined company did not know that the merchandise that it sold to the intermediary company (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

For the companies which were not selected for individual examination, we will instruct CBP to assess antidumping duties at an *ad valorem* assessment rate equal to the company-specific weighted-average dumping margin determined in these amended final results.

The amended final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the amended final results of this review and for future deposits of estimated duties, where applicable.[8]

Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the date of publication of the amended final results of this review in the **Federal Register**, in accordance with 19 CFR 356.8(a).

Cash Deposit Requirements

The following cash deposit requirements will be effective retroactively for all shipments of subject merchandise that entered, or were withdrawn from warehouse, for consumption on or after June 9, 2023, the date of publication of the *Final Results* of this administrative review. As provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed above will be equal to the weighted-average dumping margin established in these amended final results of review; (2) for exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review or another completed segment of this proceeding, but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) if neither the exporter nor the producer is a firm covered in this or any previously completed segment of this proceeding, then the cash deposit rate will be the all-others rate of 20.58 percent established in the less-than-fair-value investigation.[9]

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the period of review. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(h) and 777(i)(1) of the Act, and 19 CFR 351.224(e).

Dated: July 21, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–16033 Filed 7–27–23; 8:45 am]

BILLING CODE 3510–DS–P

[7] The weighted-average dumping margin for Acerero remains unchanged from the *Final Results. See Final Results,* 88 FR at 37850.

[8] *See* section 751(a)(2)(C) of the Act.

[9] *See Steel Concrete Reinforcing Bar from Mexico: Antidumping Duty Order,* 79 FR 65925 (November 6, 2014).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–301–803]

Citric Acid and Certain Citrate Salts From Colombia: Preliminary Results of Antidumping Duty Administrative Review; 2021–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty order on citric acid and certain citrate salts (citric acid) from Colombia. We preliminarily determine that Sucroal S.A. (Sucroal) sold subject merchandise in the United States at prices below normal value during the period of review (POR), July 1, 2021, through June 30, 2022. We invite interested parties to comment on these preliminary results.

DATES: Applicable July 28, 2023.

FOR FURTHER INFORMATION CONTACT: Patrick Barton, 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) 482–0012.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 2018, Commerce published the antidumping duty order on citric acid from Colombia in the **Federal Register**.[1] On September 6, 2022, pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), Commerce initiated an administrative review of the *Order*.[2] On March 6, 2023, Commerce extended the deadline for issuing the preliminary results of this review to July 28, 2023.[3] For a complete description of the events that followed the initiation of this administrative review, *see* the Preliminary Decision Memorandum.[4]

Scope of the Order

The merchandise covered by this *Order* includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. For a full description of the scope of the *Order, see* the Preliminary Decision Memorandum.[5]

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. Commerce calculated export price in accordance with section 772 of the Act, and normal value in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is included as the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Preliminary Results of Review

Commerce preliminarily determines that the following weighted-average dumping margin exists for the period July 1, 2021, through June 30, 2022:

Exporter/producer	Weighted-average dumping margin (percent)
Sucroal S.A.	6.10

Disclosure and Public Comment

Commerce intends to disclose to interested parties the calculations performed for these preliminary results within five days of the date of publication of this notice.[6] Interested parties may comment on the preliminary results of this review by submitting case briefs no later than 30 days after the date of publication of these preliminary results of review in the **Federal Register**.[7] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the date for filing case briefs.[8] Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[9] Executive summaries should be limited to five pages total, including footnotes. Case and rebuttal briefs should be filed using ACCESS.[10] Note that Commerce has temporarily modified certain portions of its requirements for serving documents containing business proprietary information, until further notice.[11]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically-filed request must be received successfully in its entirely by 5:00 p.m. Eastern Time within 30 days of the date of publication of this notice in the **Federal Register**.[12] Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.[13] Parties should confirm the date, time, and location of the hearing by telephone two days before the scheduled date.

Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised in case briefs, no later than 120 days after the date of publication of this notice, unless otherwise extended, pursuant to 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results of this administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. If the weighted-average dumping margin for Sucroal (*i.e.,* the sole individually-examined respondent in this review) is not zero or *de minimis* (*i.e.,* greater than or equal to 0.5 percent) in the final results of this review, then we will calculate importer-specific *ad valorem* assessment rates for the

[1] *See Citric Acid and Certain Citrate Salts from Belgium, Colombia and Thailand: Antidumping Duty Orders,* 83 FR 35214 (July 25, 2018) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 54463 (September 6, 2022).

[3] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated March 6, 2023.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Citric Acid and Certain Citrate Salts from Colombia; 2021–2022,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *Id.*

[6] *See* 19 CFR 351.224(b).

[7] *See* 19 CFR 351.309(c)(1)(ii).

[8] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[9] *See* 19 CFR 351.309(c)(2) and (d)(2).

[10] *See generally* 19 CFR 351.303.

[11] *See Temporary Rule.*

[12] *See* 19 CFR 351.310(c).

[13] *See* 19 CFR 351.310(d).

merchandise based on the ratio of the total amount of dumping calculated for the examined sales made during the POR to each importer and the total entered value of those same sales, in accordance with 19 CFR 351.212(b)(1). Where either a respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific *ad valorem* assessment rate is zero or *de minimis* in the final results of the review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[14]

For entries of subject merchandise during the POR produced by Sucroal for which the producer did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company (or companies) involved in the transaction.[15]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Sucroal will be equal to the weighted-average dumping margin established in the final results of this administrative review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or in the investigation but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be the all-others rate of 28.48 percent, the rate established in the investigation of this proceeding.[16] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(4).

Dated: July 24, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Duty Absorption
V. Discussion of the Methodology
VI. Currency Conversion
VII. Recommendation

[FR Doc. 2023–16032 Filed 7–27–23; 8:45 am]

BILLING CODE 3510–DS–P

[14] *See* 19 CFR 351.106(c)(2) *see also Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[15] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[16] *See Order,* 83 FR at 35215.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD181]

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of public hybrid meeting (in-person/virtual).

SUMMARY: The Caribbean Fishery Management Council (CFMC) will hold its 182nd public hybrid meeting to address the items contained in the tentative agenda included in the **SUPPLEMENTARY INFORMATION**.

DATES: The 182nd CFMC public hybrid meeting will be held on August 15, 2023, from 9 a.m. to 5 p.m., and on August 16, 2023, from 9 a.m. to 5 p.m., AST.

ADDRESSES: The meeting will be held at the Embassy Suites Hotel, Tartak Street, Carolina, Puerto Rico 00979.

You may join the 182nd CFMC public hybrid meeting via Zoom, from a computer, tablet, or smartphone by entering the following address:

Join Zoom Meeting: https://us02web.zoom.us/j/83060685915?pwd=VmVsc1orSUtKck8xYk1XOXNDY1ErZz09.

Meeting ID: 830 6068 5915.

Passcode: 995658.

One tap mobile:

+17879451488,,83060685915#,,,,,,0#,,995658# Puerto Rico
+17879667727,,83060685915#,,,,,,0#,,995658# Puerto Rico

Dial by your location:

+1 787 945 1488 Puerto Rico
+1 787 966 7727 Puerto Rico
+1 939 945 0244 Puerto Rico

Meeting ID: 830 6068 5915.

Passcode: 995658.

In case there are problems, and we cannot reconnect via Zoom, the meeting will continue using GoToMeeting.

You can join the meeting from your computer, tablet, or smartphone. *https://global.gotomeeting.com/join/971749317.* You can also dial in using your phone. United States: +1 (408) 650–3123 Access Code: 971–749–317.

FOR FURTHER INFORMATION CONTACT: Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903; telephone: (787) 398–3717.

SUPPLEMENTARY INFORMATION: The following items included in the tentative agenda will be discussed:

August 15, 2023

9 a.m.–10 a.m.

—Call to Order
—Roll Call
—Election of Officials
—Adoption of Agenda
—Consideration of 181st Council Meeting Verbatim Transcriptions
—Executive Director's Report

10 a.m.–10:30 a.m.

—Approval of the Southeast Data, Assessment, and Review (SEDAR) 91 Caribbean Spiny Lobster Terms of Reference
—Fishery Management Plans Amendments and Actions Updates—María López-Mercer, NOAA Fisheries

10:30 a.m.–10:45 a.m.

—Break

10:45 a.m.—12 p.m.

—Final Action for Framework Amendment 2 to the Island-Based FMPs: Updates to the Spiny Lobster Overfishing Limit, Acceptable Biological Catch, and Annual Catch Limit—Sarah Stephenson, NOAA Fisheries
—Review and Final Action for Amendment 2 to the Island-Based FMPs: Trawl and Net Gear and Descending Devices—María López-Mercer, NOAA Fisheries

12 p.m.–1:30 p.m.

—Lunch

1:30 p.m.–2:30 p.m.

—Review Draft Amendment 3 to the Island-Based FMPs: Management Measures for Dolphin and Wahoo—Sarah Stephenson, NOAA Fisheries

2:30 p.m.–3 p.m.

—Scientific and Statistical Committee Report—Vance Vicente, Chair
—Ecosystem-Based Fisheries Management Technical Advisory Panel Report—Sennai Habtes, Chair

3 p.m.–3:30 p.m.

—Southeast Fishery Science Center Updates—Kevin McCarthy, NOAA Fisheries

3:30 p.m.–3:45 p.m.

—Break

3:45 p.m.–4:30 p.m.

—District Advisory Panel Reports (15 mins each)
  —St. Thomas, U.S.V.I.—Julian Magras, Chair
  —St. Croix, U.S.V.I.—Gerson Martinez, Chair
  —Puerto Rico—Nelson Crespo, Chair

4:30 p.m.–5 p.m.

—Public Comment Period (5-minute presentations)

5 p.m.

—Adjourn for the day

August 16, 2023

9 a.m.–9:15 a.m.

—Call to Order
—Roll Call

9:15 a.m.–9:45 a.m.

—Highly Migratory Species Atlantic Actions Update—Ann Williamson, NOAA Fisheries

9:45 a.m.–10:15 a.m.

—Update on Western Central Atlantic Dolphinfish Fishery—Wessley Merten

10:15 a.m.–10:30 a.m.

—Break

10:30 a.m.–11:30 a.m.

—Outreach and Education Report—Alida Ortiz, Chair
—CFMC Liaison Officers Reports (10 minutes each)
  —St. Croix, U.S.V.I.—Liandry De La Cruz
  —St. Thomas/St. John, U.S.V.I.—Nicole Greaux
  —Puerto Rico—Wilson Santiago

11:30 a.m.–12 p.m.

Big Fish Campaign Update—Ana Salceda

12 p.m.–1:30 p.m.

—Lunch

1:30 p.m.–2:15 p.m.

—Lionfish Market Presentation on National/International Projects—Phil Karp
—Puerto Rico Activities on Lionfish Marketing—Jannette Ramos, Sea Grant Puerto Rico *2:15 p.m.—2:30 p.m.*
—NOAA Fisheries' Equity and Environmental Justice (EEJ) Strategy Update—NOAA Fisheries

2:30 p.m.–3 p.m.

—Protected Resources Updates on the Island-Based Fishery Management Plans Biological Opinion and Endangered Species Act Rules—Jennifer Lee, NOAA Fisheries

3 p.m.–3:30 p.m.

—Grammanik Bank and MCD Present Regulations for the Protection of Spawning Aggregations of Nassau grouper and Other Species—Graciela García-Moliner
—St. Thomas/St. John's Fishers Perspective on Recommendations for New Guidelines for Protection to the Nassau grouper in U.S.V.I. Fishery Spawning Aggregation Sites—Ruth Gomez—St. Thomas Fisherman's Association

3:30 p.m.–3:45 p.m.

—Break

3:45 p.m.–4:25 p.m.

—Enforcement Reports (10 minutes each):
  —Puerto Rico DNER
  —U.S.V.I. DPNR
  —U.S. Coast Guard
  —NOAA Fisheries Office of Law Enforcement

4:25 p.m.–5 p.m.

—Other Business
—Public Comment Period (5-minute presentations)
—Next Meeting

5 p.m.

—Adjourn

Note (1): Other than starting time and dates of the meetings, the established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. To further accommodate discussion and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice. Changes in the agenda will be posted to the CFMC website, Facebook, Twitter and Instagram as practicable.

Note (2): Financial disclosure forms are available for inspection at this meeting, as per 50 CFR part 601.

The order of business may be adjusted as necessary to accommodate the completion of agenda items. The meeting will begin on August 15, 2023, at 9 a.m. AST, and will end on August 16, 2023, at 5 p.m. AST. Other than the start time on the first day of the meeting, interested parties should be aware that discussions may start earlier or later than indicated in the agenda, at the discretion of the Chair.

Special Accommodations

Simultaneous interpretation will be provided.

For simultaneous interpretation English-Spanish-English follow your Zoom screen instructions. You will be asked which language you prefer when you join the meeting.

For any additional information on this public virtual meeting, please contact Diana Martino, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903, telephone: (787) 226–8849.

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

Dated: July 24, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–15971 Filed 7–27–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD083]

Fisheries of the Gulf of Mexico and the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 79 Data Workshop for Gulf of Mexico and South Atlantic Mutton Snapper.

SUMMARY: The SEDAR 79 assessment process of Gulf of Mexico and South Atlantic mutton snapper will consist of a Data Workshop, and a series of assessment webinars, and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 79 Data Workshop will be held from 1 p.m. on August 21, 2023, until 1 p.m. on August 25, 2023. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES:

Meeting address: The SEDAR 79 Data Workshop will be held at the Hilton St. Petersburg Bayfront, 333 1st Street South, St. Petersburg, FL 337011.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data/Assessment Workshop, and (2) a series of webinars. The product of the Data/Assessment Workshop is a report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses, and describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Data Workshop are as follows:

An assessment data set and associated documentation will be developed during the workshop.

Participants will evaluate proposed data and select appropriate sources for providing information on life history characteristics, catch statistics, discard estimates, length and age composition, and fishery dependent and fishery independent measures of stock abundance.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: July 24, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–15972 Filed 7–27–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD187]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Groundfish Subcommittee of the Scientific and Statistical Committee (SSC) will hold two online meetings to review 2023 groundfish stock assessments. These online meetings are open to the public.

DATES: The first online meeting will be held Monday, August 14, 2023 and will continue through Tuesday, August 15, 2023, from 8:30 a.m. until 5:30 p.m. (Pacific Daylight Time) or when business for the day has been completed. The second online meeting will be held Monday, August 28, 2023 and will continue through Tuesday, August 29, 2023, from 8:30 a.m. until 5:30 p.m. (Pacific Daylight Time) or when business for the day has been completed.

ADDRESSES: These meetings will be conducted online. Specific meeting information, materials, and instructions for how to connect to the meeting remotely will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). Please send an email to Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact via phone at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Marlene A. Bellman, Staff Officer, Pacific Council; telephone: (503) 820–2414, email: *marlene.bellman@noaa.gov.*

SUPPLEMENTARY INFORMATION: The SSC's Groundfish Subcommittee will review new assessments and stock assessment review (STAR) reports for copper rockfish in California, rex sole, shortspine thornyhead, and black rockfish on August 14–15, 2023. On August 28–29, 2023, assessments and STAR reports for canary rockfish and petrale sole, as well as a catch-only projection for widow rockfish, and a

limited assessment update for sablefish will be reviewed. Further, the SSC Groundfish Subcommittee will review a catch report for yelloweye rockfish to determine the adequacy of rebuilding progress. The SSC Groundfish Subcommittee will prepare their recommendations for the SSC and Pacific Council consideration at their meetings in September. Assessment recommendations may include endorsing these new stock assessments for management use or requesting further analyses to be reviewed at the late September review panel (this process is outlined in the Pacific Council's Terms of Reference for the Groundfish Stock Assessment Review Process for 2023–2024 which can be found here: *https://www.pcouncil.org/documents/2022/06/terms-of-reference-for-the-groundfish-stock-assessment-review-process-for-2023-2024-june-2022.pdf/.*

Although non-emergency issues not contained in the meeting agendas may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: July 24, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–15970 Filed 7–27–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD125]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice of Issuance of Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico (GOM), notification is hereby given that a Letter of Authorization (LOA) has been issued to Chevron USA, Inc., (Chevron) for the take of marine mammals incidental to geophysical survey activity in the GOM.

DATES: The LOA is effective from September 1, 2023 through September 30, 2024.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Jenna Harlacher, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in Federal waters of the U.S. GOM over the course of 5 years (86 FR 5322, January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

Summary of Request and Analysis

Chevron plans to conduct the following vertical seismic profile (VSP) survey types: Zero Offset, Offset, and Salt Proximity survey in the Mississippi Canyon Block 937. The water depth at the well location is approximately 1,300 meters. Chevron plans to use as the acoustic source either a 12-element, 2,400 cubic inch (in^3) airgun array, or a 6-element, 1,500 in^3 airgun array. The

survey is planned to occur for two days during the period from September 1, 2023 through September 30, 2024. Please see Chevron's application for additional detail.

Consistent with the preamble to the final rule, the survey effort proposed by Chevron in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5322, January 19, 2021). In order to generate the appropriate take number for authorization, the following information was considered: (1) survey type; (2) location (by modeling zone; [1]) (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

No VSP surveys were included in the modeled survey types, and use of existing proxies (*i.e.,* 2D, 3D NAZ, 3D WAZ, Coil) is generally conservative for use in evaluation of VSP survey effort. Summary descriptions of these modeled survey geometries are available in the preamble to the proposed rule (83 FR 29212, June 22, 2018). Coil was selected as the best available proxy survey type because the spatial coverage of the planned survey is most similar to that associated with the coil survey pattern.

For the planned survey, the seismic source array will be deployed in the following forms: Zero Offset VSP—deployed from a drilling rig at or near the borehole, with the seismic receivers (*i.e.,* geophones) deployed in the borehole on wireline at specified depth intervals; Offset VSP—in a fixed position deployed from a supply vessel on an offset position; and Salt Proximity VSP—reflection surveys to help define a salt-sediment interface near a wellbore by using a source on top of a salt dome away from the drilling rig. All source assemblages will be stationary. The coil survey pattern in the model was assumed to cover approximately 144 kilometers squared (km^2) per day (compared with approximately 795 km^2, 199 km^2, and 845 km^2 per day for the 2D, 3D NAZ, and 3D WAZ survey patterns, respectively). Among the different parameters of the modeled survey patterns (*e.g.,* area covered, line spacing, number of sources, shot interval, total simulated pulses), NMFS considers area covered per day to be most influential on daily modeled exposures exceeding Level B harassment criteria. Because Chevron's planned survey is expected to cover no additional area as a stationary source, the coil proxy is most representative of the effort planned by Chevron in terms of predicted Level B harassment.

In addition, all available acoustic exposure modeling results assume use of a 72-element, 8,000 in^3 array. Thus, estimated take numbers for this LOA are considered conservative due to the differences in both the airgun array (maximum 12 elements and 2,400 in^3), and in daily survey area planned by Chevron (as mentioned above), as compared to those modeled for the rule.

The survey is planned to occur in Zone 5. The survey could take place in any season. Therefore, the take estimates for each species are based on the season that has the greater value for the species (*i.e.,* winter or summer).

Additionally, for some species, take estimates based solely on the modeling yielded results that are not realistically likely to occur when considered in light of other relevant information available during the rulemaking process regarding marine mammal occurrence in the GOM. The approach used in the acoustic exposure modeling, in which seven modeling zones were defined over the U.S. GOM, necessarily averages fine-scale information about marine mammal distribution over the large area of each modeling zone. This can result in unrealistic projections regarding the likelihood of encountering particularly rare species and/or species not expected to occur outside particular habitats. Thus, although the modeling conducted for the rule is a natural starting point for estimating take, our rule acknowledged that other information could be considered (see, *e.g.,* 86 FR 5322, (January 19, 2021), discussing the need to provide flexibility and make efficient use of previous public and agency review of other information and identifying that additional public review is not necessary unless the model or inputs used differ substantively from those that were previously reviewed by NMFS and the public). For this survey, NMFS has other relevant information reviewed during the rulemaking that indicates use of the acoustic exposure modeling to generate a take estimate for Rice's whales and killer whales produces results inconsistent with what is known regarding their occurrence in the GOM. Accordingly, we have adjusted the calculated take estimates for those species as described below.

NMFS' final rule described a ''core habitat area'' for Rice's whales (formerly known as GOM Bryde's whales) [3] located in the northeastern GOM in waters between 100 to 400 m depth along the continental shelf break (Rosel *et al.,* 2016). However, whaling records suggest that Rice's whales historically had a broader distribution within similar habitat parameters throughout the GOM (Reeves *et al.,* 2011; Rosel and Wilcox, 2014). In addition, habitat-based density modeling identified similar habitat (*i.e.,* approximately 100–400 m water depths along the continental shelf break) as being potential Rice's whale habitat (Roberts *et al.,* 2016), although the core habitat area contained approximately 92 percent of the predicted abundance of Rice's whales. See discussion provided at, *e.g.,* 83 FR 29228, 83 FR 29280 (June 22, 2018); 86 FR 5418 (January 19, 2021).

Although Rice's whales may occur outside of the core habitat area, we expect that any such occurrence would be limited to the narrow band of suitable habitat described above (*i.e.,* 100–400 m) and that, based on the few available records, these occurrences would be rare. Chevron's planned activities will occur in water depths of approximately 1,000–2,000 m in the central GOM. Thus, NMFS does not expect there to be the reasonable potential for take of Rice's whale in association with this survey and, accordingly, does not authorize take of Rice's whale through the LOA.

Killer whales are the most rarely encountered species in the GOM, typically in deep waters of the central GOM (Roberts *et al.,* 2015; Maze-Foley and Mullin, 2006). As discussed in the final rule, the density models produced by Roberts *et al.* (2016) provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. GOM. The predictions represent the output of models derived from multi-year observations and associated environmental parameters that incorporate corrections for detection bias. However, in the case of killer whales, the model is informed by few data, as indicated by the coefficient of variation associated with the abundance predicted by the model (0.41, the second-highest of any GOM species model; Roberts *et al.,* 2016). The model's authors noted the expected non-uniform distribution of this rarely-encountered species (as discussed above) and expressed that, due to the

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include Winter (December–March) and Summer (April–November).

[3] The final rule refers to the GOM Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.,* 2021).

limited data available to inform the model, it ''should be viewed cautiously'' (Roberts *et al.,* 2015).

NOAA surveys in the GOM from 1992 to 2009 reported only 16 sightings of killer whales, with an additional 3 encounters during more recent survey effort from 2017–2018 (Waring *et al.,* 2013; *https://www.boem.gov/gommapps*). Two other species were also observed on fewer than 20 occasions during the 1992–2009 NOAA surveys (Fraser's dolphin and false killer whale [4]). However, observational data collected by protected species observers (PSOs) on industry geophysical survey vessels from 2002 to 2015 distinguish the killer whale in terms of rarity. During this period, killer whales were encountered on only 10 occasions, whereas the next most rarely encountered species (Fraser's dolphin) was recorded on 69 occasions (Barkaszi and Kelly, 2019). The false killer whale and pygmy killer whale were the next most rarely encountered species, with 110 records each. The killer whale was the species with the lowest detection frequency during each period over which PSO data were synthesized (2002–2008 and 2009–2015). This information qualitatively informed our rulemaking process, as discussed at 86 FR 5322, 86 FR 5334 (January 19, 2021), and similarly informs our analysis here.

The rarity of encounter during seismic surveys is not likely to be the product of high bias on the probability of detection. Unlike certain cryptic species with high detection bias, such as *Kogia* spp. or beaked whales, or deep-diving species with high availability bias, such as beaked whales or sperm whales, killer whales are typically available for detection when present and are easily observed. Roberts *et al.* (2015) stated that availability is not a major factor affecting detectability of killer whales from shipboard surveys, as they are not a particularly long-diving species. Baird *et al.* (2005) reported that mean dive durations for 41 fish-eating killer whales for dives greater than or equal to 1 minute in duration was 2.3–2.4 minutes, and Hooker *et al.* (2012) reported that killer whales spent 78 percent of their time at depths between 0–10 m. Similarly, Kvadsheim *et al.* (2012) reported data from a study of 4 killer whales, noting that the whales performed 20 times as many dives 1–30 m in depth than to deeper waters, with an average depth during those most common dives of approximately 3 m.

In summary, killer whales are the most rarely encountered species in the GOM and typically occur only in particularly deep water. This survey would take place in deep waters that would overlap with depths in which killer whales typically occur. While this information is reflected through the density model informing the acoustic exposure modeling results, there is relatively high uncertainty associated with the model for this species, and the acoustic exposure modeling applies mean distribution data over areas where the species is in fact less likely to occur. In addition, as noted above in relation to the general take estimation methodology, the assumed proxy source (72-element, 8,000-in^3 array) results in a significant overestimate of the actual potential for take to occur. NMFS' determination in reflection of the information discussed above, which informed the final rule, is that use of the generic acoustic exposure modeling results for killer whales will generally result in estimated take numbers that are inconsistent with the assumptions made in the rule regarding expected killer whale take (86 FR 5322, 86 FR 5403, January 19, 2021). In this case, use of the acoustic exposure modeling produces an estimate of two killer whale exposures. Given the foregoing, it is unlikely that any killer whales would be encountered during this 2-day survey, and accordingly no take of killer whales is authorized through this LOA.

In addition, in this case, use of the exposure modeling produces results that are smaller than average GOM group sizes for multiple species (Maze-Foley and Mullin, 2006). NMFS' typical practice in such a situation is to increase exposure estimates to the assumed average group size for a species in order to ensure that, if the species is encountered, exposures will not exceed the authorized take number. However, other relevant considerations here lead to a determination that increasing the estimated exposures to average group sizes would likely lead to an overestimate of actual potential take. In this circumstance, the very short survey duration (maximum of 2 days) and relatively small Level B harassment isopleths produced through use of the (at most) 12-element, 2,400-in^3 airgun array (compared with the modeled 72-element, 8,000 in^3 array) mean that it is unlikely that certain species would be encountered at all, much less that the encounter would result in exposure of a greater number of individuals than is estimated through use of the exposure modeling results. As a result, in this case NMFS has not increased the estimated exposure values to assumed average group sizes in authorizing take.

Based on the results of our analysis, NMFS has determined that the level of taking expected for this survey and authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations for the affected species or stocks of marine mammals. See Table 1 in this notice and Table 9 of the rule (86 FR 5322, January 19, 2021).

Small Numbers Determination

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5322 at 5438, January 19, 2021).

The take numbers for authorization, which are determined as described above, are used by NMFS in making the necessary small numbers determinations through comparison with the best available abundance estimates (see discussion at 86 FR 5322 at 5391, January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.,* 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determinations is provided in Table 1.

[4] However, note that these species have been observed over a greater range of water depths in the GOM than have killer whales.

TABLE 1—TAKE ANALYSIS

Species	Authorized take [1]	Abundance [2]	Percent abundance
Rice's whale	0	51	n/a
Sperm whale	53	2,207	2.4
Kogia spp	[3] 20	4,373	0.5
Beaked whales	232	3,768	6.2
Rough-toothed dolphin	40	4,853	0.8
Bottlenose dolphin	189	176,108	0.1
Clymene dolphin	112	11,895	0.9
Atlantic spotted dolphin	76	74,785	0.1
Pantropical spotted dolphin	510	102,361	0.5
Spinner dolphin	[4] 137	25,114	0.5
Striped dolphin	[4] 44	5,229	0.8
Fraser's dolphin	[4] 13	1,665	0.8
Risso's dolphin	33	3,764	0.9
Melon-headed whale	[4] 74	7,003	1.1
Pygmy killer whale	[4] 17	2,126	0.8
False killer whale	28	3,204	0.9
Killer whale	0	267	n/a
Short-finned pilot whale	[4] 21	1,981	1.1

[1] Scalar ratios were not applied in this case due to brief survey duration.
[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For Rice's whale and killer whale, the larger estimated SAR abundance estimate is used.
[3] Includes 1 take by Level A harassment and 19 takes by Level B harassment.
[4] Modeled exposure estimate less than assumed average group size (Maze-Foley and Mullin, 2006).

Based on the analysis contained herein of Chevron's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes (*i.e.,* less than one-third of the best available abundance estimate) and therefore the taking is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to Chevron authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: July 24, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–15983 Filed 7–27–23; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the procurement list.

SUMMARY: This action adds service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) afrom the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the procurement list:* August 27, 2023.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 4/7//2023, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service(s) to the Government.

2. The action will result in authorizing small entities to furnish the service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the service(s) proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service(s) are added to the Procurement List:

Service(s)

Service Type: Custodial Service
Mandatory for: US Navy, Naval Surface Warfare Center, NSA Crane (Except B–3291, B–3324, & B–3334), Crane & Glendora Test Facility, Sullivan, IN
Designated Source of Supply: GW Commercial Services, Inc., Indianapolis, IN
Contracting Activity: DEPT OF THE NAVY, NAVAL FAC ENGINEERING CMD MID LANT

Deletions

On 6/23/2023, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) alisted below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s): 7510–01–617–1441—Tape, Safety Stripe, Rubber Adhesive, Black/White, 36 yds
Designated Source of Supply: CINCINNATI ASSOCIATION FOR THE BLIND AND VISUALLY IMPAIRED, Cincinnati, OH
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2023–16036 Filed 7–27–23; 8:45 am]

BILLING CODE 6353–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Comment Request; AmeriCorps NCCC Team Leader Application

AGENCY: Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Corporation for National and Community Service (operating as AmeriCorps) is proposing to renew an information collection.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by September 26, 2023.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) Electronically through *www.regulations.gov* (preferred method).

(2) *By mail sent to:* AmeriCorps, Attention John Christman, 250 E Street SW, Washington, DC 20525.

(3) By hand delivery or by courier to the AmeriCorps mailroom at the mail address given in paragraph (2) above, between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Comments submitted in response to this notice may be made available to the public through *regulations.gov*. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, 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. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that may be made available to the public, notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: John Christman, 202–606–3871, or by email at *jchristman@cns.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: AmeriCorps NCCC Team Leader Application.

OMB Control Number: 3045–0005.

Type of Review: Renewal.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 800.

Total Estimated Number of Annual Burden Hours: 1,600.

Abstract: The National Civilian Community Corps (NCCC) Team Leader application, which is available electronically for all applicants, provides information AmeriCorps uses to select Team Leaders for AmeriCorps NCCC. AmeriCorps seeks to renew the current information collection. AmeriCorps also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on 11/30/2023.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. 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. All written comments will be available for public inspection on *regulations.gov*.

Walter Goodson,

Director, AmeriCorps NCCC.

[FR Doc. 2023–16002 Filed 7–27–23; 8:45 am]

BILLING CODE 6050–28–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Privacy Act of 1974; System of Records

AGENCY: Corporation for National and Community Service.

ACTION: Notice of new systems of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Corporation for National and Community Service (operating as AmeriCorps) proposes to establish a new system of records titled CNCS–11–CPO–AHB-AmeriCorps Health Benefits System of Records. AmeriCorps will use this system of records to track, store, manage, and evaluate the paper and electronic records associated with the healthcare benefits offered to AmeriCorps VISTA, AmeriCorps NCCC, and AmeriCorps FEMA Corps members (Members). The records in the system will include information about the enrollment, other insurance coverage, bank account, and medical bills and related healthcare information of the Members, and information about Members' accidents or injuries which may require medical care.

DATES: You may submit comments until August 28, 2023. Unless comments are received that would require a revision, this new system of records will become effective on August 28, 2023.

ADDRESSES: You may submit comments identified by system name and number by any of the following methods:

1. Electronically through *www.regulations.gov.* Once you access *www.regulations.gov,* find the web page for this SORN by searching for CNCS–11–CPO–AHB.
2. By email at *privacy@cns.gov.*
3. *By mail:* AmeriCorps Attn: Chief Privacy Officer, OIT, 250 E St. SW, Washington, DC 20525.
4. By hand delivery or courier to AmeriCorps at the address for mail between 9:00 a.m. and 4:00 p.m. Eastern Standard Time, Monday through Friday, except for Federal holidays.

Please note that all submissions received may be posted without change to www.regulations.gov, including any personal information. Commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: If you have general questions about the system of records, you may call ZhuoHong Liu at 202–938–7868, email her at *zliu@cns.gov* or mail them to the address in the **ADDRESSES** section above. Please include the system of record's name and number.

SUPPLEMENTARY INFORMATION:

I. Background

The system will enable AmeriCorps to administer and manage the healthcare benefit and medical records of its Members and provide enhanced streamlined service. This notice of a new system of records, as required by 5 U.S.C. 552a, fully complies with all Office of Management and Budget policies.

The website for AmeriCorps VISTA Members' health benefits plans is currently *https://americorpsvista.imglobal.com/.* The website for AmeriCorps NCCC and AmeriCorps FEMA Corps' health benefits plan is currently *https://americorpsnccc.imglobal.com/.*

II. Privacy Act

The Privacy Act codifies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents.

AmeriCorps will share information from the system in accordance with the requirements of the Privacy Act. A full list of routine uses is included in the routine uses section of the document published with this notice.

In accordance with 5 U.S.C. 552a(r), AmeriCorps has provided a report of this system of records to the Office of Management and Budget and to Congress.

Below is the description of CNCS–11–CPO–AHB-AmeriCorps Health Benefits System.

SYSTEM NAME AND NUMBER:

CNCS–11–CPO–AHB-AmeriCorps Health Benefits System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Chief of Program Operations Immediate Office, AmeriCorps, 250 E Street SW, Washington, DC 20525.

SYSTEM MANAGER(S):

AHB Information System Owner, Chief of Program Operations Immediate Office, AmeriCorps, 250 E Street SW, Washington, DC 20525.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 4955—Support services; 42 U.S.C. 12618—Authorized benefits for Corps members; and 45 CFR 2556—Volunteer in Service to America.

PURPOSE(S) OF THE SYSTEM:

AmeriCorps and its contractors use the system to track, store, manage, and evaluate the records associated with the health benefits offered to the members of AmeriCorps VISTA, AmeriCorps NCCC, and AmeriCorps FEMA Corps.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains records about (1) current and former Members, (2) individuals who maintained an insurance policy that covered a Member, and (3) individuals connected to an accident or injury that resulted in a Member seeking medical care.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system may include, but are not limited to, names, genders, dates of birth, addresses, emails, phone numbers, National Service Participant Identification (NSPID) Numbers, Exemption Certification Numbers, insurance IDs, benefit information, information about additional insurance coverage, bank account information, services dates and roles, medical bills and related healthcare information, and information about accidents and injuries that resulted in a Member seeking medical care.

RECORD SOURCE CATEGORIES:

The sources of records in the system may include, but are not limited to, Members and their representatives, AmeriCorps databases, healthcare providers, other insurance companies, individuals connected to accidents and injuries involving Members, contractors, and subcontractors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system of records may be disclosed outside of AmeriCorps as a routine use pursuant to 5 U.S.C. 552a(b)(3) under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purposes for which the information was collected:

1. To healthcare providers and entities, insurance companies, and their authorized representatives to provide healthcare and services and coordinate benefits.

2. To the Office of the President, a Member of Congress, or their personnel in response to a request made on behalf of, and at the request of, the individual who is the subject of the record. These advocates will receive the same records that individuals would have received if they had filed their own request.

3. To any component of the Department of Justice for the purpose of representing AmeriCorps or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

4. In an appropriate proceeding before a court, judicial, administrative, or adjudicative body, or official, when AmeriCorps or another agency representing AmeriCorps determines the records are relevant and necessary to the proceeding, or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

5. To a Federal or State agency, judicial, administrative, or adjudicative body, another party, or their representative to a legal matter, or witness when (a) the Federal Government is a party or potential party to a judicial, administrative, or adjudicative proceeding and (b) the record is both necessary and relevant or potentially relevant to that proceeding.

6. To prospective claimants and their attorneys to negotiate a settlement of an actual or prospective claim against AmeriCorps or its current or former employees, in advance of the initiation of a formal legal proceeding.

7. To an arbiter, mediator, or another individual authorized to investigate or settle a grievance, complaint, or appeal filed by an individual who is the subject of, or party to, the record.

8. To any agency, entity, or individual when necessary to acquire information relevant to an investigation.

9. To an appropriate Federal, State, local, Tribal, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a statute, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of civil or criminal law or regulatory violations.

10. To a former AmeriCorps employee for the purpose of responding to an official inquiry by a Federal, State, local, Territorial, or Tribal entity or professional licensing authority, for the purpose of facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the AmeriCorps requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

11. To unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, the Merit Systems Protection Board, arbitrators, the Federal Labor Relations Authority, and other parties responsible for the administration of the Federal labor-management program for the purpose of processing any corrective actions, or grievances, or conducting administrative hearings or appeals.

12. To OPM for the purpose of addressing civilian pay and leave, benefits, retirement deduction, and any other information necessary for the OPM to carry out its legally authorized government-wide personnel management functions and studies.

13. To appropriate agencies, entities, and persons when:

a. AmeriCorps suspects or has confirmed that there has been a breach of the system of records;

b. AmeriCorps has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, AmeriCorps (including its information systems, programs, and operations), the Federal Government, or national security; and

c. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with AmeriCorps' efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

14. To another Federal agency or Federal entity, when AmeriCorps determines that information from the system of records is reasonably necessary to assist the recipient agency or entity in:

a. Responding to a suspected or confirmed breach or

b. Preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

15. To the National Archives and Records Administration (NARA) as needed to assist AmeriCorps with records management, conduct inspections of AmeriCorps records management practices, and carry out other activities required by 44 U.S.C. 2904 and 2906.

16. To respond to a Privacy Act request per the requirements in 45 CFR part 2508.

17. To agency contractors, grantees, interns, and other authorized individuals engaged to assist the agency in the performance of a project, contract, service, grant, cooperative agreement, or other activity when it requires access to the records to accomplish an agency function, task, or assignment. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to AmeriCorps employees.

18. To the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission and to otherwise ensure compliance with the provisions of 5 U.S.C. 7201.

19. To an agency or organization to audit or oversee AmeriCorps' or a vendor's operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

20. To any official or designee charged with the responsibility to conduct qualitative assessments at a designated statistical agency and other well established and trusted public or private research organizations, academic institutions, or agencies for an evaluation, study, research, or other analytical or statistical purpose.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper records are stored in locked rooms, file cabinets, and desks. Electronic records and backups are stored on secure servers and encrypted media, including computers and network drives.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in the system may be retrieved by the name, phone number, email, date of birth, IMG Member ID, or NSPID Number of Members.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The system's record schedule is currently under review per amendment to title 36, chapter XII, subchapter B, dated June 5, 2023, and product records are being appraised to determine their current value. Until the records

schedule is approved by NARA, Federal records would be maintained as retrievable and useable indefinitely.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

AmeriCorps safeguards records in this system according to applicable laws, rules, and policies, including all applicable AmeriCorps systems security and access policies. AmeriCorps has strict controls in place to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. Paper records are maintained in locked rooms, file cabinets, and desks when not in use. Electronic records are maintained in accordance with National Institute of Standards and Technology Special Publication 800–53 Rev.5, Security and Privacy Controls for Federal Information Systems and Organizations or the updated equivalent.

RECORD ACCESS PROCEDURES:

In accordance with 45 CFR part 2508—Implementation of the Privacy Act of 1974, as amended, individuals wishing to access their own records as stored within the system of records may contact the FOIA Officer/Privacy Act Officer by sending (1) an email to *FOIA@cns.gov* or (2) a letter addressed to the System Manager, attention Privacy Inquiry. Individuals who make a request must include enough identifying information (*i.e.,* full name, current address, date, and signature) to locate their records, indicate that they want to access their records, and be prepared to confirm their identity as required by 45 CFR part 2508.

CONTESTING RECORD PROCEDURES:

All requests to contest or amend information maintained in the system will be directed to the FOIA Officer/Privacy Act Officer. Individuals who make a request must include enough identifying information to locate their records, in the manner described above in the Record Access Procedures section. Requests should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

NOTIFICATION PROCEDURES:

Any individual desiring to contest or amend information not subject to exemption may contact the FOIA Officer/Privacy Act Officer via the contact information in the Record Access Procedures section. Individuals who make a request must include enough identifying information to locate their records, indicate that they want to be notified whether their records are included in the system, and be prepared to confirm their identity as required by 45 CFR part 2508.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Prabhjot Bajwa,

Senior Agency Official for Privacy and Chief Information Officer.

[FR Doc. 2023–16026 Filed 7–27–23; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 22–0B]

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 and Transmittal 22–0B.

Dated: July 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 21, 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. 22-0B. 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 20-86 of December 1, 2020.

Sincerely,

for James A. Hursch
Director

Enclosures:
1. Transmittal

BILLING CODE 5001–06–C

Transmittal No. 22–0B

REPORT OF ENHANCEMENT OR UPGRADE OF SENSITIVITY OF TECHNOLOGY OR CAPABILITY (SEC. 36(B)(5)(C), AECA)

(i) *Purchaser:* Republic of Korea

(ii) *Sec. 36(b)(1), AECA Transmittal No.:* 20–86

Date: December 1, 2020

Military Department: Navy

(iii) *Description:* On December 1, 2020, Congress was notified by Congressional certification transmittal number 20–86, of the possible sale, under Section 36(b)(1) of the Arms Export Control Act, of two (2) MK 15 MOD 25 Phalanx Close-In Weapons System (CIWS) Block 1B Baseline 2 (IB2) systems; and four thousand (4,000) rounds, 20MM cartridge API linked. Also included were spare parts; other support equipment; ammunition; books and other publications; software; training; engineering technical assistance and other technical assistance; and other related elements of program and logistical support. The estimated total cost was $39 million. Major Defense Equipment (MDE) constituted $30 million of this total.

This transmittal notifies the inclusion of an additional four (4) MK 15 Phalanx Close-in Weapons System (CIWS) Block 1B Baseline 2 systems (MDE). Also included is AA20 ammunition; AA61 ammunition; spare and repair parts including those needed to support installation; support and test equipment; personnel training and training equipment, publications and technical documentation; U.S. Government and contractor engineering; technical and logistics support services; and other related elements of program and logistics support. The total estimated MDE value will increase by $66 million, resulting in a new MDE total of $96 million. The total estimated case value will increase to $129 million.

(iv) *Significance:* The proposed sale will improve Republic of Korea's capability to meet current and future

threats by being able to defeat anti-ship missiles and close-in threats that have pierced other lines of defense.

(v) *Justification:* This proposed sale will support the foreign policy goals and national security objectives of the United States by improving the security of a Major Non-NATO Ally that is a force for political stability and economic progress in the Pacific region.

(vi) *Sensitivity of Technology:* The Sensitivity of Technology statement contained in the original notification applies to items reported here.

The highest level of classification of defense articles, components, and services included in this potential sale is CONFIDENTIAL.

(vii) *Date Report Delivered to Congress:* January 21, 2022.

[FR Doc. 2023–16078 Filed 7–27–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21–56]

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 21–56 with attached Policy Justification.

Dated: July 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

FEB 0 3 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. 21-56 concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of the United Arab Emirates for defense articles and services estimated to cost $65.0 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. Regional Balance (Classified document provided under separate cover)

BILLING CODE 5001–06–C

Transmittal No. 21–56

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 the United Arab Emirates

(ii) *Total Estimated Value:*

Major Defense Equipment	$ 0.0 million
Other	$65.0 million
TOTAL	$65.0 million

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* Foreign Military Sales (FMS) case AE–B–KRG for a Foreign Military Sales Order (FMSO) II to provide funds for blanket order requisitions under a Cooperative Logistics Supply Support Agreement (CLSSA), was below the congressional notification threshold at $30 million. The case included common spares/repair parts to support the United Arab Emirates' Homing All the Way Killer (HAWK), Phased Array Tracking Radar to Intercept on Target (PATRIOT), and Terminal High Altitude Area Defense (THAAD) weapon systems, additional support; and other related elements of logistics and program support. The United Arab Emirates (UAE) has requested the case be amended to include funding to cover an additional

three years. This amendment, which will add $35 million of non-MDE, will push the current case above the congressional notification threshold, requiring notification of the entire case before the amendment can be offered.

Major Defense Equipment (MDE):

None

Non-MDE:

Foreign Military Sales Order (FMSO) II to provide funds for blanket order requisitions under a Cooperative Logistics Supply Support Agreement (CLSSA) for common spares/repair parts to support the United Arab Emirates' Homing All the Way Killer (HAWK), Phased Array Tracking Radar to Intercept on Target (PATRIOT), and Terminal High Altitude Area Defense (THAAD) weapon systems, additional support; and other related elements of logistics and program support.

(iv) *Military Department:* Army (AE–B–KRG)

(v) *Prior Related Cases, if any:* TC–B–KVN, AE–B–KRB

(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:* February 3, 2022

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Arab Emirates—Foreign Military Sales Order (FMSO) II Case

The Government of the United Arab Emirates (UAE) has requested to buy a Foreign Military Sales Order (FMSO) II to provide funds for blanket order requisitions under a Cooperative Logistics Supply Support Agreement (CLSSA) for common spares/repair parts to support the United Arab Emirates' Homing All the Way Killer (HAWK), Phased Array Tracking Radar to Intercept on Target (PATRIOT), and Terminal High Altitude Area Defense (THAAD) weapon systems, additional support; and other related elements of logistics and program support. An earlier FMS case, valued at $30 million, provided this requirement. The amended FMS case would extend the funding to cover an additional three years. The estimated total case value is $65 million.

This proposed sale will support the foreign policy and national security of the United States by helping to improve the security of an important regional partner. The UAE is a vital U.S. partner for political stability and economic progress in the Middle East.

The UAE intends to utilize this follow-on support to maintain its air defense weapon systems in accordance with U.S. maintenance requirements and standards. This sale supports the UAE's existing ability to deter and defend against hostile threats by maintaining the operational readiness of critical air defense systems. The proposed sale will contribute to the UAE's ability to effectively integrate with U.S.-led coalitions and operate independently in support of U.S. interests and the security of U.S. forces in theater, and is consistent with U.S. bilateral and multilateral defense plans in the CENTCOM region. The UAE will have no difficulty absorbing this equipment and services into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

There are no principal contractors involved with this potential sale. There are no known offset agreements associated with this sale.

Implementation of this sale will not require the assignment of any additional U.S. Government or contractor representatives to the UAE.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2023–16074 Filed 7–27–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21–62]

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 21–62 with attached Policy Justification and Sensitivity of Technology.

Dated: July 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

FEB 0 3 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. 21-62 concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Kingdom of Saudi Arabia for defense articles and services estimated to cost $23.7 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
4. Regional Balance (Classified document provided under separate cover)

BILLING CODE 5001–06–C

Transmittal No. 21–62

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:* Kingdom of Saudi Arabia

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$16.7 million
Other	$ 7.0 million
TOTAL	$23.7 million

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services Under Consideration for Purchase:* Foreign Military Sales (FMS) case SR–P–LCO, was below congressional notification threshold at $3.0 million ($2.823 million in MDE) and included eleven (11) Multifunctional Information Distribution System—Low Volume Terminals (MIDS–LVT). The Kingdom of Saudi Arabia (KSA) has requested the case be amended to include thirty-one (31) MIDS–LVT Block Upgrade 2 (BU2) terminals. This amendment will push the current case above the MDE

notification threshold and thus requires notification of the entire case.

Major Defense Equipment (MDE):

Eleven (11) Multifunctional Information Distribution System—Low Volume Terminals (MIDS–LVT) Block Upgrade 1 (BU1)

Thirty-one (31) Multifunctional Information Distribution System—Low Volume Terminals (MIDS–LVT) Block Upgrade 2 (BU2)

Non-MDE:

Also included is communications equipment; support equipment; engineering and technical support and assistance; training; and other related elements of logistics and program support.

(iv) *Military Department:* Navy (SR–P–LCO)

(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:* February 3, 2022

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Saudi Arabia—Multifunctional Information Distribution System—Low Volume Terminals (MIDS–LVT)

The Kingdom of Saudi Arabia has requested to buy thirty-one (31) Multifunctional Information Distribution System—Low Volume Terminals (MIDS–LVT) Block Upgrade 2 (BU2), that will be added to a previously implemented case. The original FMS case, valued at $3.0 million, included eleven (11) Multifunctional Information Distribution System—Low Volume Terminals (MIDS–LVT) Block Upgrade 1 (BU1). Therefore, this notification is for a total of eleven (11) Multifunctional Information Distribution System—Low Volume Terminals (MIDS–LVT) Block Upgrade 1 (BU1) and thirty-one (31) Multifunctional Information Distribution System—Low Volume Terminals (MIDS–LVT) Block Upgrade 2 (BU2). Also included is communications equipment; support equipment; engineering and technical support and assistance; training; and other related elements of logistics and program support. The total estimated cost is $23.7 million.

This proposed sale will support U.S. foreign policy and national security objectives by helping to improve the security of a friendly country that continues to be an important force for political stability and economic growth in the Middle East.

The proposed sale will provide the Saudi armed forces with the equipment, training, and follow-on support necessary to protect Saudi Arabia, and the region, from the destabilizing effects of terrorism, countering Iranian influence, and other threats. The proposed MIDS–LVT (BU2) terminals will be installed on Terminal High Altitude Air Defense (THAAD) platforms, while the previously provided MIDS–LVT (BU1) terminals were installed on PATRIOT. Saudi Arabia 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 is undetermined as there will a competitive contractual award process after LOA implementation. 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 Saudi Arabia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 21–62

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 MIDS–LVT is used by Navy, Marine Corps, and Air Force, and other foreign partners and allows Air Defense units to engage incoming missile or manned and unmanned airborne platforms in day, night, and adverse weather conditions. The MIDS–LVT utilizes an encrypted frequency hopping pattern to transmit tactical situational awareness data (Link 16). Link 16 is the standard Tactical Data Link (TDL) used by both U.S. and foreign nations to provide real time operational awareness for both individual units as well as overall command and control components.

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 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.

4. A determination has been made that Saudi Arabia 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 are authorized for release and export to the Kingdom of Saudi Arabia.

[FR Doc. 2023–16077 Filed 7–27–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 20–64]

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 20–64 with attached Policy Justification and Sensitivity of Technology.

Dated: July 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

JAN 2 5 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. 20-64 concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Egypt for defense articles and services estimated to cost $355 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,

for James A. Hursch
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified document provided under separate cover)

BILLING CODE 5001–06–C

Transmittal No. 20–64

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 Egypt

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$ 0 million
Other	$355 million
TOTAL	$355 million

Funding Source: Foreign Military Financing (FMF)

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):
None

Non-MDE:
Three (3) SPS–48 Land Based Radar (LBR), spares, motor generators, repeaters, radomes, technical manuals, site surveys, installation, calibrations, testing, operator training, and maintenance training associated with the SPS–48 LBR; obsolescence replacements of processor, track management system, communication equipment, uninterrupted power supply (UPS), generators, and/or Transmitter Control Unit in fielded SPS–48 LBR systems; updated built-in-testing (BIT) and overhaul of fielded SPS–

48 LBR antenna systems; and other related elements of logistical and program support.

(iv) *Military Department:* Navy (EG–P–LGS)

(v) *Prior Related Cases, if any:* EG–P–LDO, EG–P–GJC, EG–P–LFS, EG–P–LFE, EG–P–GHM, EG–P–JNZ, EG–P–KCC, EG–P–KCD, EG–P–LEU, EG–P–GKD, EG–P–MBZ

(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 25, 2022

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt—Air Defense Radar Systems

The Government of Egypt has requested to buy three (3) SPS–48 Land Based Radar (LBR), spares, motor generators, repeaters, radomes, technical manuals, site surveys, installation, calibrations, testing, operator training, and maintenance training associated with the SPS–48 LBR; obsolescence replacements of processor, track management system, communication equipment, uninterrupted power supply (UPS), generators, and/or Transmitter Control Unit in fielded SPS–48 LBR systems; updated built-in-testing (BIT) and overhaul of fielded SPS–48 LBR antenna systems; and other related elements of logistical and program support. The estimated total program cost is $355 million.

This proposed sale will support the foreign policy and national security of the United States by helping to improve the security of a Major Non-NATO Ally country that continues to be an important strategic partner in the Middle East.

The proposed sale will improve Egypt's capability to meet current and future threats by improving the detection of various air threats. Egypt will have no difficulty absorbing this equipment into its armed forces since Egypt already operates previously procured SPS–48 Land Based Radars.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be L3 Harris Surveillance Systems, Van Nuys, 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 Egypt with the exception of periodic trips that are 1–5 weeks in duration to participate in program reviews, inspect installations, verify testing, and buy-off equipment.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 20–64

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 SPS–48 Land Based Radar (LBR) is a long range three-dimensional search radar. The passive antenna does not contain active electronic components that are subject to failure. The sheltered equipment is compact and cooled by a closed-loop water system. Replaceable units and assemblies are mounted on cold plates and can be removed without breaking into the water system. External air is not drawn into water-cooled equipment cabinets; therefore, corrosion caused by humidity and air pollutants is eliminated.

2. The highest level of classification of defense articles, components, and services included in this potential sale is UNCLASSIFIED.

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 Government of Egypt 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 Egypt.

[FR Doc. 2023–16075 Filed 7–27–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21–26]

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 21–26 with attached Policy Justification and Sensitivity of Technology.

Dated: July 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

JAN 2 5 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. 21-26 concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Egypt for defense articles and services estimated to cost $2.2 billion. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

for James A. Hursch
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified document provided under separate cover)

BILLING CODE 5001–06–C

Transmittal No. 21–26

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 Egypt

(ii) *Total Estimated Value:*

Major Defense Equipment .... $1.6 billion
Other ..... $0.6 billion
TOTAL ..... $2.2 billion

Funding Source: Foreign Military Financing (FMF)

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Twelve (12) C–130J Super Hercules Aircraft with Four (4) each Rolls Royce AE–2100D Turboprop Engines (installed)

Twelve (12) Rolls Royce AE–2100D Turboprop Engines (spares)

Thirty (30) Embedded GPS/INS (EGI) with GPS Security Devices (including 6 spares)

Seven (7) Multifunctional Information Distribution System—Low Volume Terminal Block Upgrade Two (MIDS–LVT BU2) (including 3

spares)

Non-MDE:

Also included are AN/APX–119 Identification Friend or Foe (IFF) Transponders; AN/AAR–47 Missile Warning Systems (MWS); AN/ALE–47 Countermeasures Dispensing System (CMDS); AN/ALR–56M Radar Warning Receiver (RWR); AN/AAQ–22 (STAR SAFIRE 380); secure communications, cryptographic equipment, and GPS-aided precision navigation equipment; publications and technical documentation; software and mission critical resources; aircraft support and equipment; unclassified return and repair; integration and testing; personnel training and training equipment; 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 (EG–D–SAD)

(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 Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* January 25, 2022

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt—C–130J–30 Super Hercules Aircraft

The Government of Egypt has requested to purchase twelve (12) C–130J Super Hercules aircraft with four (4) each Rolls Royce AE–2100D Turboprop Engines (installed); twelve (12) Rolls Royce AE–2100D Turboprop Engines (spares); thirty (30) Embedded GPS/INS (EGI) with GPS Security Devices (including 6 spares); and seven (7) Multifunctional Information Distribution System—Low Volume Terminal Block Upgrade Two (MIDS–LVT BU2) (including 3 spares). Also included are AN/APX–119 Identification Friend or Foe (IFF) Transponders; AN/AAR–47 Missile Warning Systems (MWS); AN/ALE–47 Countermeasures Dispensing System (CMDS); AN/ALR–56M Radar Warning Receiver (RWR); AN/AAQ–22 (STAR SAFIRE 380); secure communications, cryptographic equipment, and GPS-aided precision navigation equipment; publications and technical documentation; software and mission critical resources; aircraft support and equipment; unclassified return and repair; integration and testing; personnel training and training equipment; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistical and program support. The estimated total program cost is $2.2 billion.

This proposed sale will support the foreign policy and national security of the United States by helping to improve the security of a Major Non-NATO Ally that continues to be an important strategic partner in the Middle East.

The proposed sale will improve Egypt's capability to meet current and future threats by providing airlift support for its forces by moving supplies, equipment, and people, thus strengthening its capacity in the security and humanitarian arena. This airlift capability would assist with border security, the interdiction of known terrorist elements, rapid reaction to internal security threats, and humanitarian aid. Egypt also intends to utilize these aircraft for maritime patrol missions and search and rescue missions in the region. Egypt, which already operates a mix of legacy C–130s, will have no difficulty absorbing these aircraft and 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 Lockheed Martin Aeronautics Company in Marietta, GA. There are no known offsets proposed in conjunction with this potential sale.

Implementation of this proposed sale will require the assignment of two (2) contracted Field Service Representatives (FSR) and one (1) Logistic Service Representative (LSR) for a period of three (3) years. The FSRs and LSR will have expertise in airframe, avionics/electrical, propulsion systems, ground maintenance systems, and logistics support.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 21–26

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 C–130J–30 8.1 Super Hercules aircraft, including the Rolls Royce AE 2100D turboprop engines, is a military airlift aircraft that performs primarily the tactical portion of the airlift mission. The aircraft is capable of operating from rough, dirt strips and is the prime transport for air-dropping troops and equipment into hostile areas. The C–130J improvements over the C130E include improved maximum speed, climb time, cruising altitude, and range. The C–130J has 55 feet of cargo compartment length, an additional 15 feet over the original ''short'' aircraft.

2. The Rolls Royce AE1200D turboprop engine is a two-stage, air cooled, vatable speed gas generator turbine, and turbo-prop engine. Each engine contains a General Electrics (GE) Dowty R391 composite propeller installed for ground/flight operations. The engine is capable of inflight (engine core) wind milling and air starts up to 25,000 feet and airspeeds between 0.43 Mach and 0.64 Mach.

3. The Embedded Global Positioning System (GPS) Inertial Navigational System (INS) (GPS/INS) (EGI) with GPS Security Devices is a highly accurate inertial navigation system has embedded GPS for blended INS/GPS, free-inertial, and GPS-only solutions. Classified elements include Selective Availability Anti-Spoofing Module (SAASM) for decryption of precision GPS signals.

4. The Multifunctional Information Distribution System—Low Volume Terminal Block Upgrade Two (MIDS–LVT BU2) is an advanced command, control, communications, computing and intelligence (C4I) system incorporating high-capacity, jam-resistant, digital communication links for exchange of near real-time tactical information, including both data and voice, among air, ground, and sea elements.

5. The AN/APX–119 Identification Friend or Foe (IFF) is a system that responds to interrogating signals to assist in identification, location, and terrain avoidance.

6. The AN/AAR–47 Missile Approach Warning System is an aircraft passive MWS designed for detection of incoming surface-to-air and air-to-air missiles on transport and helicopter aircraft. The system detects, identifies, and displays potential threats. The AN/AAR–47 warns of missile approach by detecting radiation associated with the rocket motor and automatically initiates flare ejection.

7. The AN/ALE–47 Countermeasure Dispensing System (CMDS) is an integrated, threat-adaptive, software-programmable dispensing system capable of dispensing chaff, flares, and active radio frequency expendables. The threats countered by the CMDS include radar-directed anti-aircraft artillery, radar command-guided missiles, radar

homing guided missiles, and infrared guided missiles. The system is internally mounted and may be operated as a stand-alone system or may be integrated with other on-board EW and avionics systems. The AN/ALE–47 uses threat data received over the aircraft interfaces to assess the threat situation and to determine a response. Expendable routines tailored to the immediate aircraft and threat environment may be dispensed using one of four operational modes.

8. The AN/ALR–56 Radar Warning Receiver (RWR) continuously detects and intercepts RF signals in certain frequency ranges and analyzes and separates threat signals from non-threat signals. It contributes to full-dimensional protection by providing individual aircraft probability of survival through improved aircrew situational awareness of the radar guided threat environment. The ALR56M is designed to provide improved performance in a dense signal environment and improved detection of modern threats signals.

9. The AN/AAQ–22 (STAR SAFIRE 380) is a gyro-stabilized, multi-spectral Electro-Optical/Infrared (E.O./IR) system configured to operate simultaneously in multiple bands including the visible, near-IR and mid-wave IR bands. The system consists of an externally-mounted turret sensor unit and internally-mounted central electronics unit and system control unit. Images will be displayed in the aircraft real-time and recorded for subsequent ground analysis.

10. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

11. 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.

12. A determination has been made that Egypt 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.

13. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Egypt.

[FR Doc. 2023–16073 Filed 7–27–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0143]

Agency Information Collection Activities; Comment Request; Veterans Upward Bound (VUB) Program Annual Performance Report

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before September 26, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0143. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Marie Julienne, (202) 987–1054.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. 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: Veterans Upward Bound (VUB) Program Annual Performance Report.

OMB Control Number: 1840–0832.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 62.

Total Estimated Number of Annual Burden Hours: 1,054.

Abstract: All Veterans Upward Bound projects must provide instruction in mathematics through pre-calculus, laboratory science, foreign language, composition, and literature. Projects may also provide short-term remedial or refresher courses for veterans who are high school graduates but have delayed pursuing postsecondary education. Projects are also expected to assist veterans in securing support services from other locally available resources such as the U.S. Department of Veterans Affairs, veterans' associations, and other state and local agencies that serve veterans.

The Department's annual performance report (APR) for VUB collects each current grantee's data at the participant level on services and performance over the course of a year. The Department uses the information conveyed in the performance report to assess a grantee's progress in meeting its approved goals and objectives and to evaluate a grantee's prior experience in accordance with the program regulations in 34 CFR 645.32. Grantees' annual performance reports also provide information on the outcomes of projects' work and of the VUB program as a whole. In addition, APR data allows the Department to respond to the reporting requirements of

the Government Performance and Results Act.

The APR has been updated to include questions related to the Competitive Preference Priorities used in the most recent competition. These questions are not expected to affect the total burden hours per response.

Dated: July 24, 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. 2023–15979 Filed 7–27–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2023–FSA–0136]

Privacy Act of 1974; System of Records

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Chief Operating Officer for Federal Student Aid (FSA) of the U.S. Department of Education (Department) publishes this notice of a modified system of records entitled the ''Person Authentication Service'' (PAS) (18–11–12). The information contained in this system is maintained for various purposes relating to applicants for a user ID and password (FSA ID), who include current, former, and prospective aid applicants and recipients, participants who enter their personally identifiable information (PII) as part of the Free Application for Federal Student Aid (FAFSA®) form (*i.e.,* parents of dependent FAFSA applicants or recipients and spouses of independent FAFSA applicants or recipients) under title IV of the Higher Education Act of 1965, as amended (HEA), spouses of aid applicants or recipients who enter their PII as part of income-driven repayment (IDR) certifications or recertifications, endorsers, and third-party preparers (*i.e.,* individuals who provide consultative or preparation services for the completion of the FAFSA).

DATES: Submit your comments on this modified system of records notice on or before August 28, 2023. This modified system of records notice will become applicable upon publication in the **Federal Register** on July 28, 2023, except for new and modified routine uses (1)(a), (1)(b), (1)(c), (1)(d), (1)(e), (1)(f), (2), (9), (10), (11), (12), (13), and (14) that are outlined in the section entitled ''ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES,'' which will be applicable on August 28, 2023, unless they need to be changed as a result of public comment. The Department will publish any changes to the modified system of records notice resulting from public comment.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *regulations.gov*. However, if you require accommodation or cannot otherwise submit your comments via *regulations.gov*, please contact the program contact person listed under **FOR FUTHER INFORMATION CONTACT**.

The Department will not accept comments submitted by fax or by email, or comments submitted after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the ''FAQ'' tab.

Privacy Note: The Department's policy is to make comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Robert Anderson, FSA Identity and Access Management (IAM), PAS Manager, Technology Office, Federal Student Aid, UCP, 830 First St. NE, Room 103E2, Washington, DC 20202 or email: *Robert.Anderson@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), you may call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act, the Department proposes to modify the system of records notice entitled ''Person Authentication Service (PAS)'' (18–11–12), which was last published in full in the **Federal Register** on March 20, 2015 (80 FR 14981).

The Department is modifying the section entitled ''SYSTEM LOCATION'' as follows:

(i) By deleting the Dell Systems Virtual Data Center location and adding the Amazon AWS GovCloud located at 12th Avenue, Suite 1200, Seattle, WA 98114. (This is the Hosting Center for the PAS application, where all electronic PAS information is processed and maintained.); and

(ii) By updating the address of PPS Infotech from Rockville, MD, to Ashburn, VA.

The Department is modifying the section entitled ''SYSTEM MANAGER(S)'' to change the title of the system manager from simply ''PAS Manager'' to ''FSA Identity and Access Management (IAM), Division Chief, PAS Manager,'' and to make minor updates to the system manager's address.

The Department is modifying the section entitled ''AUTHORITY FOR MAINTENANCE OF THE SYSTEM'' to add ''the FAFSA Simplification Act (title VII, division FF of Pub. L. 116–260, the Consolidated Appropriations Act, 2021) (including, but not limited to, section 702(m) that amends section 483 of the HEA and section 703 that amends section 401 of the HEA), and the FAFSA Simplification Act Technical Corrections Act (division R of Pub. L. 107–103, the Consolidated Appropriations Act, 2022),'' which reflect amendments to the HEA to improve the financial aid application experience and expand title IV, HEA eligibility.

The Department is modifying the section entitled ''PURPOSE(S) OF THE SYSTEM'' as follows:

(i) The Department has reorganized the section to distinguish between purposes related to individuals covered by the system and purposes related to the Department's oversight and administration of the title IV, HEA programs and by adding numbering to the various purposes listed under each subsection;

(ii) For the purposes related to individuals covered by the system:

(a) The Department is consolidating, and designating as purpose (1), the

existing purposes relating to generating authentication and log-on credentials for those individuals wishing to access Departmental student financial assistance systems, online applications, websites and services, and to update their security challenge questions and corresponding answers;

(b) In purpose (2), the Department is the existing purpose relating to accessing Department systems by indicating that a purpose of the system is to allow single sign-on and token management for all Department student financial assistance systems including systems run by Department contractors;

(c) In purpose (3), the Department is clarifying the existing purpose relating to the electronic signature function by indicating that a purpose of the system is to include electronic signatures on student aid forms and applications, including, but not limited to, the consent/affirmative approval for the Department to disclose records to the Internal Revenue Service (IRS) to obtain Federal Tax Information (FTI) and for the disclosure and redisclosure of the FTI, revocation of such consent/affirmative approval, the FAFSA, Direct Loan Master Promissory Notes, loan benefit programs, deferments, and forbearances through *Studentaid.gov* and other Department websites; and

(d) The Department is adding purpose (4) to enable the Department, or other Federal, State, Tribal, or local government agencies, to investigate, respond to, or resolve complaints concerning the practices or processes of the Department and/or the Department's contractors, or to investigate, respond to, or resolve aid recipients' requests for assistance or relief with regard to title IV, HEA program funds;

(iii) For the purposes related to the Department's oversight and administration of title IV, HEA programs:

(a) The Department is adding purpose (1) to prevent fraud by taking measures to validate PII submitted by aid applicants, aid recipients, application participants;

(b) In purpose (2), the Department is modifying the existing purpose relating to matching user information with authorized entities by indicating that a purpose of the system is to match name, Social Security Number (SSN) (or address, where applicable), and Date of Birth (DOB) with an authorized entities for purposes of validating the PII submitted and, if applicable, to determine program eligibility and benefits;

(c) The Department is designating as purpose (3) the existing purpose relating to providing usage information for FSA systems and websites;

(d) The Department is designating as purpose (4) the existing purpose relating to tracking changes to user account information;

(e) The Department is adding purpose (5) to maintain and track the consent/affirmative approval on aid applicants and recipients to the IRS for the IRS to disclose FTI under subsection 494(a) of the HEA (20 U.S.C. 1098h(a)) and section 6103(l)(13)(A) and (C) of the IRC to the Department as part of a matching program to determine their determine their eligibility under title IV of the HEA and to permit the Department to redisclose FTI of individuals pursuant to section 6103(l)(13)(D)(iv) of the IRC and the revocation of such consent/affirmative approval for IDR; and

(f) The Department is adding purpose (6) to support research, analysis, and development, and the implementation and evaluation of educational policies in relation to title IV, HEA programs.

The Department is modifying the section entitled ''CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM'' by deleting and replacing ''students'' with ''aid applicants and aid recipients'' who apply for a FSA ID, clarifying that ''their parents'' who apply for a FSA ID refers to parents of dependent FAFSA applicants who are participants and enter their PII as part of the FAFSA form and apply for a FSA ID, adding spouses of independent FAFSA applicants who are participants and enter their PII as part of the FAFSA form and apply for a FSA ID, and to add spouses of aid applicants or recipients who enter their PII as part of IDR certifications or recertifications and apply for a FSA ID, and adding third-party preparers who provide consultative or preparation services for the completion of the FAFSA form and apply for a FSA ID, to better explain the individuals covered by the system.

The Department is modifying the section entitled ''CATEGORIES OF RECORDS IN THE SYSTEM'' as follows:

(i) The Department is adding a second paragraph to include consent/affirmative approval both to permit the Department to disclose information on aid applicants and recipients to the IRS for the IRS to disclose FTI under subsection 494(a) of the HEA (20 U.S.C. 1098h(a)) and section 6103(l)(13)(A) and (C) of the IRC to the Department as part of a matching program to determine their eligibility under title IV of the HEA and to permit the Department to redisclose FTI of individuals pursuant to section 6103(l)(13)(D)(iv) of the IRC and the revocation of such consent/affirmative approval; and

(ii) The Department is adding a third paragraph that explains that PAS maintains information, such as SSN verification flag, citizenship status, and death indicator, obtained by the Department pursuant to matching programs or other information exchanges with Federal agencies, and other external entities, to assist in verifying the identifying information of aid applicants or recipients, application participants, including the parents of dependent aid applicants or recipients and the spouses of independent aid applicants or recipients, endorsers, and third-party preparers.

The Department is modifying the section entitled ''RECORD SOURCE CATEGORIES'' as follows:

(i) The Department is modifying the first paragraph to explain that PAS receives the verification flag, citizenship flag, and death indicator through a matching program from the Central Processing System (CPS) or the FAFSA Processing System (FPS);

(ii) The Department is adding a new second paragraph to explain that PAS also collects from aid applicants or recipients their consent/affirmative approval both to permit the Department to disclose information on aid applicants and recipients to the IRS for the IRS to disclose FTI under subsection 494(a) of the HEA (20 U.S.C. 1098h(a)) and section 6103(l)(13)(A) and (C) of the IRC to the Department as part of a matching program to determine their eligibility under title IV of the HEA and to permit the Department to redisclose FTI of individuals pursuant to section 6103(l)(13)(D)(iv) of the IRC and the revocation of such consent/affirmative approval for IDR;

(iii) The Department is adding a new third paragraph to explain that information is also received from other Department systems or their successor systems, such as:

(a) The Digital and Customer Care Information Technology (IT), Central Processing System (CPS)and the FAFSA Processing System (FPS) (covered by the Department's Privacy Act system of records notice entitled ''Aid Awareness and Application Processing (AAAP'') (18–11–21)); and

(b) The Enterprise Data Warehouse Analytics (EDWA) and Master Data Management (MDM) components covered under the ''Enterprise Data Management and Analytics Platform Services'' (covered by the Department's Privacy Act system of records notice entitled ''Enterprise Data Management and Analytics Platform Services (EDMAPS)'' (18–11–22)); and

(iv) The Department is adding a new fourth paragraph to indicate that

information in this system may be obtained from other persons or entities from whom or from which data is obtained following a disclosure under the listed routine uses.

The Department is modifying the section entitled ''ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES'' as follows:

(i) Routine use (1)(a) is being modified to delete ''the individual whom records indicate is applying for, has applied for, has endorsed, or has received a title IV, HEA loan or grant'' and add ''current, former, and prospective aid applicant, aid recipient (or their third-party preparer), or endorser;'' to add validate the PII being entered by the current, former, or prospective aid applicant or aid recipient (or their third-party preparer) or endorser, whom records indicate is applying for, has applied for, has endorsed, or has received a title IV, HEA loan and/or grant, or a participant of such an application including the spouse of an independent aid applicant or recipient or the parent(s) of a dependent aid applicant or recipient; to delete ''authorized representatives;'' and to add Tribal agencies to the list of entities to which the Department may disclose records to verify the identity of an individual;

(ii) Routine use (1)(b) is being modified to delete ''their authorized representatives'' to make the routine use clearer and to add Tribal agencies to the list of agencies to which information may be disclosed under this routine use;

(iii) Routine use (1)(c) is being deleted because PAS is not used to facilitate default reduction;

(iv) Newly renumbered routine use (1)(c) is being modified to delete the servicing, assigning, adjusting, transferring, referring, or discharging of a loan; to remove authorized representatives; and to add Tribal agencies to the list of agencies to which information may be disclosed to permit the making or collecting of a grant or loan obligation;

(v) Newly renumbered routine use (1)(d) is being modified to remove authorized representatives of applicable Federal Loan Servicers or Federal Perkins Loan Servicers, and Federal, State, or local agencies; and to add Tribal agencies to the list of agencies to which disclosures may be made to investigate possible fraud or abuse or verify compliance with program regulations;

(vi) Newly renumbered routine use (1)(e) is being added to permit the Department to disclose information on aid applicants and recipients to disclose FTI under subsection 494(a) of the HEA (20 U.S.C. 1098h(a)) and section 6103(l)(13)(A) and (C) of the IRC to the Department as part of a matching program to determine their determine their eligibility under title IV of the HEA and to permit the Department to redisclose FTI of individuals pursuant to section 6103(l)(13)(D)(iv) of the IRC and the revocation of such consent/affirmative approval for IDR, disclosures may be made to Federal Loan Servicers;

(vii) Routine use (1)(f) is being deleted because PAS is not used to locate delinquent or defaulted borrowers;

(viii) The newly renumbered routine use (1)(f) is being modified to delete authorized representatives of Guaranty agencies, educational and financial institutions, Federal Loan Services, Federal Perkins Loan Servicers, and Federal, State, or local agencies, and to add Tribal agencies to the list of agencies to which disclosures may be made to investigate complaints or to update information or correct errors contained in Department records;

(ix) Routine use (1)(g) is being deleted because PAS is not used to conduct credit checks or respond to inquiries or disputes;

(x) Routine use (2) entitled ''Feasibility Study Disclosure'' is being deleted because the system is not used to conduct feasibility studies;

(xi) Routine use (3) entitled ''Disclosure for Use by Other Law Enforcement Agencies'' is being deleted because of concerns that it was not compatible with the purposes for which records are collected in this system;

(xii) Newly renumbered routine use (2) entitled ''Enforcement Disclosure'' is being modified to indicate that if information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal or local, responsible for investigating or prosecuting that violation or charged with enforcing or implementing the statute, Executive Order, rule, regulation, or order issued pursuant thereto;

(xiii) Newly renumbered routine use (9) entitled ''Contract Disclosure'' has been modified to delete and replace ''[b]efore entering into such a contract, the Department shall require the contractor to establish and maintain Privacy Act safeguards as required under subsection (m) of the Privacy Act (5 U.S.C. 552a(m) with respect to the records in the system'' with ''[a]s part of such a contract, the Department shall require the contractor to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records'' to clarify when records can be shared;

(xiv) Newly renumbered routine use (10) entitled ''Research Disclosure'' has been modified to delete and replace ''[t]he researcher shall be required to maintain safeguards required under the Privacy Act with respect to the records in the system'' with ''[t]he researcher shall be required to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records'' to clarify when records can be shared;

(xv) Newly renumbered routine use (11) entitled ''Congressional Member Disclosure'' is being modified to clarify that the Department may disclose the records of an individual to a member of Congress or their staff when necessary to respond to an inquiry from the Member and that the Member's request must be made not only at the written request of, but also on behalf of, the individual whose records are being disclosed;

(xvi) Routine use (14) entitled ''Disclosure to OMB for Federal Credit Reform Act (CRA) Support'' was deleted because disclosures to the Office of Management and Budget for CRA support are not made from the PAS system;

(xvii) Newly renumbered routine use (12) entitled ''Disclosure in the Course of Responding to a Breach of Data'' is being modified as follows: in paragraph (a), to delete and replace ''the security or confidentiality of information in the system of records has been compromised'' with ''there has been a breach of the system of records''; in paragraph (b), to delete and replace ''compromise'' with ''breach''; in paragraph (b), to permit the Department to make disclosures when, in addition to satisfying paragraphs (a) and (c), the Department determines that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department (including its information systems, programs, and operations), the Federal government, or national security; and in paragraph (c), to delete and replace ''compromise'' with ''breach'';

(xviii) Newly renumbered routine use (13) entitled ''Disclosure in Assisting another Agency in Responding to a Breach of Data'' is being added to permit disclosures to assist another Federal agency or Federal entity in responding to a suspected or confirmed breach of data;

(xix) Routine use (16) entitled ''Disclosure to Third Parties through Computer Matching Programs'' is being deleted because this is covered under the introductory paragraph of the section entitled ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES and covered under the separate programmatic routine use disclosures; and

(xx) Newly renumbered routine use (14) entitled ''Disclosure to the National Archives and Records Administration (NARA)'' is being added to permit disclosures to NARA for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

The Department is modifying the section entitled ''POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS'' to explain that records are primarily maintained in accordance with ED Records Schedule 278, ''FSA Person Authentication Service (PAS) Records'' (DAA–0441–2016–0001) (ED 278), and the Department has submitted amendments to ED 278 for NARA's consideration and will not destroy records covered by ED 278 until such amendments are effective.

The Department is deleting the section entitled ''POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM'' and added the new section entitled ''ADMINISTRATIVE, TECHNICAL AND PHYSICAL SAGEGUARDS'' which describes authorized users to the system; the physical safeguards of magnetic tapes, disc packs, computer equipment; how other forms of data and information are stored; the procedural safeguards required to access the information; the required Federal Information Security Management Act of 2002 (FISMA) requirements of a signed Authorization to Operate (ATO) and its rigorous assessment of security controls; and finally, the FISMA controls implemented that in combination secure the system and maintain the information safely.

The Department is modifying the section entitled ''RECORD ACCESS PROCEDURES'' to delete that individuals may access their records by visiting the ED PAS Account Management site or by calling the FAFSA on the web phone number listed on the website and to add that individuals who wish to access their records must provide the system manager with the necessary particulars such as their name, DOB, SSN, and any other identifying information requested by the Department while processing the request, to distinguish between individuals with the same name.

The Department is modifying the section entitled ''CONTESTING RECORD PROCEDURES'' to delete that individuals may contest their records by contacting the Customer Service Department and the last sentence directing individuals whose SSN does not match the records of the SSA either to correct their SSN in PAS or to contact the local office of the SSA for a SSN correction; and to add that individuals who wish to contest their records must provide the system manager with the necessary particulars such as their name, DOB, SSN, and any other identifying information requested by the Department while processing the request, to distinguish between individuals with the same name, and also must identify the specific item(s) to be changed and provide a justification for the change, including any supporting documentation. The Department is modifying the section entitled ''NOTIFICATION PROCEDURES'' to include that in order to determine whether a record exists about an individual in this system of records, the individual must provide the system manager with the necessary particulars such as their name, DOB, SSN, and any other identifying information requested by the Department while processing the request to distinguish between individuals with the same name.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Richard Cordray,

Chief Operating Officer, Federal Student Aid.

For the reasons discussed in the preamble, the Chief Operating Officer, Federal Student Aid (FSA), U.S. Department of Education (Department) publishes a notice of a modified system of records to read as follows:

SYSTEM NAME AND NUMBER:

Person Authentication Service (PAS) (18–11–12).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Amazon Web Services (AWS) Government Cloud, 1200 12th Avenue, Suite 1200, Seattle, WA 98114. (This is the Hosting Center for the PAS application, where all electronic PAS information is processed and maintained.)

PPS Infotech, 20745 Williamsport Place, Suite 320, Ashburn, VA 20147. (PPS Infotech has access to the system and contracts directly with the Department for the development, operations, and maintenance support for PAS.)

SYSTEM MANAGER(S):

FSA Identity and Access Management (IAM), Division Chief, PAS Manager, Technology Office, Federal Student Aid, Union Center Plaza, 830 First St. NE, 10th floor, Washington, DC 20202.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The collection of personally identifiable information (PII) for the creation and management of a FSA ID (which includes a user ID and a password) is authorized programmatically by title IV of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1070, *et seq.*) and the FAFSA Simplification Act (title VII, division FF of Pub. L. 116–260, the Consolidated Appropriations Act, 2021) (including, but not limited to, section 702(m) that amends section 483 of the HEA and section 703 that amends section 401 of the HEA), and the FAFSA Simplification Act Technical Corrections Act (division R of Pub. L. 117–103, the Consolidated Appropriations Act, 2022).

PURPOSE(S) OF THE SYSTEM:

The information contained in this system is maintained for the following purposes related to the individuals covered by the system:

(1) to generate authentication and log-on credentials for those individuals wishing to access Departmental student financial assistance systems, online applications, websites and services, and to update security challenge questions and their corresponding answers;

(2) to allow a single sign-on and token management solution for all Department student financial assistance systems including systems operated by Department contractors;

(3) to allow electronic signature on student aid forms and applications, including, but not limited to, the consent/affirmative approval for the Department to disclose records to the Internal Revenue Service (IRS) to obtain Federal Tax Information (FTI) and for the disclosure and redisclosure of the FTI, revocation of such consent/affirmative approval, the Free Application for Federal Student Aid (FAFSA®), Direct Loan Master Promissory Notes, loan benefit program forms, deferments, or forbearances through *StudentAid.gov* and other Department websites; and

(4) to enable the Department, or other Federal, State, Tribal, or local government agencies, to investigate, respond to, or resolve complaints concerning the practices or processes of the Department and/or the Department's contractors, or to investigate, respond to, or resolve aid recipients' requests for assistance or relief with regard to title IV, HEA program funds.

The information maintained in this system is also maintained for the following purposes relating to the Department's oversight and administration of the title IV, HEA programs:

(1) to prevent fraud by taking measures to validate the PII submitted by aid applicants, aid recipients, application participants (*i.e.,* parents of dependent aid applicants or aid recipients and spouses of independent students), endorsers, and third-party preparers before allowing them to access Department websites, such as *Studentaid.gov;*

(2) to match name, Social Security number (SSN) (or address, where applicable), and Date of Birth (DOB) with an authorized entities for purposes of validating the PII submitted and, if applicable, to determine program eligibility and benefits;;

(3) to provide usage information for FSA systems and websites;

(4) to track changes to user account information;

(5) to maintain and track consent/affirmative approval the consent/affirmative approval on aid applicants and recipients to the IRS for the IRS to disclose FTI under subsection 494(a) of the HEA (20 U.S.C. 1098h(a)) and section 6103(l)(13)(A) and (C) of the IRC to the Department as part of a matching program to determine their determine their eligibility under title IV of the HEA and to permit the Department to redisclose FTI of individuals pursuant to section 6103(l)(13)(D)(iv) of the IRC and the revocation of such consent/affirmative approval for IDR; and

(6) to support research, analysis, and development, and the implementation and evaluation of educational policies in relation to title IV, HEA programs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

PAS contains records about former, current, and prospective aid applicants and aid recipients, participants who enter their PII as part of the FAFSA form (*i.e.,* parents of dependent aid applicants or recipients and spouses of independent aid applicants or recipients) under title IV of the HEA, spouses of aid applicants or recipients who enter their PII as part of IDR certifications or recertifications, endorsers, and third-party preparers (*i.e.,* individuals who provide consultative or preparation services for the completion of the FAFSA) who apply for a user ID and password (FSA ID).

CATEGORIES OF RECORDS IN THE SYSTEM:

This system maintains identifying information including, but not limited to, first name, middle name, last name, SSN, DOB, address, telephone number, email address, and security challenge questions.

The system also contains consent/affirmative approval of IDR applicants or recipients both to permit the Department to disclose information to the IRS for the IRS to disclose FTI under subsection 494(a) of the HEA (20 U.S.C. 1098h(a)) and section 6103(l)(13)(A) and (C) of the IRC to the Department as part of a matching program to determine title IV, program eligibility or monthly repayment obligation amounts for IDR plans under title IV of the HEA with respect to loans made under part D (the Direct Loan program) of title IV of the HEA and to permit the Department to redisclose FTI of individuals pursuant to section 6103(l)(13)(D)(iv) of the IRC. PAS also maintains the revocation of consent/affirmative approval for IDR.

PAS further maintains information, such as SSN verification flag, citizenship status, and death indicator, obtained pursuant to matching programs or other information exchanges with Federal agencies, and other external entities, to assist in verifying the identifying information of aid applicants or recipients, application participants including parents of dependent aid applicants or recipients and spouses of independent aid applicants or recipients, endorsers, and third-party preparers.

RECORD SOURCE CATEGORIES:

The identifying information (first name, middle name, last name, SSN, DOB, address, telephone number, email address, security challenge questions and corresponding answers) will be collected from individuals applying for a FSA ID or updating their information on the PAS registration website. In addition, PAS receives a verification flag, citizenship flag and death flag indicator which are maintained in the system through a matching program from the Central Processing System (CPS) and the FAFSA Processing System (FPS) system.

PAS also collects from aid applicants or recipients their consent/affirmative approval both to permit the Department to disclose information to the IRS for the IRS to disclose FTI under subsection 494(a) of the HEA (20 U.S.C. 1098h(a)) and section 6103(l)(13)(A) and (C) of the IRC to the Department as part of a matching program to determine title IV, program eligibility or their monthly repayment obligation amounts for IDR plans under title IV of the HEA with respect to loans made under part D of title IV of the HEA (the Direct Loan program) and to permit the Department to redisclose the FTI of such individuals pursuant to section 6103(l)(13)(D)(iv) of the IRC.

Information is also obtained from other Department systems, or their successor systems, including:

The Digital and Customer Care Information Technology (IT), Central Processing System (CPS) and FAFSA Processing System (FPS) system (covered by the Department's Privacy Act system of records notice entitled ''Aid Awareness and Application Processing (AAAP)'' (18–11–21)); and

- The Enterprise Data Warehouse Analytics (EDWA) and Person Master Data Management (pMDM) components covered under the ''Enterprise Data Management and Analytics Platform Services'' (covered by the Department's Privacy Act system of records notice entitled ''Enterprise Data Management and Analytics Platform Services (EDMAPS)'' (18–11–22)).

Information in this system also may be obtained from other persons or entities from whom or from which information is obtained following a disclosure under the listed routine uses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with a purpose for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a), under a computer matching agreement (CMA).

(1) *Program Disclosures.* The Department may disclose records for the following program purposes:

(a) To validate the PII entered by the current, former, or prospective aid applicant or aid recipient (or their third-party preparer) or endorser, whom records indicate is applying for, has applied for, has endorsed, or has received a title IV, HEA loan and/or grant, or a participant of such an application including the spouse of an independent aid applicant or recipient or the parent(s) of a dependent aid applicant or recipient, disclosures may be made to: Guaranty agencies, educational and financial institutions, Federal Loan Servicers, or Federal Perkins Loan Servicers, Federal, State, local, or Tribal agencies, private parties such as relatives, business and personal associates, and present and former employers, creditors, consumer reporting agencies, adjudicative bodies, and the individual whom the records identify as the endorser or the party obligated to repay the debt;

(b) To determine program eligibility and benefits, disclosures may be made to: Guaranty agencies, educational and financial institutions, Federal Loan Servicers, Federal Perkins Loan Servicers, Federal, State, local, or Tribal agencies; private parties such as relatives, business and personal associates, and present and former employers, creditors, consumer reporting agencies, and adjudicative bodies;

(c) To permit the making or collecting of a grant or loan obligation, disclosures may be made to: Guaranty agencies, educational institutions, financial institutions, Federal Loan Servicers, or Federal Perkins Loan Servicers that made, held, serviced, or have been assigned the debt; a party identified by the debtor as willing to advance funds to repay the debt; Federal, State, local, or Tribal agencies; private parties such as relatives, business and personal associates, and present and former employers, creditors, consumer reporting agencies, and adjudicative bodies;

(d) To investigate possible fraud or abuse or verify compliance with program regulations, disclosures may be made to: Guaranty agencies, educational and financial institutions, Federal Loan Servicers or Federal Perkins Loan Servicers, Federal, State, local, or Tribal agencies, private parties such as relatives, present and former employers, and business and personal associates, creditors, consumer reporting agencies, and adjudicative bodies;

(e) To permit the Department to disclose information on aid applicants and recipients to the IRS for the IRS to disclose FTI under subsection 494(a) of the HEA (20 U.S.C. 1098h(a)) and section 6103(l)(13)(A) and (C) of the IRC to the Department as part of a matching program to determine their determine their eligibility under title IV of the HEA and to permit the Department to redisclose FTI of individuals pursuant to section 6103(l)(13)(D)(iv) of the IRC and the revocation of such consent/affirmative approval for IDR, disclosures may be made to Federal Loan Servicers;

(f) To investigate complaints or to update information or correct errors contained in Department records, disclosures may be made to: Guaranty agencies, educational and financial institutions, Federal Loan Servicers, or Federal Perkins Loan Servicers, Federal, State, local, or Tribal agencies; private parties such as relatives, present and former employers, and business and personal associates, creditors, credit reporting agencies, and adjudicative bodies; and

(g) To report information required by law to be reported, including, but not limited to, reports required by 26 U.S.C. 6050P and 6050S, disclosures may be made to the IRS.

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, Executive Order, rule, regulation, or order issued pursuant thereto.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosure.*

(a) *Introduction.* In the event that one of the parties listed below is involved in judicial or administrative litigation or ADR, or has an interest in such litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department or any of its components;

(ii) Any Department employee in their official capacity;

(iii) Any Department employee in their individual capacity where the Department of Justice (DOJ) has been requested to or agrees to provide or arrange for representation for the employee;

(iv) Any Department employee in their individual capacity where the Department has agreed to represent the employee;

(v) The United States, where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to the judicial or administrative litigation or ADR and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to the DOJ.

(c) *Adjudicative Disclosure.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear or to an individual or an entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Disclosure to Parties, Counsel, Representatives, and Witnesses.* If the Department determines that disclosure of certain records is relevant and necessary to judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to a party, counsel, representative, or witness.

(4) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency, or another public authority or professional organization, maintaining civil, criminal, or other relevant enforcement or other pertinent records, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a

contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(5) *Employee Grievance, Complaint, or Conduct Disclosure.* If a record is relevant and necessary to an employee grievance, complaint, or disciplinary action, the Department may disclose the record in this system of records in the course of investigation, fact-finding, or adjudication to any party or the party's counsel or representative, a witness, or to a designated fact-finder, mediator, or other person designated to resolve issues or decide the matter.

(6) *Labor Organization Disclosure.* The Department may disclose records from this system of records to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.

(7) *Freedom of Information Act (FOIA) and Privacy Act Advice Disclosure.* The Department may disclose records to the DOJ or the Office of Management and Budget if the Department seeks advice regarding whether records maintained in this system of records are required to be disclosed under the FOIA or the Privacy Act.

(8) *Disclosure to the DOJ.* The Department may disclose records to the DOJ, or the authorized representative of the DOJ, to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(9) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. As part of such a contract, the Department shall require the contractor to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(10) *Research Disclosure.* The Department may disclose records to a researcher if the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The Department may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(11) *Congressional Member Disclosure.* The Department may disclose the records of an individual to a Member of Congress or the Member's staff when necessary to respond to an inquiry from the Member made at the written request of that individual and on behalf of that individual. The Member's right to the information is no greater than the right of the individual who requested the inquiry.

(12) *Disclosure in the Course of Responding to a Breach of Data.* The Department may disclose records from this system of records to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that there has been a breach of the system of records; (b) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department (including its information systems, programs, and operations), the Federal government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach and prevent, minimize, or remedy such harm.

(13) *Disclosure in Assisting another Agency in Responding to a Breach of Data.* The Department may disclose records from this system to another Federal agency or Federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal government, or national security, resulting from a suspected or confirmed breach.

(14) *Disclosure to the National Archives and Records Administration (NARA).* The Department may disclose records from this system of records to NARA for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose the following information to a consumer reporting agency regarding a valid overdue claim of the Department: (1) the name, address, taxpayer identification number, and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in subsection 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined in 15 U.S.C. 1681a(f) and 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The records are stored electronically.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

In order for users to retrieve aid applicant or recipient information, they must supply the respective SSN, name, and DOB or by the unique internal account identifier.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are primarily retained and disposed of in accordance with ED Records Schedule 278, ''FSA Person Authentication Service (PAS) Records'' (DAA–0441–2016–0001) (ED 278). The Department has submitted amendments to ED 278 for NARA's consideration and will not destroy records covered by ED 278 until such amendments are in effect, as applicable.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Authorized users: Access to the system is limited to authorized PAS program personnel and contractors responsible for administering the PAS program. Authorized personnel include Department employees and officials, financial and fiscal management personnel, computer personnel, and program managers who have responsibilities for implementing the PAS program. Read-only users: Read-only access is given to servicers, holders, financial/fiscal management personnel, and institutional personnel.

Physical safeguards: Magnetic tapes, disc packs, computer equipment, and other forms of data are stored in areas where fire and life safety codes are strictly enforced. Security guards are staffed 24 hours a day, seven days a week, to perform random checks on the physical security of the record storage areas.

Procedural safeguards: A password is required to access the terminal, and a data set name controls the release of information to only authorized users. In addition, all sensitive data is encrypted using Oracle Transparent Data Encryption functionality. Access to records is strictly limited to those staff members trained in accordance with the Privacy Act and Automatic Data Processing (ADP) security procedures. Contractors are required to maintain confidentiality safeguards with respect to these records. Contractors are instructed to make no further disclosure of the records except as authorized by the System Manager and permitted by the Privacy Act. All individuals who have access to these records receive appropriate ADP security clearances.

Department personnel make site visits to ADP facilities for the purpose of ensuring that ADP security procedures continue to be met. Privacy Act and ADP system security requirements are specifically included in contracts. The PAS project directors, project officers, and the system manager oversee compliance with these requirements.

In accordance with the Federal Information Security Management Act of 2002 (FISMA), as amended by the Federal Information Security Modernization Act of 2014, every Department system must receive a signed Authorization to Operate (ATO) from a designated Department official. The ATO process includes a rigorous assessment of security controls, a plan of actions and milestones to remediate any identified deficiencies, and a continuous monitoring program.

FISMA controls implemented are comprised of a combination of management, operational, and technical controls, and include the following control families: access control, awareness and training, audit and accountability, security assessment and authorization, configuration management, contingency planning, identification and authentication, incident response, maintenance, media protection, physical and environmental protection, planning, personnel security, privacy, risk assessment, system and services acquisition, system and communications protection, system and information integrity, and program management.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record in this system, you must contact the system manager with the necessary particulars such as your name, DOB, SSN, and any other identifying information requested by the Department while processing the request, to distinguish between individuals with the same name. Requests by an individual for access to a record must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record in the system of records, you must contact the system manager with the necessary particulars such as your name, DOB, SSN, and any other identifying information requested by the Department while processing the request, to distinguish between individuals with the same name. You must also identify the specific item(s) to be changed, and provide a justification for the change, including any supporting documentation. Requests to amend a record must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.7.

NOTIFICATION PROCEDURES:

If you wish to determine whether a record exists regarding you in this system of records, you must contact the system manager with the necessary particulars such as your name, DOB, SSN,and any other identifying information requested by the Department while processing the request, to distinguish between individuals with the same name. Requests for notification about whether the system of records contains information about an individual must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

The system of records notice entitled the ''Person Authentication Service'' (18–11–12) was last modified and published in full in the **Federal Register** on March 20, 2015 (80 FR 14981).

[FR Doc. 2023–16001 Filed 7–27–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2023–FSA–0133]

Privacy Act of 1974; System of Records

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the U.S. Department of Education (Department) publishes this notice of a modified system of records titled ''Enterprise Data Management and Analytics Platform Services (EDMAPS)'' (18–11–22). The EDMAPS system is a data analytics platform that ingests data from multiple Federal Student Aid (FSA) systems of records to perform big-data analytics on FSA data in one common location, produce reports and statistical models, and serve as a centralized repository of information about FSA customers across the full student aid life cycle.

DATES: Submit your comments on this modified system of records notice on or before August 28, 2023. This modified system of records notice will become applicable upon publication in the **Federal Register** on July 28, 2023, unless it needs to be changed as a result of public comment. The Department will publish any changes to the modified system of records notice resulting from public comment.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *regulations.gov.* However, if you require an accommodation or cannot otherwise submit your comments via *regulations.gov,* please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov,* including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the ''FAQ'' tab.

Privacy Note: The Department's policy is to make comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at

www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Barry Goldstein, Chief Data Officer, FSA, U.S. Department of Education, UCP, Room 64E1, 830 First Street NE, Washington, DC 20202–5454. Telephone: (202) 377–4563 or email: *Barry.Goldstein@ed.gov.* If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), you may call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act, the Department proposes to modify the system of records notice entitled, ''Enterprise Data Management and Analytics Platform Services (EDMAPS)'' (18–11–22), which was published in full in the **Federal Register** on September 13, 2022 (87 FR 56038).

The Department is modifying this system of records notice by making a global change to delete and replace ''borrower'' and ''student'' with ''aid recipient,'' ''aid applicant and aid recipient,'' and ''aid applicant or aid recipient,'' as applicable, to be more consistent with changes in other Department system of record notices.

The Department is modifying the section entitled ''SYSTEM LOCATION'' to update the description of the Amazon Web Services (AWS) location from a ''computer'' to ''hosting'' center to better align with industry terminology.

The Department is modifying the section entitled ''AUTHORITY FOR MAINTENANCE OF THE SYSTEM'' as follows:

(1) The Department is including as authority for the system all of the FAFSA Simplification Act (title VII, division FF of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260)), rather than only subsections 701(b) and 702(m) of the FAFSA Simplification Act, and the FAFSA Simplification Act Technical Corrections Act (division R of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103)) to ensure EDMAPS contains complete data to improve data analytics and reporting and to maintain Master Data Management records;

(2) The Department is modifying the specific authority for the system of records notice entitled ''Aid Awareness and Aid Processing System'' (18–11–21) to delete and replace the reference to ''users of the Federal Student Aid Application File system'' in the collection of Social Security Numbers (SSN) with ''The collection of SSNs of individuals, and parents of dependent students, who apply for or receive Federal student financial assistance under programs authorized by title IV of the HEA is also authorized by 31 U.S.C. 7701 and Executive Order 9397, as amended by Executive Order 13478 (November 18, 2008); and

(3) The Department is updating the authority for National Student Loan Data System (NSLDS) (18–11–06), Common Services for Borrowers (CSB) (18–11–16) and the Aid Awareness and Application Processing (AAAP) (18–11–21) to include the Higher Education Relief Opportunities for Students Act of 2003 (20 U.S.C. 1098bb) (including any waivers or modifications that the Secretary of Education deems necessary to make to any statutory or regulatory provision applicable to the student financial assistance programs under title IV of the HEA to achieve specific purposes listed in the section in connection with a war, other military operation, or a national emergency).

The Department is modifying the section entitled ''PURPOSE(S) OF THE SYSTEM'' to add new category (22) to maintain the consent/affirmative approval on aid applicants and recipients to the IRS for the IRS to disclose FTI under subsection 494(a) of the HEA (20 U.S.C. 1098h(a)) and section 6103(l)(13)(A) and (C) of the IRC to the Department as part of a matching program to determine their determine their eligibility under title IV of the HEA and to permit the Department to redisclose FTI of individuals pursuant to section 6103(l)(13)(D)(iv) of the IRC and the revocation of such consent/affirmative approval for IDR.

The Department is modifying the section entitled ''CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM'' as follows:

(1) Category (1) is updated to include third-party preparers, who assist aid applicants and recipients with the completion of Free Applications for Federal Student Aid (FAFSAs®);

(2) Category (3) is updated to include incarcerated aid recipients, who are recipients of Federal Pell Grants, and to include recipients of Federal Supplemental Educational Opportunity Grants (FSEOGs) and Federal Work-Study (FWS) Program earnings that are used in the calculation of the Student Aid Index (SAI) and sent to EDMAPS for analytics and reporting purposes;

(3) Category (9) is updated to include spouses of married aid applicants and recipients under programs authorized under title IV of the HEA, third-party preparers, and all other individuals who apply for an FSA user ID and password to better explain the individuals already covered by the system;

(4) New category (11) is added to include individuals who are, or once were, officials at postsecondary institutions, such as college presidents, college chief financial officers, and college financial aid directors, and who are mentioned in records of their institutions' annual reports and periodic institutional program reviews and those who serve as contacts at educational institutions listed on the program participation agreement, including, but not limited to, financial aid directors and college presidents to better describe these individuals already covered by the system; and

(5) New category (12) is added to include individuals who are title IV, HEA aid recipients and who attended, or who are attending, a gainful employment program at a postsecondary institution.

The Department is modifying the section entitled ''CATEGORIES OF RECORDS IN THE SYSTEM'' as follows:

(i) The Department is adding a ''Note'' section to explain that the Federal Tax Information (FTI) that the Department will directly obtain from the Internal Revenue Service (IRS) under the Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE) Act will be maintained in a separate system of records, which is covered by the system of records notice entitled ''FUTURE Act System (FAS)'' (18–11–23);

(ii) Category (1) is modified to delete and replace ''state administered driver's license number,'' with ''driver's license state of issuance and number'';

(iii) Category (3) is modified to include an aid applicant or recipient incarcerated flag for analytics and reporting;

(iv) Category (4) is modified to include demographic information on the spouse of a married aid applicant or aid recipient; to delete and replace ''state administered driver's license number,'' with ''driver's license state of issuance and number''; and to add parent college attendance status, which will replace parent highest level of schooling completed on the FAFSA due to the

amendment of subsection 483(a)(2)(B)(ii)(XIII) of the HEA made by subsection 702(m)(1) of the FAFSA Simplification Act, to clarify the demographic information collected;

(v) Category (5) is modified to include aid applicant's spouse in the application of IDR;

(vi) Category (6) is modified to include FSEOG amounts and dates of disbursement, and money earned under the FWS Program for analytics and reporting of title IV, HEA programs;

(vii) Category (10) is modified to clarify that it is the aid recipient's loan information that contains information on financial institutions participating in the loan participation and sale programs established by the Department under the Ensuring Continued Access to Student Loan Act of 2008 (ECASLA) (Pub. L. 110–227);

(viii) Category (11) is modified to include approved Prison Education Programs (PEPS) for analytics and reporting of the PEPS program;

(ix) Category (12) is modified to expand the types of case records related to discharge of title IV, HEA obligations on grounds of qualifying service, bankruptcy discharge, death, Public Service Loan Forgiveness (PSLF) (including, but not limited to, employment records), Borrower Defense (including, but not limited to, case decisions, principal and interest discharged, amount refunded, and borrower defense notifications), or other statutory or regulatory grounds for relief;

(x) Category (14) is modified to include examples of the types of individuals on whom the Department maintains FSA IDs and passwords, and account recovery information;

(xi) Category (20) has been deleted because it is duplicative of category (11);

(x) Newly renumbered category (21) is added to include unstructured data, documentation, and images (such as PDF files), including, but not limited to, free-text fields, servicer telephone conversations, deferment forms, repayment plan application forms, consolidation application forms, loan discharge applications, alternative documentation of income (ADOI) artifacts, and other agreements that may impact a legal obligation to repay funds disbursed under title IV, HEA programs;

(xi) New category (22) is added to include records regarding individuals at postsecondary institutions that participate in aid programs authorized under title IV of the HEA including, but not limited to, the name and taxpayer identification number or SSN of individuals with a substantial ownership interest in the institution, business address, phone numbers, and personal identification numbers assigned by the Department and employees, officials, and authorized representatives/agents of IHEs, and members of boards of directors or trustees of IHEs; employees of foreign entities (*i.e.,* Non-U.S. Medical Evaluating Agency, Authorizing Agency) that evaluate the quality of education; and employees, officials, and authorized representatives/agents of third-party servicers, guaranty agencies, federal loan servicers, Federal Family Education Loan (FFEL) lenders, FFEL lenders' servicers, and State agencies that participate in aid programs authorized under title IV of the HEA including, but not limited to, their name and taxpayer identification number or SSN. The system also maintains the following information for all individuals identified covered by this paragraph including business addresses, phone numbers, and personal identification numbers assigned by the Department, for analytics and reporting;

(xii) New category (23) is added to include information about aid recipients who began a program of study that prepares them for gainful employment in a recognized occupation pursuant to sections 101 and 102 of the HEA (''gainful employment program'') such as aid applicant or aid recipient identifiers including the aid applicant's or aid recipient's SSN, date of birth, and name, enrollment information including the Office of Postsecondary Education Identification number (OPEID) of the postsecondary institution, the Classification of Instructional Programs (CIP) code of the gainful employment program in which the aid recipient enrolled, and, if the aid recipient completed the program, the completion date and the CIP code of the completed program, the level of study, the amount of the aid recipient's private education loan debt, the amount of institutionally provided financing owed by the aid recipient, and whether the aid recipient matriculated to a higher credentialed program at the same institution or another institution for analytics and reporting; and

(xiii) New category (24) is added to include information provided on third-party preparers, including, but not limited to first and last name, SSN or employer identification number, affiliation, address or employer's address, signature and signature date, for analytics and reporting;

(xiv) New category (25) is added to include consent/affirmative approval on aid applicants and recipients to the IRS for the IRS to disclose FTI under subsection 494(a) of the HEA (20 U.S.C. 1098h(a)) and section 6103(l)(13)(A) and (C) of the IRC to the Department as part of a matching program to determine their determine their eligibility under title IV of the HEA and to permit the Department to redisclose FTI of individuals pursuant to section 6103(l)(13)(D)(iv) of the IRC and the revocation of such consent/affirmative approval for IDR; and

(xv) The Department is adding a new last paragraph to clarify that information in this system may also bec obtained on individuals who are not aid applicants or recipients under title, IV by Federal or State agencies as part of an interagency agreement or memorandum of understanding to allow analysis of title IV, HEA programs.

To be more consistent with other Department System of Records Notices, and to more concisely describe the record source categories the Department is modifying the section entitled ''RECORD SOURCE CATEGORIES'' to read as follows: ''Information is also obtained from other Department systems, or their successor systems, such as the Federal Loan Servicers' IT systems (covered by the system of records titled 'Common Services for Borrowers (CSB)' (18–11–16)); Debt Management and Collections System (covered by the system of records titled 'Common Services for Borrowers (CSB)' (18–11–16)); Common Origination and Disbursement System (covered by the system of records titled 'Common Origination and Disbursement (COD) System' (18–11–02)); Financial Management System (covered by the system of records titled 'Financial Management System (FMS)' (18–11–17)); Student Aid internet Gateway, Participant Management System (covered by the system of records titled 'Student Aid internet Gateway (SAIG), Participation Management System' (18–11–10)); Postsecondary Education Participants System (covered by the system of records titled 'Postsecondary Education Participants System' (18–11–09)); National Student Loan Data System (covered by the system of records titled 'National Student Loan Data System (NSLDS)' (18–11–06)); Person Authentication Service (covered by the system of records titled 'Person Authentication Service (PAS)' (18–11–12)); Health Education Assistance Loan Program (covered by the system of records titled 'Health Education Assistance Loan (HEAL) Program' (18–11–20)); and all IT systems covered by the system of records entitled 'Aid Awareness and Application Processing' (18–11–21).

Information in this system also may be obtained from other persons or entities from whom or from which information is obtained following a disclosure under the routine uses set forth below.''

Richard Cordray,

Chief Operating Officer, Federal Student Aid.

For the reasons discussed in the preamble, the U.S. Department of Education (Department) publishes a notice of a modified system of records to read as follows:

SYSTEM NAME AND NUMBER:

''Enterprise Data Management and Analytics Platform Services (EDMAPS)'' (18–11–22).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Student Aid (FSA), U.S. Department of Education, Union Center Plaza (UCP), 830 First Street NE, Washington, DC 20202–5454.

Amazon Web Services (AWS), 1200 12th Avenue, Suite 1200, Seattle, WA 98114. (This is the Hosting Center for the EDMAPS system's application, where all electronic EDMAPS system information is processed and stored.)

Accenture, 22451 Shaw Road, Sterling, VA 20166–4319. (The EDMAPS system's Sterling Cloud-based Operations is located here.)

Accenture DC, 810 First Street NE, Washington, DC 20202–4227. (This is the EDMAPS system's Operations Center.)

SYSTEM MANAGER(S):

System Owner, EDMAPS System, Federal Student Aid, U.S. Department of Education, Union Center Plaza (UCP), Room 102–E5, 830 First Street NE, Washington, DC 20202.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The EDMAPS system is authorized under title I, Part D, and title IV of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1001, 1002, 1018–1018b and 20 U.S.C. 1070 *et seq.*), the Presidential Memorandum entitled ''A Student Aid Bill of Rights to Help Ensure Affordable Loan Repayment'' (March 10, 2015), the Higher Education Relief Opportunities for Students Act of 2003 (HEROES Act) (20 U.S.C. 1098bb) (including any waivers or modifications that the Secretary of Education deems necessary to make to any statutory or regulatory provision applicable to the student financial assistance programs under title IV of the HEA to achieve specific purposes listed in the section in connection with a war, other military operation, or a national emergency), the FAFSA Simplification Act (title VII, Division, division FF of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260)) (including, but not limited to the following: subsections 701(b) and 702(m), which amends section 483 of the HEA, and section 703, which amends section 401 of the HEA), and the FAFSA Simplification Act Technical Corrections Act (division R of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103)).

The EDMAPS system is largely comprised of records that originate from, and are also maintained in, other Department systems of records. Therefore, the Department is also listing the more specific authorities for those systems of records here:

(1) National Student Loan Data System (NSLDS) (18–11–06). The authority under which the NSLDS system of records is maintained includes sections 101, 102, 132(i), 485, and 485B of the HEA (20 U.S.C. 1001, 1002, 1015a(i), 1092, and 1092b), and sections 431(2) and (3) of the General Education Provisions Act (20 U.S.C. 1231a(2)–(3)), and the Higher Education Relief Opportunities for Students Act of 2003 (20 U.S.C. 1098bb) (including any waivers or modifications that the Secretary of Education deems necessary to make to any statutory or regulatory provision applicable to the student financial assistance programs under title IV of the HEA to achieve specific purposes listed in the section in connection with a war, other military operation, or a national emergency). The collection of Social Security numbers (SSNs) of individuals who are covered by this system is authorized by 31 U.S.C. 7701 and Executive Order 9397 (November 22, 1943), as amended by Executive Order 13478 (November 18, 2008);

(2) Common Origination and Disbursement (COD) System (18–11–02). The system of records for the COD System is authorized under title IV of the HEA and the HEROES Act (including any waivers or modifications that the Secretary of Education deems necessary to make to any statutory or regulatory provision applicable to the student financial assistance programs under title IV of the HEA to achieve specific purposes listed in the section in connection with a war, other military operation, or a national emergency);

(3) Common Services for Borrowers (CSB) (18–11–16). The CSB system of records is authorized by titles IV–A, IV–B, IV–D, and IV–E of the HEA, and the Higher Education Relief Opportunities for Students Act of 2003 (20 U.S.C. 1098bb) (including any waivers or modifications that the Secretary of Education deems necessary to make to any statutory or regulatory provision applicable to the student financial assistance programs under title IV of the HEA to achieve specific purposes listed in the section in connection with a war, other military operation, or a national emergency);

(4) Health Education Assistance Loan (HEAL) Program (18–11–20). The authority for maintenance of the HEAL Program system of records includes sections 701 and 702 of the Public Health Service Act, as amended (PHS Act) (42 U.S.C. 292 and 292a), which authorize the establishment of a Federal program of student loan insurance; section 715 of the PHS Act (42 U.S.C. 292n), which directs the Secretary of Education to require institutions to provide information for each aid recipient who has a loan; section 709(c) of the PHS Act (42 U.S.C. 292h(c)), which authorizes disclosure and publication of HEAL defaulters; the Debt Collection Improvement Act (31 U.S.C. 3701 and 3711–3720E); and the Consolidated Appropriations Act, 2014, Division H, title V, section 525 of Public Law 113–76, which transferred the authority to administer the HEAL program from the Secretary of Health and Human Services to the Secretary of Education;

(5) Financial Management System (FMS) (18–11–17). The FMS system of records is authorized by title IV of the HEA;

(6) Postsecondary Education Participants Systems (PEPS) (18–11–09). The PEPS system of records is authorized by sections 481, 487, 498 of the HEA (20 U.S.C. 1088, 1094, 1099c) and section 31001(i)(1) of the Debt Collection Improvement Act of 1996, Public Law 104–134 (31 U.S.C. 7701);

(7) Person Authentication Service (PAS) (18–11–12). The PAS system of records and the collection of personal information for the creation and management of an FSA ID (which includes a user ID and a password) is authorized by title IV of the HEA;

(8) Student Aid internet Gateway (SAIG), Participation Management (PM) System (18–11–10). The SAIG,

PM system of records is authorized by title IV of the HEA. The collection of SSNs of users of the SAIG, PM System is authorized by 31 U.S.C. 7701 and Executive Order 9397, as amended by Executive Order 13478 (November 18, 2008); and

(9) Aid Awareness and Application Processing (AAAP) (18–11–21). The AAAP system of records is authorized under title IV of the HEA (20 U.S.C. 1070 *et seq.*) and 20 U.S.C. 1018(f) and

1087e(h), and the Higher Education Relief Opportunities for Students Act of 2003 (20 U.S.C. 1098bb) (including any waivers or modifications that the Secretary of Education deems necessary to make to any statutory or regulatory provision applicable to the student financial assistance programs under title IV of the HEA to achieve specific purposes listed in the section in connection with a war, other military operation, or a national emergency). The collection of SSNs of individuals, and parents of dependent students, who apply for or receive Federal student financial assistance under programs authorized by title IV of the HEA is also authorized by 31 U.S.C. 7701 and Executive Order 9397, as amended by Executive Order 13478 (November 18, 2008) or both.

PURPOSE(S) OF THE SYSTEM:

The information contained in this system of records is maintained for the following purposes (*Note:* Different parts of the HEA use the terms ''discharge,'' ''cancellation,'' or ''forgiveness'' to describe when an aid recipient's loan amount is reduced, in whole or in part, by the Department. To reduce complexity, this system of records notice uses the term ''discharge'' to include all three terms (''discharge,'' ''cancellation,'' and ''forgiveness''), including, but not limited to, discharges of student loans made pursuant to specific benefit programs. At times, this system of records notice may refer by name to a specific benefit program, such as the ''Public Service Loan Forgiveness'' program; such specific references are not intended to exclude any such program benefits from more general references to loan discharges):

(1) To provide master data management, to serve as a production database, and to provide common naming conventions and standards;

(2) To provide a data warehouse for analytics, reporting, and modeling;

(3) To provide the Data Lake for the storage of large data sets, both structured and unstructured (PDFs and audio files are examples of unstructured data);

(4) To provide analytics and reporting, including querying, modeling, forecasting, and visualizing, for the purpose of administering the title IV, HEA programs effectively and efficiently;

(5) To improve transparency by publicly releasing information and reports, as required by the Foundations for Evidence-Based Policymaking Act of 2018 and title IV of the HEA;

(6) To support research, analysis, and development, and the implementation and evaluation of education policies in relation to title IV, HEA programs;

(7) To support Federal budget analysts in the Department, the Office of Management and Budget (OMB), and the Congressional Budget Office (CBO) in the development of budget needs and forecasts;

(8) To help aid applicants and recipients achieve better outcomes through outreach to aid applicants and recipients at risk of default and of being defrauded;

(9) To determine aid recipients' eligibility for discharges of loans under title IV of the HEA;

(10) To maintain and process information and documentation, including, but not limited to, loan discharge income eligibility information, associated application information for the purposes of eligibility determination and verification information obtained from applicants, or applicable applicant's parent(s) or spouse, and income verification documentation of an aid recipient or applicable aid recipient's parent(s) or spouse, pertaining to discharge of eligible loans under title IV, HEA and promissory notes and other agreements that evidence the existence of a legal obligation to repay funds disbursed under title IV, HEA programs;

(11) To provide a more flexible data architecture that will allow FSA to respond more efficiently and accurately to complex data requests and changes in title IV, HEA policies and operations;

(12) To provide additional insights into title IV, HEA programs, improve oversight of FSA vendors, and develop a global view of FSA operations;

(13) To facilitate the collection, processing, and transmission of information to aid applicants or aid recipients, postsecondary and financial institutions, lenders, State agencies, and other authorized operational parties;

(14) To identify, prevent, reduce, and recoup improper payments;

(15) To communicate with aid applicants and recipients information regarding financial aid including, but not limited to, the Free Application for Federal Student Aid (FAFSA®) processing timelines, debt counseling references, and PSLF information;

(16) To enforce the conditions or terms of a title IV, HEA obligation;

(17) To investigate possible fraud or abuse or verify compliance with program regulations or contract requirements;

(18) To litigate a title IV, HEA obligation, or to prepare for, provide support services for, or audit the results of litigation on a title IV, HEA obligation;

(19) To verify the identity of FSA aid recipients for the purpose of loan discharge eligibility;

(20) To assist audit and program review planning and reviews;

(21) To conduct testing, analysis, or take other administrative actions needed to prepare for or execute programs under title IV of the HEA; and

(22) To maintain the consent/affirmative approval from income-driven repayment (IDR) applicants or recipients to permit the Department to disclose information to the Internal Revenue Service (IRS) for the IRS to disclose Federal Tax Information (FTI) of such individuals under subsection 494(a) of the HEA (20 U.S.C. 1098h(a)) and section 6103(l)(13)(A) of the Internal Revenue Code of 1986 (IRC) to the Department as part of a matching program to determine monthly repayment obligation amounts for IDR plans under title IV of the HEA with respect to loans made under part D of title IV of the HEA (the Direct Loan program) and to permit the Department to redisclose the FTI of such individuals pursuant to section 6103(l)(13)(D)(iv) of the IRC, or the revocation of the consent/affirmative approval.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The EDMAPS system maintains records on the following categories of individuals:

(1) Individual recipients of, and applicants for, aid (and their third-party preparers) under one of the programs authorized under title IV of the HEA, including, but not limited to, the: (a) Direct Loan Program; (b) Federal Family Education Loan (FFEL) Program; (c) Federal Insured Student Loan (FISL) Program; and (d) Federal Perkins Loan Program, including National Defense Student Loans, National Direct Student Loans, and Perkins Expanded Lending and Income Contingent Loans (Perkins Loans);

(2) Individuals who serve as endorsers on Direct PLUS loans;

(3) Recipients of Federal Pell Grants, Academic Competitiveness Grants (ACG), National Science and Mathematics Access to Retain Talent (SMART) Grants, Federal Supplemental Educational Opportunity Grants (FSEOGs), Federal Work-Study (FWS) Program earnings, Teacher Education Assistance for College and Higher Education (TEACH) Grants, and Iraq and Afghanistan Service Grants;

(4) Individuals who owe an overpayment on a Federal Pell Grant, an ACG, a National SMART Grant, a FSEOG, an Iraq and Afghanistan Service

Grant, a TEACH Grant, or a Federal Perkins Loan;

(5) Individuals who have applied for borrower defense discharges (*Note:* The system contains case tracking records on these individuals);

(6) Individuals who received aid under the HEAL Program for analysis of their use of the title IV, HEA programs;

(7) Individuals who are title IV, HEA aid applicants or recipients, and parents or spouses of aid applicants or recipients, who submit feedback/complaints to the Department regarding title IV, HEA programs, contractors, or practices or processes of the Department;

(8) Individuals who are not aid applicants or recipients under title IV, HEA programs, but who have submitted feedback or a complaint or whose information has been provided to the Department as part of an interagency agreement or memorandum of understanding to allow analysis of title IV, HEA programs;

(9) Aid applicants and recipients under title IV, HEA programs, the parents of aid applicants and recipients under title IV, HEA programs, spouses of married aid applicants and recipients under title IV, HEA programs, PLUS loan endorsers, third-party preparers, and all other individuals who apply for an FSA user ID and password;

(10) Individuals who are, or once were, the parent(s) of a dependent applicant or aid recipient, or the spouse of a married applicant or aid recipient, under title IV, HEA programs;

(11) Individuals who are, or once were, officials, such as college presidents, college chief financial officers, and college financial aid directors, at postsecondary institutions and who are mentioned in records of their institutions' annual reports and periodic institutional program reviews and those who serve as contacts at educational institutions listed on the program participation agreement, including, but not limited to, financial aid directors and college presidents; and

(12) Individuals who are title IV, HEA aid recipients and who attended, or who are attending, a gainful employment program at a postsecondary institution.

CATEGORIES OF RECORDS IN THE SYSTEM:

Note: The FTI that the Department will obtain directly from the IRS under the Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE) Act will be maintained in a separate system of records, which is covered by the system of records notice entitled ''FUTURE Act System (FAS)'' (18–11–23). This system will continue to maintain both historical and applicant-provided income information (either through a manual FAFSA entry or submission of alternative documentation of income (ADOI) through the IDR process). Any reference to income throughout this system of records notice refers to income information that the Department did not obtain directly from the IRS but obtained from the applicant or from another source.

The EDMAPS system includes, but is not limited to, the following categories of records:

(1) Aid applicant and recipient identifier information, including Social Security number (SSN), FSA ID, name (both current and previous), date of birth, physical mailing address, phone number, email address, and driver's license number and state of issuance;

(2) Information on the aid recipient's loan(s) covering the period from the origination of the loan through final payment, cancellation, consolidation, discharge, or other final disposition, including details such as loan amount, disbursements, balances, loan status, repayment plan payments and related information, collections, lender and guaranty agency claims, deferments, forbearances, refunds, and cancellations, master promissory notes, information collected to determine loan discharge eligibility along with eligibility and income verification consents;

(3) Aid applicant and recipient demographic information from aid applications including, but not limited to, dependency status, citizenship, veteran status, marital status, sex/gender, race/ethnicity, incarceration flag, income and asset information (including income and asset information on the aid applicant's or aid recipient's parent(s), if a dependent aid applicant or recipient, and the aid applicant's or recipient's spouse, if married), and expected family contribution or Student Aid Index;

(4) Demographic information on the spouse of a married aid applicant or aid recipient and the parent(s) of a dependent aid applicant or aid recipient from aid applications, including, but not limited to, U.S. passport number, name (current and previous), date of birth, SSN, FSA ID, driver's license number and state of issuance, marital status, telephone number, email address, income and asset information, and parent highest level of schooling completed and college attendance status;

(5) Information related to an aid applicant or aid recipient's application for an income-driven repayment plan, including information such as current income, family size, repayment plan selection, and, if married, information about the aid applicant's or recipient's spouse;

(6) Federal Pell Grant, ACG, National SMART Grant, TEACH Grant, FSEOG, and Iraq and Afghanistan Service Grant amounts and dates of disbursement, and money earned under the FWS Program;

(7) Federal Pell Grant, ACG, National SMART Grant, Iraq and Afghanistan Service Grant, FSEOG, and Federal Perkins Loan Program overpayment amounts;

(8) Information maintained by a guaranty agency, including, demographic, contact, and identifier information, an aid recipient's FFEL loan(s), and the lender(s), holder(s), and servicer(s) of the aid recipient's FFEL loan(s);

(9) Information concerning the date of any default on loans;

(10) Aid recipient loan information that contains information on financial institutions participating in the loan participation and sale programs established by the Department under the Ensuring Continued Access to Student Loan Act of 2008 (ECASLA) (Pub. L. 110–227), including the collection of ECASLA loan-level funding amounts, dates of ECASLA participation for financial institutions, dates and amounts of loans sold to the Department under ECASLA, and the amount of loans funded by the Department's programs but repurchased by the lender;

(11) Aid recipient enrollment information, such as enrollment status, information on the aid recipient's educational institution, level of study, the Classification of Instructional Programs (CIP) code, published length for the program in which the aid recipient enrolled at a postsecondary institution or programs of studies at the postsecondary institution and approved Prison Education Programs (PEPs) (the FAFSA Simplification Act allows for expanding access to Federal Pell Grants to include Federal and State penal facilities approved PEPs);

(12) Records related to discharge of title IV, HEA obligations on grounds of qualifying service, bankruptcy discharge, death, Public Service Loan Forgiveness (PSLF) (including, but not limited to, employment records), Borrower Defense (including, but not limited to, case decisions, principal and interest discharged, amount refunded, and borrower defense notifications), or other statutory or regulatory grounds for relief;

(13) Case records on complaints and feedback regarding title IV, HEA programs, Department contractors, and

the practices and processes of the Department and fraud referrals;

(14) Records on FSA user IDs and passwords, and password recovery questions and answers for individuals covered under the system including aid applicants and recipients, the parents of aid applicants and recipients under title IV, HEA programs, spouses of married aid applicant and aid recipients, PLUS loan endorsers, and third-party preparers;

(15) Records of aid applicant or aid recipient contacts (phone calls and letters);

(16) HEAL Program records, when loaded into the system for analysis of HEAL aid recipients' use of the title IV, HEA programs;

(17) Reference data about lenders and guaranty agencies, such as parent-subsidiary lender relationships, in addition to aggregated financials from lenders and guaranty agencies;

(18) Centralized identifying and contact information received from the FAFSA, origination and disbursement records, loan servicers, and customers (via the studentaid.gov interface), augmented by algorithms to identify the most accurate and/or up-to-date identifying and contact records;

(19) Credit check details, decision, adverse reasons/credit bureau info and credit appeal information on PLUS loan applicants, recipients, and endorsers;

(20) Loan discharge income eligibility information, associated discharge eligibility and income verification consent information from discharge applicants or applicable applicant's parent(s) or spouse, and income verification documentation of an aid recipient or applicable aid recipient's parent(s) or spouse, pertaining to discharge of eligible loans under title IV, HEA programs;

(21) Unstructured data, documentation, and images (such as PDF files), including, but not limited to, free-text fields, servicer telephone conversations, deferment forms, repayment plan application forms, consolidation application forms, loan discharge application forms, ADOI artifacts used to support IDR plans, and other agreements that may impact a legal obligation to repay funds disbursed under title IV, HEA programs;

(22) Records regarding individuals at postsecondary institutions that participate in aid programs authorized under title IV of the HEA including, but not limited to, the name and taxpayer identification number or SSN of individuals with a substantial ownership interest in the institution, business address, phone numbers, and personal identification numbers assigned by the Department and employees, officials, and authorized representatives/agents of IHEs, and members of boards of directors or trustees of IHEs; employees of foreign entities (*i.e.,* Non-U.S. Medical Evaluating Agency, Authorizing Agency) that evaluate the quality of education; and employees, officials, and authorized representatives/agents of third-party servicers, guaranty agencies, federal loan servicers, FFEL lenders, FFEL lenders' servicers, and State agencies that participate in aid programs authorized under title IV of the HEA including, but not limited to, their name and taxpayer identification number or SSN. The system also maintains the following information for all individuals covered by this paragraph including business address, phone numbers, and personal identification numbers assigned by the Department for analytics and reporting;

(23) For aid recipients who began a program of study that prepares them for gainful employment in a recognized occupation pursuant to sections 101 and 102 of the HEA (''gainful employment program''), aid recipient identifiers including the recipient's SSN, date of birth, and name, aid recipient enrollment information including the Office of Postsecondary Education identification number (OPEID number) of the postsecondary institution, the CIP code for the gainful employment program in which the aid recipient enrolled, and, if the aid recipient completed the program, the completion date and the CIP code of the completed program, the level of study, the amount of the aid recipient's private education loan debt, the amount of institutionally provided financing owed by the aid recipient, and whether the aid recipient matriculated to a higher credentialed program at the same institution or another institution;

(24) Information provided on third-party preparers, including, but not limited to, first name, last name, SSN or employer identification number, affiliation, address or employer's address, signature, and signature date;

(25) Consent/affirmative approval both to permit the Department to disclose information on IDR applicants or recipients to the IRS for the IRS to disclose FTI under subsection 494(a) of the HEA (20 U.S.C. 1098h(a)) and section 6103(l)(13)(A) and (C) of the IRC to the Department as part of a matching program to determine their monthly repayment obligation amounts for IDR plans under title IV of the HEA with respect to loans made under part D of title IV of the HEA (the Direct Loan program) and to permit the Department to redisclose FTI of such individuals pursuant to clauses section 6103(l)(13)(D)(iv) of the IRC and for the revocation of the consent/affirmative approval; and

(26) Information on individuals who are not aid applicants or recipients under title, IV by Federal or State agencies as part of an interagency agreement or memorandum of understanding to allow analysis of title IV, HEA programs.

RECORD SOURCE CATEGORIES:

Information is obtained from other Department systems, or their successor systems, such as the Federal Loan Servicers' IT systems (covered by the system of records titled ''Common Services for Borrowers (CSB)'' (18–11–16)); the Debt Management and Collections System (covered by the system of records titled ''Common Services for Borrowers (CSB)'' (18–11–16)); COD (covered by the system of records titled ''Common Origination and Disbursement (COD) System'' (18–11–02)); FMS (covered by the system of records titled ''Financial Management System (FMS)'' (18–11–17)); SAIG, PM System (covered by the system of records titled ''Student Aid internet Gateway (SAIG), Participation Management System'' (18–11–10)); Postsecondary Education Participants System (covered by the system of records titled ''Postsecondary Education Participants System'' (18–11–09)); NSLDS (covered by the system of records titled ''National Student Loan Data System (NSLDS)'' (18–11–06)); PAS (covered by the system of records titled ''Person Authentication Service (PAS)'' (18–11–12)); HEAL (covered by the system of records titled ''Health Education Assistance Loan (HEAL) Program'' (18–11–20)); and all IT systems covered by the system of records titled ''Aid Awareness and Application Processing'' (18–11–21).

The EDMAPS system receives origination and disbursement records on Federal Pell Grants, ACGs, National SMART Grants, TEACH Grants, Iraq and Afghanistan Service Grants, and Direct Loans; master promissory note records; records of PLUS loan credit checks and credit appeals; annual aggregated Federal Campus-Based Program (FWS, FSEOG, and Perkins Loan) records from post-secondary institutions; consolidation loan application records; repayment plan application records; and financial literacy (entrance and exit) counseling records from COD (covered by the systems of records titled ''Common Origination and Disbursement (COD) System'' (18–11–02)) or any successor system.

Information in this system also may be obtained from other persons or entities from whom or from which information is obtained following a disclosure under the routine uses set forth below.

Information in this system may also be obtained on individuals who are not aid applicants or recipients under title, IV by Federal or State agencies as part of an interagency agreement or memorandum of understanding to allow analysis of title IV, HEA programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. The Department may make these disclosures on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act of 1974, as amended (Privacy Act), under a computer matching agreement.

(1) *Program Disclosures.* The Department may disclose records from this system of records for the following program purposes:

(a) To promote transparency, and the effective and efficient administration, of title IV, HEA programs, the Department may disclose records to guaranty agencies, educational institutions, financial institutions, and Federal, State, Tribal, and local government agencies;

(b) To detect, prevent, mitigate, and recoup improper payments in title IV, HEA programs, the Department may disclose records to guaranty agencies, educational institutions, financial institutions, and Federal, State, Tribal, and local government agencies;

(c) To support auditors and program reviewers in planning and carrying out their assessments of title IV, HEA program compliance, the Department may disclose records to guaranty agencies, educational institutions, financial institutions and servicers, and Federal, State, Tribal, and local government agencies; and

(d) To assist with the determination of eligibility for loan discharges, the Department may disclose records to holders of loans made under title IV of the HEA.

(2) *Congressional Member Disclosure.* The Department may disclose the records of an individual to a member of Congress or the member's staff when necessary to respond to an inquiry from the member made at the written request of that individual and on behalf of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(3) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate government agency, whether Federal, State, Tribal, or local, charged with investigating or prosecuting that violation or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.

(4) *Litigation and Alternative Dispute Resolution (ADR) Disclosure.*

(a) *Introduction.* In the event that one of the following parties listed in subparagraphs (i) through (v) is involved in judicial or administrative litigation or ADR, or has an interest in judicial or administrative litigation or ADR, the Department may disclose certain records from this system of records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department or any of its components;

(ii) Any Department employee in their official capacity;

(iii) Any Department employee in their individual capacity if the U.S. Department of Justice (DOJ) has been requested to or has agreed to provide or arrange for representation of the employee;

(iv) Any Department employee in their individual capacity when the Department has agreed to represent the employee;

(v) The United States when the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to DOJ.* If the Department determines that disclosure of certain records to DOJ is relevant and necessary to judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to DOJ.

(c) *Adjudicative Disclosure.* If the Department determines that it is relevant and necessary to judicial or administrative litigation or ADR to disclose certain records from this system of records to an adjudicative body before which the Department is authorized to appear or to a person or an entity designated by the Department or otherwise empowered to resolve or mediate disputes, the Department may disclose those records as a routine use to the adjudicative body, person, or entity.

(d) *Disclosure to Parties, Counsel, Representatives, and Witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative, or witness is relevant and necessary to the judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(5) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record from this system of records to a Federal, State, Tribal, or local government agency, or to another public agency or professional organization, maintaining civil, criminal, or other relevant enforcement or other pertinent records if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action; the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, Tribal, local, or other government or public agency or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(6) *Employee Grievance, Complaint, or Conduct Disclosure.* If a record is relevant and necessary to a grievance, complaint, or disciplinary action involving a present or former employee of the Department, the Department may disclose the record during investigation, fact-finding, or adjudication to any party to the grievance, complaint, or action; to the party's counsel or representative; to a witness; or to a designated fact finder, mediator, or other person designated to resolve issues or decide the matter.

(7) *Labor Organization Disclosure.* The Department may disclose a record to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of a labor organization recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.

(8) *Freedom of Information Act (FOIA) and Privacy Act Advice Disclosure.* The Department may disclose records to DOJ or the OMB if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA or the Privacy Act.

(9) *Disclosure to DOJ.* The Department may disclose records to DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(10) *Contract Disclosure.* If the Department contracts with an entity to perform any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. As part of such a contract, the Department shall require the contractor to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(11) *Research Disclosure.* The Department may disclose records to a researcher if the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to the functions or purposes of this system of records. The Department may disclose records from this system of records to that Federal researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(12) *Disclosure in the Course of Responding to a Breach of Data.* The Department may disclose records from this system of records to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that there has been a breach of the system of records; (b) the Department has determined that, as a result of the suspected or confirmed breach, there is a risk of harm to individuals, the Department (including its information systems, programs, and operations), the Federal government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(13) *Disclosure in Assisting Another Agency in Responding to a Breach of Data.* The Department may disclose records from this system to another Federal agency or Federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(14) *Disclosure to the OMB and CBO for Federal Credit Reform Act (FCRA) Support.* The Department may disclose records to OMB and CBO as necessary to fulfill FCRA requirements in accordance with 2 U.S.C. 661b.

(15) *Disclosure to National Archives and Records Administration (NARA).* The Department may disclose records from this system of records to NARA for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The Department electronically stores information at the AWS site referenced in the foregoing section titled ''SYSTEM LOCATION.'' For example, the Department electronically stores, for the entire Federal Student Aid life cycle from application through loan payoff, aid applicant and aid recipient demographic and title IV, HEA aid information such as, but not limited to, FFEL program, FISL program, and Perkins Loan records at the AWS site. The Department also stores electronic master promissory notes, electronic Special Direct Consolidation Loan opportunity applications and promissory notes, electronic requests to repay a Direct Loan under an income-driven repayment plan, and Federal Direct Consolidation Loan applications and promissory notes at the AWS site. Finally, data obtained from the paper promissory notes or the paper loan discharge eligibility form are stored on hard disks at the AWS site. (These are referred to as metadata and are used by the system to link promissory notes or loan discharge eligibility forms to an aid recipient.)

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

With some exceptions, the Department does not generally use the EDMAPS system for the retrieval of individual records. However, system administrators and a handful of privileged users are able to retrieve records from the EDMAPS system by award ID, customer ID, borrower ID, an individual's SSN, last name, first name, and date of birth. Further, the Department uses the EDMAPS system to retrieve individual records to process eligibility information and other information about of aid recipients and to send it to Federal Loan Servicers for the discharge of eligible student loans under the title IV, HEA programs. Internal reports also provide a secure vehicle for approved Department employees and Department contractor staff to access samples of individual records, for example as part of performing program reviews.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The Department has submitted a retention and disposition schedule that covers the primary records contained in this system to NARA for review. The Department will treat these records as ''permanent records,'' as defined in 36 CFR 1220.18, until such time as a final disposition is approved.

The EDMAPS system may also contain certain records that the Department considers, on a case-by-case basis and with the approval of the Agency Records Officer, to be covered by General Records Schedule 5.2, ''Transitory and Intermediary Records.''

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

All users of the system will have a unique user ID with password. In addition to the user ID and password, users must authenticate their Personal Identity Verification (PIV) card to access the system, from within either the Department's Network, the Department's Global Protect Virtual Private Network (VPN), or the Department's vendor's Cisco AnyConnect VPN. Users are required to change their password at least every 60 days in accordance with the Department's information technology standards.

All physical access to the information housed in the EDMAPS system locations is controlled and monitored by security personnel who check each individual entering the building for their employee or visitor badge.

The computer system employed by the Department offers a high degree of resistance to tampering and circumvention with firewalls, encryption, and password protection. This security system limits data access to Department and Department contractor staff on a ''need-to-know'' basis and controls individual users' ability to access and alter records within

the system. All interactions by users of the system are recorded. Users of the EDMAPS system do not see personally identifiable information (PII), even when looking at individual records. EDMAPS tokenizes PII, meaning that PII is swapped out for non-sensitive random values. This does not prevent users of EDMAPS from joining tables containing the same PII data element, because tokenization ensures that the same non-sensitive value is swapped out in every table that has that particular data element, for example SSN or date of birth.

In accordance with the Federal Information Security Management Act of 2002 (FISMA), as amended by the Federal Information Security Modernization Act of 2014, every Department system must receive a signed Authorization to Operate (ATO) from a designated Department official. The ATO process includes a rigorous assessment of security and privacy controls, a plan of actions and milestones to remediate any identified deficiencies, and a continuous monitoring program.

FISMA controls implemented are comprised of a combination of management, operational, and technical controls, and include the following control families: access control, awareness and training, audit and accountability, security assessment and authorization, configuration management, contingency planning, identification and authentication, incident response, maintenance, media protection, physical and environmental protection, planning, personnel security, privacy, risk assessment, system and services acquisition, system and communications protection, system and information integrity, and program management.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record regarding you in this system of records, contact the system manager at the address listed above. You must provide the system manager with the necessary particulars such as your full, legal name, date of birth, address, and any other identifying information requested by the Department while processing the request in order to distinguish between individuals with the same name. Requesters must also reasonably specify the record contents sought. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of your personal record within the system of records, contact the system manager at the address listed above and provide your full, legal name, date of birth, and SSN. Identify the specific items to be changed and provide a written justification for the change. Requests to amend a record must meet the requirements in 34 CFR 5b.7.

NOTIFICATION PROCEDURES:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager at the address listed above. You must provide necessary particulars such as your full, legal name, date of birth, address, and any other identifying information requested by the Department while processing the request to distinguish between individuals with the same name. Requests must meet the requirements in 34 CFR 5b.5, including proof of identity.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

The system of records entitled ''Enterprise Data Management and Analytics Platform Services (EDMAPS)'' (18–11–22) was first published in full in the **Federal Register** on September 13, 2022 (87 FR 56038–56044).

[FR Doc. 2023–15997 Filed 7–27–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2448–000]

Tunica Windpower LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Tunica Windpower LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 10, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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: July 21, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–15956 Filed 7–27–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–101–000.
Applicants: BIF V Hollywood Carry LLC, BEP BIF V Hollywood AIV LLC, BIF V Hollywood Carry II, L.P., Duke Energy Renewables Holding Company, LLC, on Behalf of Its Public Utility Subsidiaries.
Description: Clarification to Exhibit B of June 29, 2023 Joint Application for Authorization Under Section 203 of the Federal Power Act of BIF V Hollywood Carry LLC, et al.
Filed Date: 7/21/23.
Accession Number: 20230721–5171.
Comment Date: 5 p.m. ET 7/31/23.

Docket Numbers: EC23–112–000.
Applicants: Elliott Associates, L.P., Elliott International, L.P., The Liverpool Limited Partnership.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Elliott Associates, L.P., et al.
Filed Date: 7/21/23.
Accession Number: 20230721–5172.
Comment Date: 5 p.m. ET 8/11/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–1703–002.
Applicants: Stanton Battery Energy Storage, LLC.
Description: Tariff Amendment: Second Amendment to Application of MBR Authority to be effective 6/5/2023.
Filed Date: 7/24/23.
Accession Number: 20230724–5082.
Comment Date: 5 p.m. ET 7/31/23.

Docket Numbers: ER23–1749–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2023–07–24_SA 3235 ITC Midwest-Duane Arnold Deficiency Resp 1st Rev GIA (J504) to be effective 4/21/2023.
Filed Date: 7/24/23.
Accession Number: 20230724–5163.
Comment Date: 5 p.m. ET 8/14/23.

Docket Numbers: ER23–2469–000.
Applicants: Lost Creek Wind, LLC.
Description: Market: Revisions to MBR Tariff—Change in Seller Status & Triennial Update to be effective 7/22/2023.
Filed Date: 7/21/23.
Accession Number: 20230721–5157.
Comment Date: 5 p.m. ET 9/19/23.

Docket Numbers: ER23–2470–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 7031; Queue No. AF2–416 to be effective 9/23/2023.
Filed Date: 7/24/23.
Accession Number: 20230724–5065.
Comment Date: 5 p.m. ET 8/14/23.

Docket Numbers: ER23–2471–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA and CSA, SA Nos. 5866 and 5867; Queue No. AD1–082 (amend) to be effective 9/23/2023.
Filed Date: 7/24/23.
Accession Number: 20230724–5116.
Comment Date: 5 p.m. ET 8/14/23.

Docket Numbers: ER23–2472–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: ISA, First Revised Service Agreement No. 5187; Queue No. AF1–007 to be effective 9/25/2023.
Filed Date: 7/24/23.
Accession Number: 20230724–5121.
Comment Date: 5 p.m. ET 8/14/23.

Docket Numbers: ER23–2473–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Designated Entity Agreement, SA No. 7002 between PJM and BGE to be effective 6/23/2023.
Filed Date: 7/24/23.
Accession Number: 20230724–5149.
Comment Date: 5 p.m. ET 8/14/23.

Docket Numbers: ER23–2474–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Designated Entity Agreement, SA No. 7003 between PJM and BGE to be effective 6/23/2023.
Filed Date: 7/24/23.
Accession Number: 20230724–5157.
Comment Date: 5 p.m. ET 8/14/23.

Docket Numbers: ER23–2475–000.
Applicants: Duke Energy Florida, LLC.
Description: § 205(d) Rate Filing: DEF–OUC LGIA SA No. 85 to be effective 10/1/2023.
Filed Date: 7/24/23.
Accession Number: 20230724–5165.
Comment Date: 5 p.m. ET 8/14/23.

Docket Numbers: ER23–2476–000.
Applicants: Rochester Gas and Electric Corporation, New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: Rochester Gas and Electric Corporation submits tariff filing per 35.13(a)(2)(iii: NYISO–RG&E Joint 205: EPC Agreement for Excelsior Energy Center Project to be effective 7/10/2023.
Filed Date: 7/24/23.
Accession Number: 20230724–5169.
Comment Date: 5 p.m. ET 8/14/23.

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, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) 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.

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Dated: July 24, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–16029 Filed 7–27–23; 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: EG23–238–000.
Applicants: Copperhead Solar, LLC.

Description: Copperhead Solar, LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.
Filed Date: 7/21/23.
Accession Number: 20230721–5109.
Comment Date: 5 p.m. ET 8/11/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–1693–000.
Applicants: Lucky Corridor, LLC.
Description: Supplement to April 20, 2023 Application for Renewed Negotiated Rate Authority of Lucky Corridor, LLC.
Filed Date: 7/20/23.
Accession Number: 20230720–5123.
Comment Date: 5 p.m. ET 7/31/23.

Docket Numbers: ER23–2125–001.
Applicants: Saint Solar, LLC.
Description: Tariff Amendment: Saint Solar, LLC Amendment to the Co-Tenancy Shared Facilities Agreement to be effective 7/21/2023.
Filed Date: 7/21/23.
Accession Number: 20230721–5126.
Comment Date: 5 p.m. ET 8/11/23.

Docket Numbers: ER23–2456–000.
Applicants: Platteview Solar, LLC.
Description: Baseline eTariff Filing: Platteview Solar, LLC MBR Tariff to be effective 9/1/2023.
Filed Date: 7/21/23.
Accession Number: 20230721–5002.
Comment Date: 5 p.m. ET 8/11/23.

Docket Numbers: ER23–2457–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 6103; Queue Nos. AC1–091/092/093 et al to be effective 9/18/2023.
Filed Date: 7/21/23.
Accession Number: 20230721–5038.
Comment Date: 5 p.m. ET 8/11/23.

Docket Numbers: ER23–2458–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Notice of Cancellation of ISA, SA No. 6835; Queue No. AD2–162 to be effective 6/21/2023.
Filed Date: 7/21/23.
Accession Number: 20230721–5044.
Comment Date: 5 p.m. ET 8/11/23.

Docket Numbers: ER23–2459–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Seminole Solar Projects (Seminole V Solar + BESS) LGIA Filing to be effective 7/10/2023.
Filed Date: 7/21/23.
Accession Number: 20230721–5087.
Comment Date: 5 p.m. ET 8/11/23.

Docket Numbers: ER23–2460–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Seminole Solar Projects (Seminole VI Solar + BESS) LGIA Filing to be effective 7/10/2023.
Filed Date: 7/21/23.
Accession Number: 20230721–5089.
Comment Date: 5 p.m. ET 8/11/23.

Docket Numbers: ER23–2461–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Seminole Solar Projects (Seminole VII Solar + BESS) LGIA Filing to be effective 7/10/2023.
Filed Date: 7/21/23.
Accession Number: 20230721–5090.
Comment Date: 5 p.m. ET 8/11/23.

Docket Numbers: ER23–2462–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Seminole Solar Projects (Seminole VIII Solar + BESS) LGIA Filing to be effective 7/10/2023.
Filed Date: 7/21/23.
Accession Number: 20230721–5091.
Comment Date: 5 p.m. ET 8/11/23.

Docket Numbers: ER23–2463–000.
Applicants: Idaho Power Company.
Description: § 205(d) Rate Filing: IPC/PAC JOOA Agreement—Changes to RS 158 to be effective 12/31/9998.
Filed Date: 7/21/23.
Accession Number: 20230721–5101.
Comment Date: 5 p.m. ET 8/11/23.

Docket Numbers: ER23–2464–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2023–07–21 Competitive Solicitation Deposit and Cap Amendment to be effective 9/20/2023.
Filed Date: 7/21/23.
Accession Number: 20230721–5113.
Comment Date: 5 p.m. ET 8/11/23.

Docket Numbers: ER23–2465–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Ministerial Clean-Up, Tariff, Attachment DD, Section 5.14 to be effective 6/23/2023.
Filed Date: 7/21/23.
Accession Number: 20230721–5118.
Comment Date: 5 p.m. ET 8/11/23.

Docket Numbers: ER23–2466–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amend ISA/CSA, SA 4492/4494, Queue No. AA2–060; Cancel ISA/CSA, SA 4501/4502 to be effective 7/31/2023.
Filed Date: 7/21/23.
Accession Number: 20230721–5124.
Comment Date: 5 p.m. ET 8/11/23.

Docket Numbers: ER23–2467–000.
Applicants: Saint Energy Storage II, LLC.
Description: Baseline eTariff Filing: Saint Energy Storage II, LLC Certificate of Concurrence to the Co-Tenancy SFA to be effective 7/21/2023.
Filed Date: 7/21/23.
Accession Number: 20230721–5127.
Comment Date: 5 p.m. ET 8/11/23.

Docket Numbers: ER23–2468–000.
Applicants: Storey Energy Center, LLC.
Description: Baseline eTariff Filing: Storey Energy Center, LLC Certificate of Concurrence to the Co-Tenancy SFA to be effective 7/21/2023.
Filed Date: 7/21/23.
Accession Number: 20230721–5129.
Comment Date: 5 p.m. ET 8/11/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

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Dated: July 21, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–15958 Filed 7–27–23; 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 and Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–908–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates—UGI to Colonial 8984486 eff 7–22–23 to be effective 7/22/2023.
Filed Date: 7/21/23.
Accession Number: 20230721–5024.
Comment Date: 5 p.m. ET 8/2/23.

Docket Numbers: RP23–909–000.
Applicants: Great Lakes Gas Transmission Limited Partnership.
Description: Compliance filing: Semi-Annual Transporter's Use Report July 2023 to be effective N/A.
Filed Date: 7/21/23.
Accession Number: 20230721–5065.
Comment Date: 5 p.m. ET 8/2/23.

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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.

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Dated: July 21, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–15957 Filed 7–27–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2450–000]

Great Cove Solar LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Great Cove Solar LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 10, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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Dated: July 21, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–15955 Filed 7–27–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD23–4–000]

Billing Procedures for Annual Charges for the Costs of Other Federal Agencies for Administering Part I of the Federal Power Act; Notice Reporting Costs for Other Federal Agencies' Administrative Annual Charges for Fiscal Year 2022

1. The Federal Energy Regulatory Commission (Commission) is required to determine the reasonableness of costs incurred by other Federal agencies (OFAs) [1] in connection with their participation in the Commission's proceedings under the Federal Power Act (FPA) Part I [2] when those agencies seek to include such costs in the administrative charges licensees must pay to reimburse the United States for the cost of administering Part I.[3] The Commission's *Order on Remand and Acting on Appeals of Annual Charge Bills* [4] determined which costs are eligible to be included in the administrative annual charges. This order also established a process whereby the Commission would annually request each OFA to submit cost data, using a form [5] specifically designed for this purpose. In addition, the order established requirements for detailed cost accounting reports and other documented analyses to explain the cost assumptions contained in the OFAs' submissions.

2. The Commission has completed its review of the forms and supporting documentation submitted by the U.S. Department of the Interior (Interior), the U.S. Department of Agriculture (Agriculture), and the U.S. Department of Commerce (Commerce) for fiscal year (FY) 2022. This notice reports the costs the Commission included in its administrative annual charges for FY 2023.

Scope of Eligible Costs

3. The basis for eligible costs that should be included in the OFAs' administrative annual charges is prescribed by the Office of Management and Budget's (OMB) Circular A–25—*User Charges* and the Federal Accounting Standards Advisory Board's Statement of Federal Financial Accounting Standards (SFFAS) Number 4—*Managerial Cost Accounting Concepts and Standards for the Federal Government.* Circular A–25 establishes Federal policy regarding fees assessed for government services and provides specific information on the scope and type of activities subject to user charges. SFFAS Number 4 provides a conceptual framework for federal agencies to determine the full costs of government goods and services.

4. Circular A–25 provides for user charges to be assessed against recipients of special benefits derived from federal activities beyond those received by the general public.[6] With regard to licensees, the special benefit derived from federal activities is the license to operate a hydropower project. The guidance provides for the assessment of sufficient user charges to recover the *full* costs of services associated with these special benefits.[7] SFFAS Number 4 defines full costs as the costs of resources consumed by a specific governmental unit that contribute directly or indirectly to a provided service.[8] Thus, pursuant to OMB requirements and authoritative accounting guidance, the Commission must base its OFA administrative annual charge on all direct and indirect costs incurred by agencies in administering Part I of the FPA. The special form the Commission designed for this purpose, the ''Other Federal Agency Cost Submission Form,'' captures the full range of costs recoverable under the FPA and the referenced accounting guidance.[9]

5. Our guidance directs the OFAs to ensure that the costs are for FPA Part I activities and that the documented costs are segregated between activities covering municipal projects from those for non-municipal projects. This year, we also asked the OFAs to provide additional narrative descriptions of the type of work performed in administering FPA Part I (including a list of the projects for which work was performed during the covered period) and a detailed description of what managerial/administrative or other activities are included in the non-specific category.

Commission Review of OFA Cost Submittals

5. The Commission received cost forms and other supporting documentation from the Departments of the Interior, Agriculture, and Commerce. The Commission completed a review of each OFA's cost submission forms and supporting reports. In its examination of the OFAs' cost data, the Commission considered each agency's ability to demonstrate a system or process which effectively captured, isolated, and reported FPA Part I costs as required by the ''Other Federal Agency Cost Submission Form.''

6. The Commission held a Technical Conference on March 23, 2023 to report its initial findings to licensees and OFAs. Representatives for several licensees and most of the OFAs attended the conference. Following the technical conference, a transcript was posted, and licensees had the opportunity to submit comments to the Commission regarding its initial review.

7. Idaho Falls Group (Idaho Falls) filed written comments [10] raising concerns that several of the agencies failed to provide a list of projects for which activities were taken during the fiscal year. The issues are addressed in the Appendix to this notice.

8. After additional review, full consideration of the comments presented, and in accordance with the previously cited guidance, the Commission accepted as reasonable any costs reported via the cost submission forms that were clearly documented in the OFAs' accompanying reports and/or analyses. These documented costs will be included in the administrative annual charges for FY 2023.

[1] The OFAs include: the U.S. Department of the Interior (Bureau of Land Management, Bureau of Reclamation, National Park Service, U.S. Fish and Wildlife Service, Office of the Solicitor, Office of Environmental Policy & Compliance); the U.S. Department of Agriculture (U.S. Forest Service); the U.S. Department of Commerce (National Marine Fisheries Service); and the U.S. Army Corps of Engineers.

[2] 16 U.S.C. 791a-823d (2018).

[3] *See id.* 803(e)(1) and 42 U.S.C. 7178 (2018).

[4] 107 FERC ¶ 61,277, *order on reh'g,* 109 FERC ¶ 61,040 (2004).

[5] Other Federal Agency Cost Submission Form, *available at https://www.ferc.gov/docs-filing/forms.asp#ofa.*

[6] OMB Circular A–25 6.

[7] OMB Circular A–25 6.a.2.

[8] SFFAS Number 4 ¶ 7.

[9] For the past few years, the form has excluded ''Other Direct Costs'' to avoid the possibility of confusion that occurred in earlier years as to whether costs were being entered twice as ''Other Direct Costs'' and ''Overhead.''

[10] *See* Letter from Michael A. Swiger, Van Ness Feldman, to the Honorable Kimberly D. Bose, FERC, Docket No. AD23–4–000 (filed April 17, 2023).

Summary of Reported & Accepted Costs for Fiscal Year 2022

	Municipal		Non-Municipal		TOTAL	
	Reported	Accepted	Reported	Accepted	Reported	Accepted
Department of Interior						
Bureau of Indian Affairs	-	-	-	-	-	-
Bureau of Land Management	-	-	34,629	-	34,629	-
Bureau of Reclamation	103	-	31,137	-	31,239	-
National Park Service	67,871	67,871	659,727	659,727	727,598	727,598
U.S. Fish and Wildlife Service	58,685	58,685	1,243,437	1,243,417	1,302,122	1,302,102
Office of the Solicitor	54,482	54,482	263,556	263,556	318,038	318,038
Office of Environmental Policy & Compliance	63,805	41,734	107,726	129,796	171,531	171,531
Office of Hearings and Appeals	-	-	-	-	-	-
Department of Agriculture						
U.S. Forest Service	444,879	59,693	805,185	480,172	1,250,064	539,865
Department of Commerce						
National Marine Fisheries Service	1,040,398	1,037,056	1,059,698	1,056,297	2,100,096	2,093,353
TOTAL	1,730,223	1,319,521	4,205,094	3,832,966	5,935,317	5,152,487

Figure 1

9. Figure 1 summarizes the total reported costs incurred by Interior, Agriculture, and Commerce with respect to their participation in administering Part I of the FPA. Additionally, Figure 1 summarizes the reported costs that the Commission determined were clearly documented and accepted for inclusion in its FY 2023 administrative annual charges.

Summary Findings of Commission's Costs Review

10. As presented in Figure 1, the Commission has determined that $5,152,487 of the $5,935,317 in total reported costs were reasonable and clearly documented in the OFAs' accompanying reports and/or analyses. Based on this finding, 13% of the total reported cost was determined to be unreasonable. The Commission notes the most significant issue with the documentation provided by the OFAs was the lack of detailed description of type of work performed and a list of projects for work performed during the fiscal year.

11. The cost reports that the Commission determined were clearly documented and supported could be traced to detailed cost-accounting reports, which reconciled to data provided from agency financial systems or other pertinent source documentation. A further breakdown of these costs is included in the Appendix to this notice, along with an explanation of how the Commission determined their reasonableness.

Points of Contact

12. If you have any questions regarding this notice, please contact Raven Rodriguez at (202) 502–6276.

Dated: July 24, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

Appendix

The supporting documentation provided by Interior's Bureau of Land Management (BLM), Bureau of Reclamation (Reclamation), National Park Service (NPS), U.S. Fish and Wildlife Service (FWS), Office of Environmental Policy & Compliance (OEPC), and Office of the Solicitor (SOL) can be found in the Commission's eLibrary electronic filing system using the following information:

Docket No. AD23–4–000

As part of their supporting documentation for FY 2022, the participating Interior organizations provided detailed cost-accounting reports from their financial accounting systems that clearly tracked FPA Part I-related costs through specific job and activity-based codes. The reporting entities also further clarified how FPA Part I-related costs were being recorded and classified, including job cost-code tables to support their municipal and non-municipal distinctions, narrative descriptions of the type of work performed and listing of the projects for which work was performed. In addition, the various Interior organizations' indirect cost rates were substantiated and deemed reasonable based on the detailed explanation provided in their submission. Figures 2 through 8 below detail the specific reported and accepted cost categories for these organizations.

Idaho Falls group raises concerns regarding BLM's cost submission not containing information of work performed or a list of projects. BLM subsequently provided a list of five projects for which BLM performed work. The projects listed are licensed projects that are partially located on BLM land. However, BLM provided no statement even generally describing what work was done on these projects. Therefore, we are disallowing the costs.

Bureau of Land Management

	Municipal		Non-Municipal		TOTAL	
	Reported	Accepted	Reported	Accepted	Reported	Accepted
Direct Costs						
Salaries		-	19,620	-	19,620	-
Benefits	-	-	5,484	-	5,484	-
Travel			-	-	-	-
Other	-	-	-	-	-	-
Indirect Costs						
Bureau Level	-	-	5,297	-	5,297	-
Departmental Level	-	-	4,228	-	4,228	-
TOTAL	-	-	34,629	-	34,629	-

Figure 2

Idaho Falls Group proposes exclusion of all of Reclamation costs because the projects listed by Reclamation were all federal projects rather than projects licensed under Part I of the FPA. We reviewed the submittal and confirmed that no projects subject to the Commission's jurisdiction were listed; therefore, we are disallowing the costs submitted by Reclamation costs.

Bureau of Reclamation

	Municipal		Non-Municipal		TOTAL	
	Reported	Accepted	Reported	Accepted	Reported	Accepted
Direct Costs						
Salaries	56	-	13,913	-	13,969	-
Benefits	15	-	4,570	-	4,585	-
Travel	-	-	-	-	-	-
Other	-	-	-	-	-	-
Indirect Costs						
Bureau Level	20	-	9,541	-	9,561	-
Departmental Level	12	-	3,113	-	3,125	-
TOTAL	103	-	31,137	-	31,240	-

Figure 3

Idaho Falls Group raises concerns regarding the Commission's acceptance of NPS' costs arguing that NPS' cost of non-project specific work, $342,626.76, comprises 55% of its total direct costs and lacks sufficient explanation. NPS, in response to Idaho Falls' comment, notes that it does not have a system in place to track allowable costs incurred by NPS staff in other programs and parks across the Service. It states that if these costs were included in the submittal, the percentage of non-specific costs would not be as high. Subsequent response contain an adequate explanation of non-specific costs as well as a list of projects. We are accepting the submitted costs.

National Park Service

	Municipal		Non-Municipal		TOTAL	
	Reported	Accepted	Reported	Accepted	Reported	Accepted
Direct Costs						
Salaries	41,638	41,638	388,894	388,894	430,532	430,532
Benefits	16,451	16,451	161,293	161,293	177,744	177,744
Travel			2,399	2,399	2,399	2,399
Other			14,490	14,490	14,490	14,490
Indirect Costs						
Bureau Level					-	-
Departmental Level	9,782	9,782	92,651	92,651	102,433	102,433
TOTAL	67,871	67,871	659,727	659,727	727,598	727,598

Figure 4

Idaho Falls Group raises no concerns regarding the Commission's acceptance of FWS' costs. FWS provided a list of projects for all but one of its branches, with a brief description of activities undertaken for each. We accept most of the submitted costs.

U.S. Fish and Wildlife Service

	Municipal		Non-Municipal		TOTAL	
	Reported	Accepted	Reported	Accepted	Reported	Accepted
Direct Costs						
Salaries	29,938	29,938	648,187	648,187	678,125	678,125
Benefits	12,028	12,028	239,651	239,651	251,679	251,679
Travel			1,864	1,864	1,864	1,864
Other			20		20	-
Indirect Costs						
Bureau Level	9,652	9,652	204,203	204,203	213,855	213,855
Departmental Level	7,067	7,067	149,512	149,512	156,579	156,579
TOTAL	58,685	58,685	1,243,437	1,243,417	1,302,122	1,302,102

Figure 5

Idaho Falls Group raises concerns regarding the Commission's acceptance of costs submitted by SOL, arguing that while SOL did submit a general description of the types of activities in each cost code, it did not provide a list of projects that the its staff worked on during the fiscal year. At the technical conference, the SOL representative acknowledged that SOL did not provide a project list, noting that SOL's system was not set up for project by project reporting. Because the new requirement to provide a list of projects was not provided to the OFAs until after the fiscal year had passed, we will not use the missing project list as a disqualifying factor for this billing cycle. The submittal otherwise provided sufficient information for a determination. Therefore, we are accepting the submitted costs.

Office of the Solicitor

	Municipal		Non-Municipal		TOTAL	
	Reported	Accepted	Reported	Accepted	Reported	Accepted
Direct Costs						
Salaries	34,716	34,716	166,285	166,285	201,001	201,001
Benefits	11,914	11,914	59,285	59,285	71,199	71,199
Travel					-	-
Other					-	-
Indirect Costs						
Bureau Level	-		-		-	-
Departmental Level	7,852	7,852	37,986	37,986	45,838	45,838
TOTAL	54,482	54,482	263,556	263,556	318,038	318,038

Figure 6

Based on OEPC's initial submission, we originally disallowed costs in the non-specific cost category due to the absence of an explanation. Idaho Falls, in its comments, noted its agreement with the proposed disallowance, noting the high percentage of non-specific costs. After the technical conference, OEPC provided clarification containing the reclassification of some erroneously coded costs as well as an explanation of non-specific costs. We find the explanations reasonable and accept the costs.

Office of Environmental Policy & Compliance

	Municipal		Non-Municipal		TOTAL	
	Reported	Accepted	Reported	Accepted	Reported	Accepted
Direct Costs						
Salaries	33,062	21,648	55,785	67,198	88,847	88,847
Benefits	12,967	8,459	21,928	26,436	34,895	34,895
Travel					-	-
Other					-	-
Indirect Costs						
Bureau Level	10,025	6,557	16,926	20,394	26,951	26,951
Departmental Level	7,751	5,070	13,087	15,768	20,838	20,838
TOTAL	63,805	41,734	107,726	129,796	171,531	171,531

Figure 7

The supporting documentation provided by Agriculture's U.S. Forest Service can be found in the Commission's eLibrary electronic filing system using the following information: Docket No. AD23–4–000

As part of its supporting documentation for FY 2022, Forest Service provided detailed cost-accounting reports from its financial accounting system that clearly tracked FPA Part I-related costs through specific job and activity-based codes. Forest Service also further clarified how FPA Part I-related costs were being recorded and classified, including job cost-code tables to support its municipal and non-municipal distinctions, narrative descriptions of the type of work performed and listing of the projects for which work was performed. In addition, its indirect cost rates were substantiated and deemed reasonable based on the detailed explanation provided in its submission.

Idaho Falls states in its comments that it concurs with our findings with regard to the costs submitted by Forest Service.

U.S. Forest Service

	Municipal		Non-Municipal		TOTAL	
	Reported	Accepted	Reported	Accepted	Reported	Accepted
Direct Costs						
Salaries	269,331	38,528	511,327	306,249	780,658	344,777
Benefits	98,438	14,228	186,394	118,092	284,832	132,320
Travel	298	78	447	667	745	745
Contracts	29,002	-	16,313	-	45,315	-
Indirect Costs						
Bureau Level	47,810	6,858	90,704	55,164	138,514	62,023
Departmental Level	-	-	-	-	-	-
TOTAL	444,879	59,693	805,185	480,172	1,250,064	539,865

Figure 8

The supporting documentation provided by the U.S. Department of Commerce's National Marine Fisheries Service (NMFS) can be found in the Commission's eLibrary electronic filing system using the following information: Docket No. AD23–4–000

As part of its supporting documentation for FY 2022, NMFS provided detailed cost-accounting reports from its financial accounting system that clearly tracked FPA Part I-related costs through specific job and activity-based codes. NMFS also further clarified how FPA Part I-related costs were being recorded and classified, including job cost-code tables to support its municipal and non-municipal distinctions, narrative descriptions of the type of work performed and listing of the projects for which work was performed. In addition, its indirect cost rates were substantiated and deemed reasonable based on the detailed explanation provided in its submission.

Idaho Falls argues in its comments that all costs associated with NMFS' PHY General/Non-Specific category should be disallowed because NMFS fails to explain why the majority of time is spent on non-project specific activities that are only generally related to FPA Part I. Following the technical conference, NMFS provided a fuller description of the non-project specific work performed. We find the explanations reasonable and accept the costs.

National Marine Fisheries Service

	Municipal		Non-Municipal		TOTAL	
	Reported	Accepted	Reported	Accepted	Reported	Accepted
Direct Costs						
Salaries	694,070	690,729	713,042	709,640	1,407,112	1,400,369
Benefits	271,513	271,512	273,313	273,314	544,826	544,826
Travel	4,746	4,746	1,975	1,975	6,721	6,721
Contracts	68,695	68,695	69,969	69,969	138,664	138,664
Indirect Costs						
Bureau Level	1,374	1,374	1,399	1,399	2,773	2,773
Departmental Level					-	-
TOTAL	1,040,398	1,037,056	1,059,698	1,056,297	2,100,096	2,093,353

Figure 9

[FR Doc. 2023–16030 Filed 7–27–23; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2438–200]

C–S Canal Hydro, 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. *Application Type:* Request for temporary variance of Article 405.

b. *Project No:* 2438–200.

c. *Date Filed:* May 12, 2023, and supplemented July 13, 2023.

d. *Applicant:* C–S Canal Hydro, LLC (licensee).

e. *Name of Project:* Waterloo and Seneca Falls Hydroelectric Project.

f. *Location:* The project is located on the Seneca River in Seneca, Yates, Schuyler, and Ontario counties, New York, and does not occupy any Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Jonathan Dollard, Gravity Renewables, Inc., 5 Dartmouth Drive, Suite 104, Auburn, NH 03032, (303) 440–3378, *jdollard@gravityrenewables.com.*

i. *FERC Contact:* Jeremy Jessup, (202) 502–6779, *Jeremy.Jessup@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* August 23, 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 the docket number P–2438–200. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee proposes a temporary variance from the target impoundment elevation requirements in Article 405 of the license at the Seneca Falls Development for required dam safety repairs. The licensee lowered Van Cleef Lake 2 feet to 428.5 feet Barge Canal Datum in coordination with the Commission's Division of Dam Safety and Inspections—New York Regional Office. The licensee proposes to maintain this elevation until repairs can be permitted and completed which is currently expected to be accomplished within six months of the start of the drawdown (*i.e.,* by October 29, 2023).

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: July 24, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–16048 Filed 7–27–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2023–0074; FRL–10886–01–OCSPP]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations and Amend Registrations To Terminate Certain Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of requests by the registrants to voluntarily cancel their registrations of certain pesticide products and to amend their pesticide product registrations to terminate one or more uses. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registrations have been cancelled or uses terminated only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before August 28, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2023–0074, 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: Christopher Green, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–2707; email address: *green.christopher@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, 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.

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.*

II. What action is the Agency taking?

This notice announces receipt by EPA of requests from registrants to cancel certain and terminate certain uses of certain product registrations. The affected products and the registrants making the requests are identified in Tables 1–3 of this unit.

Unless a request is withdrawn by the registrant or if the Agency determines that there are substantive comments that warrant further review of this request, EPA intends to issue an order canceling and amending the affected registrations.

TABLE 1—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Company No.	Product name	Active ingredients
9688–168	9688	Chemsico RTU Herbicide G II	Glyphosate-isopropylammonium (103601/38641–94–0)—(1.92%).
9688–169	9688	Chemsico RTU Herbicide G 1	Glyphosate-isopropylammonium (103601/38641–94–0)—(.96%).
9688–177	9688	Chemsico Concentrate Herbicide G 1	Glyphosate-isopropylammonium (103601/38641–94–0)—(18%).
9688–178	9688	Chemsico Concentrate Herbicide G II	Glyphosate-isopropylammonium (103601/38641–94–0)—(41%).
9688–189	9688	Chemsico Concentrate Herbicide G III	Glyphosate-isopropylammonium (103601/38641–94–0)—(25%).
34704–1150	34704	LPI.A004	Trinexapac-ethyl (112602/95266–40–3)—(12%).
87373–117	87373	ARG Mancozeb MUP	Mancozeb (014504/8018–01–7)—(86.2%).
CA–040002	54555	Dormex	Cyanamide (014002/420–04–2)—(50%).
OR–100015	2749	Shield Emulsifiable Concentrate	Chlorpropham (018301/101–21–3)—(36%).

TABLE 1A—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Company No.	Product name	Active ingredients
264–334	264	Sevin Brand RP2 Carbaryl Insecticide	Carbaryl (056801/63–25–2)—(22.5%).
264–335	264	Sevin Brand RP4 Carbaryl Insecticide	Carbaryl (056801/63–25–2)—(43%).
264–429	264	Sevin Brand Granular Carbaryl Insecticide	Carbaryl (056801/63–25–2)—(7%).
432–982	432	Sevin Brand 97.5% Insecticide	Carbaryl (056801/63–25–2)—(97.5%).
432–1209	432	R & M Garden Dust 5%	Carbaryl (056801/63–25–2)—(5%).
432–1210	432	R & M Garden Dust 10%	Carbaryl (056801/63–25–2)—(10%).
432–1211	432	CP Carbaryl Insecticide Spray—RTU	Carbaryl (056801/63–25–2)—(.126%).
432–1212	432	Sevin Grub Killer Granules (2% Sevin)	Carbaryl (056801/63–25–2)—(2%).
432–1227	432	Sevin SL Carbaryl Insecticide	Carbaryl (056801/63–25–2)—(43%).
432–1511	432	Sevin 4MC Manufacturing Use Concentrate Insecticide.	Carbaryl (056801/63–25–2)—(43%).
432–1525	432	Sevin Brand Carbaryl Technical	Carbaryl (056801/63–25–2)—(99.45%).

The registrants of the products listed in Table 1A of Unit II, have requested 18-months after cancellation to sell existing stocks.

TABLE 1B—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Company No.	Product name	Active ingredients
61483–2	61483	Dura-Treet 40 Wood Preserver	Pentachlorophenol (063001/87–86–5)—(34%).
61483–3	61483	KMG–B Penta OL Technical Penta	Pentachlorophenol (063001/87–86–5)—(86%).
61483–94	61483	KMG–B Penta OL Penta Blocks	Pentachlorophenol (063001/87–86–5)—(86%).
97080–10	97080	Stella-Jones Penta	Pentachlorophenol (063001/87–86–5)—(86%).

The registrants of the products listed in Table 1B of Unit II, have requested an effective date of cancellation of February 29, 2024, for the products listed in Table 1B of Unit II.

TABLE 2—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

Registration No.	Company No.	Product name	Active ingredient	Uses to be terminated
67690–2	67690	A-Rest Solution	Ancymidol (108601/12771–68–5)—(.0264%).	Interior scape.
94730–3	94730	Bifenthrin Technical	Bifenthrin (128825/82657–04–3)—(98.37%).	Termiticide and Soil Contact Non-Fumigation Treatment, Wood Treatment and Protection, Christmas trees, Conifer Seed Orchards, Nonbearing Fruit and Nut Trees, Greenhouse Grown Ornamental Trees, Shrubs, Plants, Flowers, Outdoor Insect Control, Indoor Insect Control, Residential Lawns, Ornamental Plants, Trees, Shrubs, and Vines (Woody), Turfgrass (including golf courses), Sod Farms & Food Handling Establishments: Places other than private residences in which food is held, processed, prepared, or served.

Table 3 of this unit includes the names and addresses of record for the registrants of the products listed in Table 1, Table 1A, Table 1B and Table 2 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1, Table 1A, Table 1B and Table 2 of this unit.

TABLE 3—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS

EPA Company No.	Company name and address
264	Bayer CropScience, LP, Agent Name: Bayer CropScience, LLC, 801 Pennsylvania Avenue, Suite 900, Washington, DC 20004.
432	Bayer Environmental Science, A Division of Bayer CropScience, LP, 700 Chesterfield Parkway West, Chesterfield, MO 63017.
9688	Chemsico, A Division of United Industries Corp., P.O. Box 142642, St. Louis, MO 63114–0642.
2749	Aceto Life Sciences, LLC, 4 Tri Harbor Court, Port Washington, NY 11050–4661.
34704	Loveland Products, Inc., P.O. Box 1286, Greeley, CO 80632–1286.
54555	Alzchem Trostberg GmbH, Agent Name: Alzchem, LLC, 11390 Old Roswell Road, St. 124, Alpharetta, GA 30009.
61483	KMG-Bernuth, Inc., 300 Throckmorton, Suite 1900, Fort Worth, TX 76102.
67690	Sepro Corporation, 11550 N Meridian Street, Suite 600, Carmel, IN 46032.
87373	Argite, LLC, Agent Name: Pyxis Regulatory Consulting, Inc., 4110 136th Street Ct. NW, Gig Harbor, WA 98332.
94730	Generic Crop Science, LLC, 1887 Whitney Mesa Drive, #9740, Henderson, NV 89014–2069.
97080	Arbor Preservative Systems, LLC, Agent Name: Lewis & Harrison, 2461 South Clark Street, Suite 710, Arlington, VA 22202.

III. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA (7 U.S.C. 136d(f)(1)(B)) requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) (7 U.S.C. 136d(f)(1)(C)) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or
2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants have requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 30-day comment period on the proposed requests.

IV. Procedures for Withdrawal of Requests

Registrants who choose to withdraw a request for product cancellation or use termination should submit the withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the action. If the requests for voluntary cancellation and amendments to terminate uses are granted, the Agency intends to publish the cancellation order in the **Federal Register**.

In any order issued in response to these requests for cancellation of product registrations and for amendments to terminate uses, EPA proposes to include the following provisions for the treatment of any existing stocks of the products listed in Table 1, Table 1A, Table 1B and Table 2 of Unit II.

A. For: 264–334, 264–335, 264–429, 432–982, 432–1209, 432–1210, 432–1211, 432–1212, 432–1227, 432–1511, and 432–1525

For 264–334, 264–335, 264–429, 432–982, 432–1209, 432–1210, 432–1211, 432–1212, 432–1227, 432–1511, and 432–1525, listed in Table 1A of Unit II, the registrants have requested 18-months after the effective date of the cancellation, which will be the date of publication of the cancellation order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing the products identified in Table 1A of Unit II, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

B. For: 61483–2; 61483–3; 61483–94, and 97080–10

For 61483–2; 61483–3; 61483–94, and 97080–10, listed in Table 1B of Unit II, the registrants of the products listed in Table 1B of Unit II, have requested an effective date of cancellation of February 29, 2024, for the products listed in Table 1B of Unit II, registrants will be permitted to sell and distribute existing stocks of voluntarily canceled products for 1 year after the effective date of the cancellation, which will be March 01, 2025. Thereafter, registrants will be prohibited from selling or distributing the products identified in Table 1B of Unit II, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

For all other voluntary product cancellations listed in Table 1 of Unit II, registrants will be permitted to sell and distribute existing stocks of voluntarily canceled products for 1 year after the effective date of the cancellation, which will be the date of publication of the cancellation order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing the products identified in Table 1 of Unit II, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

Once EPA has approved product labels reflecting the requested amendments to terminate uses, listed in Table 2 of Unit II, registrants will be permitted to sell or distribute products under the previously approved labeling for a period of 18 months after the date of **Federal Register** publication of the cancellation order, unless other restrictions have been imposed. Thereafter, registrants will be prohibited from selling or distributing the products whose labels include the terminated uses identified in Table 2 of Unit II, except for export consistent with FIFRA section 17 or for proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of canceled products and products whose labels include the terminated uses until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products and terminated uses.

Authority: 7 U.S.C. 136 *et seq.*

Dated: July 19, 2023.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2023–16047 Filed 7–27–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–079]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed July 17, 2023 10 a.m. EST Through July 24, 2023 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

EIS No. 20230089, Draft, FHWA, VA, Bowers Hill Interchange Improvements Study, Comment Period Ends: 09/11/2023, Contact: John Simkins 804–775–3347.

EIS No. 20230090, Draft, USACE, FL, Tampa Harbor Navigation Improvement Study Draft Integrated General Reevaluation Report and Environmental Impact Statement, Comment Period Ends: 09/11/2023, Contact: Graceann Sparkman 904–232–3738.

EIS No. 20230091, Draft, NPS, MI, Isle Royale National Park Wilderness Stewardship Plan, Comment Period Ends: 09/26/2023, Contact: Denice Swanke 906–231–4961.

Dated: July 24, 2023.

Nancy Abrams,

Associate Director, Office of Federal Activities.

[FR Doc. 2023–16024 Filed 7–27–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2018–0534, FRL–10922–01–OLEM]

Agency Information Collection Activities; Proposed Collection; Comment Request; Identification, Listing and Rulemaking Petitions (Renewal), EPA ICR No. 1189.32, OMB Control No. 2050–0053

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit the information collection request (ICR), Identification, Listing and Rulemaking Petitions (Renewal), EPA ICR No. 1189.32, OMB Control No. 2050–0053 to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described in **SUPPLEMENTARY INFORMATION**. This is a proposed extension of the ICR, which is currently approved through March 31, 2024. 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.

DATES: Comments must be submitted on or before September 26, 2023.

ADDRESSES: Submit your comments, referencing by Docket ID No. EPA–HQ–OLEM–2018–0534, at *https://www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is

restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov//dockets.*

FOR FURTHER INFORMATION CONTACT: Peggy Vyas, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–0453; *vyas.peggy@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov.* Materials can also be viewed at the Reading Room located at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays). The telephone number for the Docket Center is 202–566–1744.

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Under the authority of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, Congress directed the U.S. Environmental Protection Agency to implement a comprehensive program for the safe management of hazardous waste. In addition, Congress wrote that ''[a]ny person may petition the Administrator for the promulgation, amendment or repeal of any regulation'' under RCRA (section 7004(a)). 40 CFR parts 260 and 261 contain provisions that allow regulated entities to apply for petitions, variances, exclusions, and exemptions from various RCRA requirements.

The following are some examples of information required from petitioners under 40 CFR part 260. Under 40 CFR 260.20(b), all rulemaking petitioners must submit basic information with their demonstrations, including name, address, and statement of interest in the proposed action. Under § 260.21, all petitioners for equivalent testing or analytical methods must include specific information in their petitions and demonstrate to the satisfaction of the Administrator that the proposed method is equal to, or superior to, the corresponding method in terms of its sensitivity, accuracy, and reproducibility. Under § 260.22, petitions to amend part 261 to exclude a waste produced at a particular facility (more simply, to delist a waste) must meet extensive informational requirements. When a petition is submitted, the Agency reviews materials, deliberates, publishes its tentative decision in the **Federal Register**, and requests public comment. The EPA also may hold informal public hearings (if requested by an interested person or at the discretion of the Administrator) to hear oral comments on its tentative decision. After evaluating all comments, the EPA publishes its final decision in the **Federal Register**.

With this renewal, this ICR will no longer include the burden associated with the disposal of coal combustion residuals (CCR) from electric utilities as solid waste under Subtitle D of RCRA, found at 40 CFR part 257, subpart D. That burden is covered by OMB Control No. 2050–0223.

Form numbers: None.

Respondents/affected entities: Business and other for-profit as well as States, Local and Tribal governments.

Respondent's obligation to respond: required to obtain or retain a benefit (RCRA Sections 1008, 4004, 4005(a)).

Estimated number of respondents: 24,777.

Frequency of response: On occasion.

Total estimated burden: 127,889 hours. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $18,347,854, which includes $10,024,078 annualized labor costs and $8,323,776 annualized capital or O&M costs.

Changes in estimates: The burden hours are likely to stay substantially the same.

Dated: July 23, 2023.

Carolyn Hoskinson,

Director Office of Resource Conservation and Recovery.

[FR Doc. 2023–15973 Filed 7–27–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0751; FRL–11138–01–OCSPP]

Pesticide Registration Review; Decisions and Case Closures for Several Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's interim or final registration review decisions for the following chemicals: dioctyl sodium sulfosuccinate, plant extract 620, polymeric betaine, sodium fluoroacetate, and undecylenic acid. In addition, this notice announces the closure of the registration review case for chlorpyrifos-methyl, because the last U.S. registrations for this pesticide have been canceled.

DATES: Comments must be received on or before September 26, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2017–0751, 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:

For pesticide specific information, contact: The Chemical Review Manager

for the pesticide of interest identified in Table 1 in Unit IV.

For general information on the registration review program, contact: Melanie Biscoe, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–0701; email address: *biscoe.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

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 pesticide specific contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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. As part of the registration review process, the Agency has completed interim or final decisions for all pesticides listed in Table 1 in Unit IV. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

EPA is conducting its registration review of the chemicals listed in Table 1 in Unit IV 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 155.58, this notice announces the availability of EPA's interim or final registration review decisions for the pesticides shown in Table 1. The registration review decisions are supported by rationales included in the docket established for each chemical.

TABLE 1—REGISTRATION REVIEW INTERIM AND FINAL DECISIONS BEING ISSUED

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Dioctyl Sodium Sulfosuccinate; Case Number 4095	EPA–HQ–OPP–2022–0550	Bob Little, *little.robert@epa.gov*, (202) 566–2234.
Plant Extract 620; Case Number 6071	EPA–HQ–OPP–2013–0587	Joseph Mabon, *mabon.joseph@epa.gov*, (202) 566–1535.
Polymeric betaine; Case Number 5116	EPA–HQ–OPP–2013–0374	Erin Dandridge, *dandridge.erin@epa.gov*, (202) 566–0635.
Sodium Fluoroacetate; Case Number 3073	EPA–HQ–OPP–2010–0753	Natalie Bray, *bray.natalie@epa.gov*, (202) 566–2222.
Undecylenic Acid; Case Number 4095	EPA–HQ–OPP–2022–0549	Bob Little, *little.robert@epa.gov*, (202) 566–2234.

The proposed decisions and proposed interim registration review decisions for the chemicals in the table above were posted to the docket and the public was invited to submit any comments or new information. EPA addressed the comments or information received during the 60-day comment period for the proposed interim decisions in the discussion for each pesticide listed in the table. Comments from the 60-day comment period that were received may or may not have affected the Agency's interim or final decision. Pursuant to 40 CFR 155.58(c), the registration review case docket for the chemicals listed in the Table will remain open until all actions required in the decision have been completed.

This document also announces the closure of the registration review case for chlorpyrifos-methyl (Case Number 8011, Docket ID Number EPA–HQ–OPP–2010–0119) because the last U.S. registrations for these pesticides have been canceled.

Background on the registration review program is provided at: *https://www.epa.gov/pesticide-reevaluation.*

Authority: 7 U.S.C. 136 *et seq.*

Dated: July 18, 2023.

Mary Elissa Reaves,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2023–16016 Filed 7–27–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 23–630; FR ID 158891]

Disability Advisory Committee; Announcement of Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission announces the second meeting of the fifth term of its Disability Advisory Committee (DAC or Committee).

DATES: Thursday, September 7, 2023. The meeting will come to order at 9:00 a.m. Eastern Time.

ADDRESSES: The DAC meeting will be held in the Commission Meeting Room at FCC Headquarters, located at 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joshua Mendelsohn, Designated Federal Officer, Federal Communications Commission, Consumer and Governmental Affairs Bureau, (202) 559–7304, or email: *dac@fcc.gov.*

SUPPLEMENTARY INFORMATION: This meeting is open to members of the general public. The meeting will be webcast with sign language interpreters and open captioning at: *www.fcc.gov/live.* In addition, a reserved amount of time will be available on the agenda for comments and inquiries from the public. Members of the public may comment or ask questions of presenters

via *livequestions@fcc.gov.* Requests for other reasonable accommodations or for materials in accessible formats for people with disabilities should be submitted via email to: *fcc504@fcc.gov* or by calling the Consumer and Governmental Affairs Bureau at (202) 418–0530. Such requests should include a detailed description of the accommodation needed and a way for the FCC to contact the requester if more information is needed to fill the request. Requests should be made as early as possible; last minute requests will be accepted but may not be possible to accommodate.

Proposed Agenda: At this meeting, the DAC is expected to discuss or receive updates on (i) a working group report and recommendation on the transmittal of audio description files to Internet Protocol programming; (ii) a working group report and recommendation on Direct Video Calling best practices and outreach; and (iii) any other topics relevant to the DAC's work.

Federal Communications Commission.

Suzanne Singleton,

Chief, Disability Rights Office, Consumer and Governmental Affairs Bureau.

[FR Doc. 2023–16070 Filed 7–27–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0813, OMB 3060–0987; FR ID 157352]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before September 26, 2023. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0813. {PRIVATE}

Title: Section 9.10, Enhanced 911 Emergency Calling Systems.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other-for-profit and State, local and Tribal governments.

Number of Respondents and Responses: 675 Respondents; 567 Responses.

Estimated Time per Response: 0.5–1 hours.

Frequency of Response: One-time third-party disclosure requirements.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 151, 152, 154(i), 154(j), 154(o), 251(e), 303(b), 303(g), 303(r), 316, and 403.

Total Annual Burden: 527 hours.

Total Annual Cost: No cost.

Needs and Uses: The information collection entailed in a Public Safety Answering Point (PSAP) request is necessary to initiate E911 service and serves as notice to the CMRS provider. The notification requirement on PSAPs will be used by the carriers to verify that wireless E911 calls are referred to PSAPs who have the technical capability to use the data to the caller's benefit. If the carrier challenges the validity of the request, the request will be deemed valid if the PSAP making the request provides the following information:

A. *Cost Recovery.* The PSAP must demonstrate that a mechanism is in place by which the PSAP will recover its costs of the facilities and equipment necessary to receive and utilize the E911 data elements;

B. *Necessary Equipment.* The PSAP must provide evidence that it has ordered the equipment necessary to receive and utilize the E911 data elements; and

C. *Necessary Facilities.* The PSAP must demonstrate that it has made a timely request to the appropriate local exchange carrier for the necessary trunking and other facilities to enable E911 data to be transmitted to the PSAP.

In the alternative, the PSAP may demonstrate that a funding mechanism is in place, that it is E911 capable using a Non-Call Path Associated Signaling technology, and that it has made a timely request to the appropriate LEC for the necessary ALI database upgrade.

OMB Control Number: 3060–0987.

Title: 911 Callback Capability; Non-initialized Handsets (47 CFR 9.10(o)(1)(i–iii), 9.10(o)(2)(i–iii)).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents and Responses: 595 respondents; 225,595 responses.

Estimated Time per Response: 0.01094882 hour (range of 30 seconds for labeling each handset to one hour for each respondent's public education effort).

Frequency of Response: Third-party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 154, 160, 201, 251–254, 303, and 332 unless otherwise noted.

Total Annual Burden: 2,470 hours.

Total Annual Cost: No Cost.

Needs and Uses: In 2003, the Commission modified 47 CFR 20.18(l) to further improve the ability of public safety answering points (PSAPs) to respond quickly and efficiently to calls for emergency assistance made from non-service initialized wireless mobile handsets. In 2019, 47 CFR 20.18 was renumbered as 47 CFR 9.10. Accordingly, we have updated the references to section 20.18 with section 9.10. *See* 84 FR 66716. Non-service-initialized wireless mobile handsets (non-initialized handsets) are not

registered for service with any Commercial Mobile Radio Service (CMRS) licensee. A non-initialized handset lacks a dialable number, but is programmed to make outgoing 911 calls. The Commission addressed issues arising from the inability of a PSAP operator to call back a 911 caller who becomes disconnected when using a non-service-initialized wireless handset. These requirements also apply to manufacturers of 911-only handsets that are manufactured after May 3, 2004.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–16014 Filed 7–27–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL TRADE COMMISSION

[File No. P222100]

Horseracing Integrity and Safety Authority Enforcement Rule Modification

AGENCY: Federal Trade Commission.

ACTION: Notice of Horseracing Integrity and Safety Authority (HISA) proposed rule modification; request for public comment.

SUMMARY: The Horseracing Integrity and Safety Act of 2020 recognizes a self-regulatory nonprofit organization, the Horseracing Integrity and Safety Authority, which is charged with developing proposed rules on a variety of subjects. Those proposed rules and proposed rule modifications take effect only if approved by the Federal Trade Commission. The Authority submitted to the Commission a proposed rule modification on Enforcement on May 31, 2023. The Office of the Secretary of the Commission determined that the proposal complied with the Commission's rule governing such submissions. This document publicizes the Authority's proposed rule modification's text and explanation, and it seeks public comment on whether the Commission should approve or disapprove the proposed rule modification.

DATES: If approved, the HISA proposed rule modification would take effect upon approval, and the Commission must approve or disapprove the proposed rule modification on or before September 26, 2023. Comments must be received on or before August 11, 2023.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Comment Submissions part of the **SUPPLEMENTARY INFORMATION** section below. Write ''HISA Enforcement Rule Modification'' on your comment and file your comment online at *https://www.regulations.gov.* If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex H), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: John H. Seesel (202–326–2702), Associate General Counsel, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

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Background

The Horseracing Integrity and Safety Act of 2020 [1] recognizes a self-regulatory nonprofit organization, the Horseracing Integrity and Safety Authority (''HISA'' or ''the Authority''), which is charged with developing proposed rules on a variety of subjects. Those proposed rules and proposed rule modifications take effect only if approved by the Federal Trade Commission.[2] The proposed rules and rule modifications must be published in the **Federal Register** for public comment.[3] Thereafter, the Commission has 60 days from the date of publication to approve or disapprove the proposed rule or rule modification.[4]

Pursuant to Section 3053(a) of the Horseracing Integrity and Safety Act of 2020 and Commission Rule 1.142, notice is hereby given that, on May 31, 2023, the Authority filed with the Federal Trade Commission an Enforcement proposed rule modification and supporting documentation as described in Sections s I and II of this publication, which Items have been prepared by the Authority. The Office of the Secretary of the Commission determined that the filing complied with the Commission's rule governing such submissions.[5] The Commission publishes this notice to solicit comments on the proposed rule modification from interested persons.

I. Self-Regulatory Organization's Statement of the Background, Purpose of, and Statutory Basis for the Proposed Rule Modification

a. Background and Purpose

The Horseracing Integrity and Safety Act of 2020 (''Act'') recognizes that the establishment of a national set of uniform standards for racetrack safety and medication control will enhance the safety and integrity of horseracing. On December 20, 2021, the Authority filed with the Commission the Rule 8000 Series, which establishes penalties and adjudicatory procedures for the enforcement of rules promulgated by the Authority. The Rule 8000 Series was published in the **Federal Register** on January 26, 2022,[6] and approved by the Commission by Order dated March 25, 2022.[7]

In its Order, the Commission directed the Authority to file modifications to several provisions in the Rule Series 8000, including a modification which ''further defines the meaning of ''object'' and ''device'' within proposed Rule 8400(a)(2)'s list of items eligible for seizure (''medication, drug, substance, paraphernalia, object, or device'') and that provides a process for the return of seized property if no violation is found.'' [8] In a subsequent Order dated September 23, 2022, which approved the proposed modifications to the Rule 8000 Series, the Commission directed the Authority to further refine the language pertaining to the Authority's power to seize items.[9]

The Authority therefore proposes the rule modifications described in this publication in order to fulfill the Commission's directive. The proposed

[1] 15 U.S.C. 3051 through 3060.

[2] 15 U.S.C. 3053(b)(2).

[3] 15 U.S.C. 3053(b)(1).

[4] 15 U.S.C. 3053(c)(1).

[5] 16 CFR 1.140 through 1.144; *see also* Fed. Trade Comm'n, Procedures for Submission of Rules Under the Horseracing Integrity and Safety Act, 86 FR 54819 (Oct. 5, 2021), *https://www.federalregister.gov/documents/2021/10/05/2021-21306/procedures-for-submission-of-rules-under-the-horseracing-integrity-and-safety-act.*

[6] See Fed. Trade Comm'n, Notice of HISA Enforcement Proposed Rule (''Notice''), 87 FR 4023 (Jan. 26, 2022).

[7] Order Approving the Enforcement Rule Proposed by the Horseracing Integrity and Safety Authority, March 25, 2022.

[8] Id. at 34–35.

[9] Order Approving the Enforcement Rule Modification Proposed by the Horseracing Integrity and Safety Authority, September 23, 2022.

rule modification is described in detail in Section II of this publication. The modifications have been crafted in the most precise manner possible to resolve the specific issues that the Commission directed the Authority to address. No reasonable alternatives presented themselves for consideration in effecting the very narrowly focused changes necessary to comply with the Commission's directive.

The proposed rule modification will affect Covered Persons by clarifying with particularity the objects and devices subject to search and seizure in the course of investigations conducted by the Authority. Covered Horses and Covered Horseraces will not be directly affected by these modifications to the search and seizure provisions in the Rule 8000 Series, since these provisions focus specifically upon investigations of Covered Persons and other individuals. But Covered Horses and Covered Horseraces will be affected by—and benefit from—the effective enforcement through the Rule 8000 Series of the Authority's racetrack safety program. The program safeguards and enhances in many ways the health and safety of Covered Horses participating in Covered Horseraces under the jurisdiction of the Authority. The clarity and soundness of the search and seizure provisions will promote effective enforcement of the program.

With the review, input and ultimate approval of the Authority's Board of Directors, the proposed rule modification to Rule 8400 conforms to the directive in the Commission's Order of September 23, 2022. HISA submits herewith the proposed rule modification for Commission approval.

b. Statutory Basis

The Horseracing Integrity and Safety Act of 2020, 15 U.S.C. 3051 through 3060.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Enforcement Proposed Rule Modification

In its Order dated March 25, 2022, the Commission directed the Authority ''to submit to the Commission a supplemental proposed rule modification by July 1, 2022, in which the Authority further defines the meaning of 'object' and 'device' within proposed Rule 8400(a)(2)'s list of items eligible for seizure ('medication, drug, substance, paraphernalia, object, or device') and that provides a process for the return of seized property if no violation is found.'' [10] The Authority filed a modification in response to the Commission's directive, but the modification retained the broad terms ''object'' and ''device.'' The Commission in its subsequent Order dated September 23, 2022, directed the Authority to further refine the language pertaining to the Authority's power of seizure. Specifically, the Order states as follows: ''The Authority is hereby directed to not rely on the words 'object' or 'device' in Rule 8400(a)(2) to effectuate a seizure. It is further directed to submit within 30 days of this Order a proposed rule modification to define further the type of item subject to a seizure to include items such as 'intravenous tubing, oral dosing syringes, needles, nasal gastric tubes, various types of container bags, and vials' and other items such as illegal whips and shock devices, but it should not include in the proposed definition generic nouns that could be applied to authorize seizure of computers, phones, cars, or other objects that are not themselves evidence of a violation.'' [11]

The Proposed Rule Modification complies with the Commission's Order by deleting the words ''object'' and ''device,'' and adding instead a list of items similar to that specified in the Commission's Order. The pertinent provision, Rule 8400(a)(2), has been revised as follows, with language stricken as indicated and new language added as underlined below:

[10] Order Approving the Enforcement Rule Proposed by the Horseracing Integrity and Safety Authority, March 25, 2022. pp. 34–35.

[11] Order Approving the Enforcement Rule Modification Proposed by the Horseracing Integrity and Safety Authority of September 23, 2022, p. 15.

(a) The Commission, the Authority or their designees:

(1) * * *

(2) May seize:

(i) any medication, drug, substance, or injectable~~paraphernalia~~ in violation or suspected violation of any provision of 15 U.S.C. Chapter 57A or the regulations of the Authority; and ~~any object or device reasonably believed to have been used in furtherance of the violation or suspected violation.~~

(ii) intravenous tubing, syringes, needles, nasogastric tubes, container bags, vials, electrical devices, riding crops not in compliance with Rule 2281, and similar items that may be evidence of a violation or suspected violation of 15 U.S.C. Chapter 57A or the regulations of the Authority.

The Authority believes that the modification of the language as described above conforms with the Commission's directive. The words ''object'' and ''device'' have been deleted and a new provision has been added in Rule 8400(a)(2)(ii) which sets forth a more specific list of items as described by the Commission. The word ''paraphernalia'' has also been replaced with the more specific term ''injectable.'' In addition, a reference to computers and phones has been deleted in a provision relating to the return of seized property in Rule 8400(b).

The Commission's Order of September 23, 2022, also directed the Authority to ''correct the potential inconsistency it conceded in its response to comments by replacing 'relate to' with the Act's exact phrase in defining the access power of Rule 8400(a)(1).'' The proposed rule modification complies with this request by replacing the phrase ''relate to'' in Rule 8400(a)(1)(i) and (ii) with the phrase ''are used in,'' as utilized in the search and seizure provision in 15 U.S.C. 3054(c)(1)(A)(i).

The Commission's Order specifies that this proposed rule modification is not subject to pre-submission informal public comment under the Commission's procedural rule, 16 CFR 1.142(f).

All the changes proposed in the proposed rule modification are intended to enhance the Rule 8000 Series Enforcement Rules in a manner consistent with 15 U.S.C. 3057(d). An effective enforcement system builds public confidence in the sport by ensuring that Covered Horseraces are conducted in a fair and transparent manner. The proposed rule modification considers the unique character of horseracing and the organizational structure of the Authority, and it is carefully tailored to respond to the Commission's directive to narrow the seizure powers of the Authority as set forth in Rule 8400.

Covered Persons will benefit from the effective enforcement of the rules, the standards of integrity in racing that the rules establish, and the deterrence of violations.

III. Legal Authority

This rule modification is proposed by the Authority for approval or disapproval by the Commission under 15 U.S.C. 3053(c)(1).

IV. Effective Date

If approved by the Commission, this proposed rule modification will take effect immediately.

V. Request for Comments

Members of the public are invited to comment on the Authority's proposed rule modification. The Commission requests that factual data on which the comments are based be submitted with the comments. The supporting documentation referred to in the Authority's filing, as well as the written comments it received before submitting the proposed rule modification to the Commission, are available for public inspection at *https://www.regulations.gov* under docket number FTC–2022–0044.

The Commission seeks comments that address the decisional criteria provided by the Act. The Act gives the Commission two criteria against which to measure proposed rules and rule modifications: ''The Commission shall approve a proposed rule or modification if the Commission finds that the proposed rule or modification is consistent with—(A) this chapter; and (B) applicable rules approved by the Commission.'' [12] In other words, the Commission will evaluate the proposed rule modification for its consistency with the specific requirements, factors, standards, or considerations in the text of the Act as well as the Commission's procedural rule.

VI. Comment and Submissions

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before August 11, 2023. Write ''HISA Enforcement Rule 8400 Modification'' on your comment. Your comment—including your name and your State—will be placed on the public record of

[12] 15 U.S.C. 3053(c)(2).

this proceeding, including, to the extent practicable, on the website *https://www.regulations.gov.*

Because of the Commission's heightened security screening, postal mail addressed to the Commission will be subject to delay. The Commission strongly encourages that comments be submitted online through the *https://www.regulations.gov* website. To ensure that the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write ''HISA Enforcement Rule Modification'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex H), Washington, DC 20580.

Because your comment will be placed on the public record, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not contain sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other State identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential''—as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *https://www.regulations.gov*—as legally required by FTC Rule 4.9(b), 16 CFR 4.9(b)—we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this document and the news release describing it. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives on or before August 11, 2023. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/siteinformation/privacypolicy.*

VII. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner's advisor, will be placed on the public record. *See* 16 CFR 1.26(b)(5).

VIII. Self-Regulatory Organization's Proposed Rule Language

The following language reflects the Enforcement rule with the proposed modifications incorporated. A redline version that shows every way in which the previously approved Enforcement rule would be modified by the proposed rule modification is available as Exhibit A on the docket for this matter at *https://www.regulations.gov.*

8400. Investigatory Powers

(a) The Commission, the Authority or their designees:

(1) Shall have free access to:

(i) with regard to Covered Persons, books, records, offices, racetrack facilities, and other places of business of Covered Persons that are used in the care, treatment, training, and racing of Covered Horses, and

(ii) with regard to any person who owns a Covered Horse or performs services on a Covered Horse, books, records, offices, facilities, and other places of business that are used in the care, treatment, training, and racing of Covered Horses.

(2) May seize:

(i) any medication, drug, substance, or injectable in violation or suspected violation of any provision of 15 U.S.C. Chapter 57A or the regulations of the Authority; and

(ii) intravenous tubing, syringes, needles, nasogastric tubes, container bags, vials, electrical devices, riding crops not in compliance with Rule 2281, and similar items that may be evidence of a violation or suspected violation of any provision of 15 U.S.C. Chapter 57A or the regulations of the Authority.

(b) Upon final resolution of a violation, the Commission, the Authority or their designees shall return seized property, the possession of which is not specifically prohibited by the Act or the rules of the Authority.

(c) A Covered Person shall:

(1) Cooperate with the Commission, the Authority or their designees during any investigation; and

(2) Respond truthfully to the best of the Covered Person's knowledge if questioned by the Commission, the Authority, or their designees about a racing matter.

(d) A Covered Person or any officer, employee or agent of a Covered Person shall not hinder a person who is conducting an investigation under or attempting to enforce or administer any provision of 15 U.S.C. chapter 57A or the regulations of the Authority.

(e) The Commission or the Authority may issue subpoenas for the attendance of witnesses in proceedings within their jurisdiction, and for the production of documents, records, papers, books, supplies, devices, equipment, and all other instrumentalities related to matters within the jurisdiction of the Commission or the Authority.

(f) Failure to comply with a subpoena or with the other provisions of this Rule may be penalized by the imposition of one or more penalties set forth in Rule 8200.

(g) The Commission or the Authority may administer oaths to witnesses and require witnesses to testify under oath in matters within the jurisdiction of the Commission or the Authority.

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2023–16000 Filed 7–27–23; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Submission for OMB Review; Public Comment Request; of the Annual Senior Medicare Patrol/ State Health Insurance Assistance Program/Medicare Improvements for Patients and Providers Act National Training Conference Survey; OMB Control Number 0985–0068

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance as required under section 506(c)(2)(A) of the Paperwork Reduction Act of 1995. This 30-Day notice collects comments on the information collection requirements related to the Annual SMP/SHIP/MIPPA National Training Conference Survey; OMB Control Number 0985–0068.

DATES: Submit written comments on the collection of information by August 28, 2023.

ADDRESSES: Submit written comments and recommendations for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find the information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. By mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW, Rm. 10235, Washington, DC 20503, Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT: Katherine Glendening, Administration for Community Living, at (202) 795–7350 or *Katherine.Glendening@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, the Administration for Community Living (ACL) has submitted the following proposed collection of information to OMB for review and clearance. The Office of Healthcare Information and Counseling (OHIC) hosts an annual national training conference for the federally funded programs that it administers. The audience for this training conference includes attendees from State Health Insurance Assistance Program (SHIP), Senior Medicare Patrol (SMP) programs and Medicare Improvements for Patients and Providers Act (MIPPA) programs, which are three nationally recognized programs that provide Medicare information and counseling to Medicare beneficiaries and help, fight Medicare fraud through prevention and education. Grantee leadership is required to attend this training annually to ensure they receive critical information and technical assistance needed to help them successfully meet the requirements of their grant awards. Grantees are encouraged to bring up to three (3) people from each program. Programs operate in each of the 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

Section 4360(f) of OBRA 1990 created the State Health Insurance Assistance Program (SHIP) and requires the Secretary to support a national network of grantees to provide outreach and assistance to Medicare beneficiaries. In addition, under Public Law 104–208, the Omnibus Consolidated Appropriations Act of 1997, Congress established the Senior Medicare Patrol Projects to further curb losses to the Medicare program. The Senate Committee noted that retired professionals, with appropriate training, could serve as educators and resources to assist Medicare beneficiaries and others to detect and report error, fraud, and abuse.

This tool provides ACL an opportunity to assess the success and impact of the training provided to the SHIP and SMP grantees by ACL along with determining the future training needs of the program grantees. Section 301 of the Public Health Service Act (42 U.S.C. 241) is the authorizing law for data collections within the Department of Health and Human Services (HHS). Specifically, agencies within HHS should ''collect and make available through publications and other appropriate means . . . research and other activities.'' The March 3, 1998, White House Memorandum, ''Conducting Conversations with America to Further Improve Customer Service,'' directs agencies ''to track customer service measurements, then take necessary actions to change or improve how the agency operates, as appropriate. Integrate what your agency learns from its customers with your agency's strategic plans, operating plans, and performance measures required by the Government Performance and Results Act of 1993, reporting on financial and program performance under the Chief Financial Officers Act of 1990, and the Government Management Reform Act of 1994.'' The information collected in this survey is necessary to ensure that ACL is meeting the technical assistance needs of the attendees and to capture valuable feedback to be used for future training meetings.

By gathering feedback on the quality of the training and content provided, we can ensure attendee satisfaction and gather information for future planning. ACL administers a contract to develop and provide the training conference evaluation tool for ACL's approval.

Comments in Response to the 60-Day Federal Register Notice

A notice published in the **Federal Register** *88 FR 30764 on Friday, May 12, 2023.* There were no comments were received during the 60-day FRN.

Estimated Program Burden: ACL estimates the burden of this collection of information as follows:

ACL will collect data once following the Annual SMP/SHIP/MIPPA National Training Conference. This evaluation will be sent to all event attendees, which is estimated to include maximum 486 participants, each survey is estimated at .25 hours to complete. This time estimate is based on research performed by ACL with the existing survey instrument and in consideration of previous survey content and length. The target number 486 is a result of 54 states/territories, each sending up to nine conference participants who may be eligible to complete a survey (54 * 9 = 486). Factoring in an additional 40 non-grantee, non-federal partner event participants (486 + 40 = 526). 526 respondents taking 15 minutes to complete for a total of 131.5 annual burden hours.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Number of respondents	Responses per respondent	Average burden hours per response (minutes)	Total burden hours
526	1	15	131.5

Dated: July 25, 2023.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2023–16015 Filed 7–27–23; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–2757]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Devices—Voluntary Improvement Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by August 28, 2023.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://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. The title of this information collection is ''Voluntary Improvement Program.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Voluntary Improvement Program

OMB Control Number 0910–NEW

This information collection supports FDA's implementation of its Voluntary Improvement Program (VIP). Included among the strategic priorities of our Center for Devices and Radiological Health (CDRH) is promoting a culture of quality and organizational excellence. As communicated on our website at *https://www.fda.gov/medical-devices/quality-and-compliance-medical-devices/voluntary-medical-device-manufacturing-and-product-quality-pilot-program,* we conducted a pilot project pertaining to voluntary medical device manufacturing and product quality and have incorporated some of the successes and learnings into the VIP. The VIP oversees third-party appraisers who evaluate industry participants. The VIP is facilitated by the Medical Device Innovation Consortium, a public-private partnership that evaluates the capability and performance of a medical device manufacturer's practices using third-party appraisals and is intended to guide improvement to enhance the quality of devices. As part of the VIP process, FDA receives information about participating device manufacturers' capability and performance for activities covered in third-party appraisals.

The guidance document entitled ''Fostering Medical Device Improvement: FDA Activities and Engagement with the Voluntary Improvement Program'' communicates our policy regarding participation in the VIP. Only eligible manufacturers of medical devices regulated by CDRH whose marketing applications are reviewed under the applicable provisions of the Federal Food, Drug, and Cosmetic Act (including under sections 510(k), 513, 515, and 520 (21 U.S.C. 360(k), 360c, 360e, and 360j)) may participate in the VIP. The guidance document was developed and issued consistent with our good guidance practice regulations in 21 CFR 10.115, which provide for public comment at any time. The guidance document includes instruction to respondents regarding eligibility, FDA engagement with participants, submission criteria, and withdrawal or removal from the program.

Information included in VIP applications is verified by FDA. This helps the third-party appraiser to determine the manufacturers' eligibility for participation in the VIP. We use aggregate data to identify broad industry trends and patterns to help inform risk-based inspection planning and improve review efficiencies. We also consider aggregate data to better allocate limited Agency resources. Also included among the goals of the program is to improve the safety, quality, and access of medical devices for patients by driving quality and continuous improvement within the device industry. The program is intended to result in increased production and access to higher quality medical devices for patients, decreases in safety issues, and lower production costs, which will increase value to industry, patients, providers, payors, and FDA.

We published a 60-day notice soliciting public comment on the proposed collection of information in the **Federal Register** of May 6, 2022 (87 FR 27165) and received several comments. Most comments included feedback on individual collection elements and the operational logistics of the program. We have considered these comments. Although we intend to revise the guidance to clarify what participants must demonstrate to benefit from the opportunities offered by VIP and add further details regarding the role of FDA in VIP in section V.B of the guidance, we are making no adjustments to our burden estimates. In addition, two comments requested FDA clarify the benefits and utility of VIP for patients and consumers. FDA intends to address these comments in the guidance document, which guides improvement to enhance the quality of devices.

Respondents: Respondents to the information collection are manufacturing sites who voluntary elect to participate in the VIP. Based on our device registration and listing data and informal feedback from stakeholders, we anticipate approximately 400 sites may participate annually.

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Recommended information collection activity: Fostering medical device improvement: FDA activities and engagement with the voluntary Improvement Program	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Site manufacturer application	1	400	400	0.08 (5 minutes)	33
Aggregate data reporting	1	4	4	8	32
Summary of site appraisal	1	400	400	20	8,000
Total					8,065

[1] There are no capital or operating and maintenance costs associated with the information collection.

Site Manufacturer Application

In section IV.A of the guidance, we explain that manufacturers wishing to apply for an appraisal may do so at the third-party appraiser's application portal. As part of the VIP process (see section IV.D, *Process Flow,* of the guidance), the site manufacturers' application information is provided to FDA by the third-party appraiser. We assume it will take the third-party appraiser approximately 5 minutes to notify FDA of the availability of each application. Such notification is provided via email and FDA may then access the information via the third-party appraiser's online portal.

Aggregate Data Reporting

As discussed in sections III and IV of the guidance, the third-party appraiser provides FDA with aggregated data across all participating manufacturer sites quarterly. We assume that it will take approximately 8 hours to prepare and submit the aggregate data.

Summary of Site Appraisal

In section IV.D of the guidance, we communicate that the third-party appraiser will provide FDA a summary of the appraisal result for each participating site. We assume an average of 20 hours is necessary to prepare and submit the summary.

This is a new information collection. Specifically, we are accounting for third-party appraiser burden to provide the site manufacturer's information to FDA under the VIP process. We believe associated recordkeeping by participating manufactures to be usual and customary business practice and have therefore not included estimates for VIP application activities by manufacturers. The estimated average burden per response is largely based on our experience with the program pilot and informal communications with participants.

Dated: July 25, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–16079 Filed 7–27–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–2966]

Biosimilar User Fee Rates for Fiscal Year 2024

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the rates for biosimilar user fees for fiscal year (FY) 2024. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Biosimilar User Fee Amendments of 2022 (BsUFA III), authorizes FDA to assess and collect user fees for certain activities in connection with biosimilar biological product development; review of certain applications for approval of biosimilar biological products; and each biosimilar biological product approved in a biosimilar biological product application. BsUFA III directs FDA to establish, before the beginning of each fiscal year, the amount of initial and annual biosimilar biological product development (BPD) fees, the reactivation fee, and the biosimilar biological product application and program fees for such year. These fees apply to the period from October 1, 2023, through September 30, 2024.

FOR FURTHER INFORMATION CONTACT: Olufunmilayo (Funmi) Ariyo, Office of Financial Management, Food and Drug Administration, 4041 Powder Mill Rd., 6th Floor, Beltsville, MD 20705–4304, 240–402–4989, and the User Fees Support Staff at *OO-OFBAP-OFM-UFSS-Government@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Sections 744G, 744H, and 744I of the FD&C Act (21 U.S.C. 379j–51, 379j–52, and 379j–53), as amended by BsUFA III, authorize the collection of fees for biosimilar biological products. Under section 744H(a)(1)(A) of the FD&C Act, the initial BPD fee for a product is due when the sponsor submits an investigational new drug (IND) application that FDA determines is intended to support a biosimilar biological product application or within 7 calendar days after FDA grants the first BPD meeting, whichever occurs first. A sponsor who has paid the initial BPD fee is considered to be participating in FDA's BPD program for that product.

Under section 744H(a)(1)(B) of the FD&C Act, once a sponsor has paid the initial BPD fee for a product, the annual BPD fee is assessed beginning with the next fiscal year. The annual BPD fee is assessed for the product each fiscal year until the sponsor submits a marketing application for the product that is accepted for filing, the sponsor discontinues participation in FDA's BPD program for the product, or the sponsor has been administratively removed from the BPD program for the product.

Under section 744H(a)(1)(D) of the FD&C Act, if a sponsor has discontinued participation in FDA's BPD program or has been administratively removed from the BPD program for a product and wants to reengage with FDA on development of the product, the sponsor must pay all annual BPD fees previously assessed for such product and still owed, and a reactivation fee to resume participation in the program. The sponsor must pay the reactivation fee by the earlier of the following dates: (1) no later than 7 calendar days after FDA grants the sponsor's request for a BPD meeting for that product or (2) upon the date of submission by the sponsor of an IND describing an investigation that FDA determines is intended to support a biosimilar biological product application for that product. The sponsor will be assessed an annual BPD

fee beginning in the next fiscal year after payment of the reactivation fee.

BsUFA III also authorizes fees for certain biosimilar biological product applications and for each biosimilar biological product identified in an approved biosimilar biological product application (section 744H(a)(2) and (3) of the FD&C Act). Under certain conditions, FDA will grant a small business a waiver of the biosimilar biological product application fee (section 744H(d)(1) of the FD&C Act).

For FY 2023 through FY 2027, the base revenue amounts for the total revenues from all BsUFA fees are established by BsUFA III. For FY 2024, the base revenue amount is the FY 2023 total revenue amount excluding any operating reserve adjustment, which equates to the amount of $48,700,243. The FY 2024 base revenue amount is to be adjusted by the inflation adjustment, strategic hiring and retention adjustment, capacity planning adjustment (CPA), operating reserve adjustment, and the additional dollar amount. Each of these adjustments will be discussed in the sections below.

This document provides fee rates for FY 2024 for the initial and annual BPD fee ($10,000), for the reactivation fee ($20,000), for an application requiring clinical data ($1,018,753) for an application not requiring clinical data ($509,377) and for the program fee ($177,397). These fees are effective on October 1, 2023, and will remain in effect through September 30, 2024. For applications that are submitted on or after October 1, 2023, the new fee schedule must be used.

II. Fee Revenue Amount for FY 2024

The base revenue amount for FY 2024 is $48,700,243 prior to adjustments for inflation, strategic hiring and retention, capacity planning, operating reserves, and the additional dollar amount (see section 744H(b) and (c) of the FD&C Act).

A. FY 2024 Statutory Fee Revenue Adjustments for Inflation

BsUFA III specifies that the $48,700,243 is to be adjusted for inflation increases for FY 2024 using two separate adjustments: one for personnel compensation and benefits (PC&B) and one for non-PC&B costs (see section 744H(c)(1) of the FD&C Act).

The component of the inflation adjustment for payroll costs shall be the average annual percent change in the cost of all PC&B paid per full-time equivalent (FTE) positions at FDA for the first 3 of the preceding 4 fiscal years, multiplied by the proportion of PC&B costs to total FDA costs of the process for the review of biosimilar biological product applications for the first 3 of the preceding 4 fiscal years (see section 744H(c)(1)(B) of the FD&C Act).

Table 1 summarizes the actual cost and FTE data for the specified fiscal years and provides the percent changes from the previous fiscal years and the average percent changes over the first 3 of the 4 fiscal years preceding FY 2024. The 3-year average is 3.9280 percent.

Table 1.--FDA PC&B Each Year and Percent Changes

	FY 2020	FY 2021	FY 2022	3-Year Average
Total PC&B	$2,875,592,000	$3,039,513,000	$3,165,477,000	
Total FTE	17,535	18,501	18,474	
PC&B per FTE	$163,992	$164,289	$171,348	
Percent Change from Previous Year	7.3063%	0.1811%	4.2967%	3.9280%

The statute specifies that this 3.9280 percent be multiplied by the proportion of PC&B costs to the total FDA costs of the process for the review of biosimilar biological product applications. Table 2 shows the PC&B and the total obligations for the process for the review of biosimilar biological product applications for the first 3 of the preceding 4 fiscal years.

Table 2.--PC&B as a Percent of Total Cost of the Process for the Review of Biosimilar Biological Product Applications

	FY 2020	FY 2021	FY 2022	3-Year Average
Total PC&B	$25,445,175	$30,932,267	$34,065,826	
Total Costs	$56,798,694	$55,928,075	$68,521,689	
PC&B Percent	44.7989%	55.3072%	49.7154%	49.9405%

The payroll adjustment is 3.9280 percent from table 1 multiplied by 49.9405 percent (or 1.9617 percent).

The statute specifies that the portion of the inflation adjustment for nonpayroll costs is the average annual percent change that occurred in the Consumer Price Index (CPI) for urban consumers (Washington-Arlington-Alexandria, DC-VA-MD-WV; not seasonally adjusted; all items; annual index) for the first 3 years of the preceding 4 years of available data multiplied by the proportion of all costs other than PC&B costs to total costs of the process for the review of biosimilar biological product applications for the first 3 years of the preceding 4 fiscal years (see section 744H(c)(1)(B) of the FD&C Act). Table 3 provides the summary data for the percent changes in the specified CPI for the Washington-Arlington-Alexandria area.[1]

[1] The data are published by the Bureau of Labor Statistics and can be found on its website at: *https://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUURS35ASA0, CUUSS35ASA0.*

Table 3.--Annual and 3-Year Average Percent Change in CPI for Washington-Arlington-Alexandria Area

	2020	2021	2022	3-Year Average
Annual CPI	267.16	277.73	296.12	
Annual Percent Change	0.8989%	3.9568%	6.6212%	3.8256%

The statute specifies that this 3.8256 percent be multiplied by the proportion of all costs other than PC&B to total costs of the process for the review of biosimilar biological product applications obligated. Since 49.9405 percent was obligated for PC&B (as shown in table 2), 50.0595 percent is the portion of costs other than PC&B (100 percent minus 49.9405 percent equals 50.0595 percent). The non-payroll adjustment is 3.8256 percent times 50.0595 percent, 1.9151 percent.

Next, we add the payroll adjustment (1.9617 percent) to the nonpayroll adjustment (1.9151 percent), for a total inflation adjustment of 3.8768 percent (rounded) for FY 2024.

We then multiply the base revenue amount for FY 2024 ($48,700,243) by the inflation adjustment percentage (3.8768 percent), yielding an inflation adjustment of $1,888,011. Adding this amount yields an inflation-adjusted amount of $50,588,254.

B. Strategic Hiring and Retention Adjustment

The statute specifies that for each fiscal year, after the annual base revenue is adjusted for inflation, FDA shall further increase the fee revenue and fees by the strategic hiring and retention adjustment, which is $150,000 for FY 2024 (see section 744H(c)(2) of the FD&C Act).

C. FY 2024 Statutory Fee Revenue Adjustments for Capacity Planning

The statute specifies that the fee revenue and fees shall be further adjusted to reflect changes in the resource capacity needs for the process for the review of biosimilar biological product applications (see section 744H(c)(3) of the FD&C Act). Following a process required in statute, FDA established the capacity planning adjustment methodology and first applied it in the setting of FY 2021 fees. The establishment of this methodology is described in the **Federal Register** at 85 FR 47220. This methodology includes a continuous, iterative improvement approach, under which the Agency intends to refine its data and estimates for the core review activities to improve their accuracy over time.

In FY 2023, updates were made to refine the time reporting categories included within the CPA to reflect program changes in the current authorization period. As such, time reporting data and baseline capacity were revised to match the refinements. For FY 2024, additional updates were made including to account for additional activities that are also directly related to the direct review of biosimilar biological product applications and supplements as provided for in the statute. These updates include additional formal meeting types and the direct review of postmarketing commitments (PMC) and requirements (PMR) (see table 4), the direct review of risk evaluation and mitigation strategies (REMS), and the direct review of annual reports for approved biosimilar biological products. These updates necessitated an additional re-baselining of capacity.

The CPA methodology consists of four steps:

1. *Forecast workload volumes:* predictive models estimate the volume of workload for the upcoming fiscal year.

2. *Forecast the resource needs:* forecast algorithms are generated utilizing time reporting data. These algorithms estimate the required demand in FTEs [2] for direct review-related effort. This is then compared to current available resources for the direct review-related workload.

3. *Assess the resource forecast in the context of additional internal factors:* program leadership examines operational, financial, and resourcing data to assess whether FDA will be able to utilize additional funds during the fiscal year and those funds are required to support additional review capacity. FTE amounts are adjusted, if needed.

4. *Convert the FTE Need to Dollars:* utilizing FDA's fully loaded FTE cost model, the final feasible FTEs are converted to an equivalent dollar amount.

The following section outlines the major components of the FY 2024 BsUFA III CPA. Table 4 summarizes the forecasted workload volumes for BsUFA III in FY 2024 based on predictive models, as well as historical actuals from FY 2022 for comparison.

[2] Full-time equivalents refer to a paid staff year, rather than a count of individual employees.

Table 4.--BsUFA III Actual FY 2022 Workload Volumes & Predicted FY 2024 Workload Volumes

Workload Category	FY 2022 Actuals	FY 2024 Predictions
Original Biosimilar Supplements[1]	27	34
Manufacturing Supplements	80	73
Biosimilar Biological Product Applications	12	14
BsUFA Industry Meetings (BIA, BPD Type 1-4)	129	139
Participating BPD Programs[2]	108	120
Annual Reports[3]	41	47
PMR/PMC-Related Documents[3]	18	24
Active REMS Programs[3, 4]	0	0

[1] Includes Supplements with Clinical Data and Labeling Supplements
[2] The methodology for counting Participating BPD Programs has been updated and FY 2022 actuals are reported using the revised methodology. In the BsUFA fee notice for FY 2022 (86 FR 40567), Participating BPD Programs for FY 2022 were forecasted to be 131; using the same methodology as in FY 2022, the actuals would be 121.
[3] Represents activities related to the review of materials submitted to the application file after approval
[4] Represents the number of Active REMS Programs proportional to Center and User Fee by total number of qualifying products with the exclusion of the Opioid Shared System

Utilizing the resource forecast algorithms, the forecasted workload volumes for FY 2024 were then converted into estimated FTE needs for FDA's BsUFA III direct review-related work. The resulting expected FY 2024 FTE need for BsUFA III was compared to current onboard capacity for BsUFA III direct review-related work to determine the FY 2024 resource delta, as summarized in table 5.

Table 5.--FY 2024 BsUFA III Resource Delta

Current Resource Capacity	FY 2024 Resource Forecast	Predicted FY 2024 FTE Delta
74	83	9

The projected nine FTE delta was then assessed by FDA in the context of additional operational and internal factors to ensure that a fee adjustment is only made for resources that can be utilized in the fiscal year and for which funds are required to support additional review capacity. FDA determined that realistic expected net FTE gains could be funded through the expected FY 2024 collections amount without further adjustment from the CPA. As such, FDA determined that in FY 2024 the BsUFA fee amounts do not need adjustment from the CPA to provide funds for the realistic estimated net FTE gains.

Table 6.--FY 2024 BsUFA III CPA

Additional FTEs for FY 2024	Cost for Each Additional FTE	FY 2024 BsUFA III CPA
0	$336,269	$0

Although an adjustment to the fee amounts for resource needs by the CPA will not be made in FY 2024, FDA will evaluate the need for a fee adjustment from the CPA in future fiscal years and will make adjustments as warranted.

D. FY 2024 Additional Dollar Amount

For FY 2023 and FY 2024, BsUFA III provides an additional dollar amount for additional FTE for the biosimilar biological product review program to support enhancements outlined in the BsUFA III Commitment Letter. For FY 2024, the statute directs FDA to further increase the fee revenue and fees by the additional dollar amount, which is $320,569 for FY 2024 (see section 744H(b)(1)(G) of the FD&C Act).

Table 7.--Base Revenue Amount and Adjustments Prior to Operative Reserve Adjustment

Fee	Amount
Base Revenue Amount	$ 48,700,243
Inflation Adjustment	$ 1,888,011
Strategic Hiring and Retention Adjustment	$ 150,000
Capacity Planning Adjustment	$ -
Additional Dollar Amount	$ 320,569
Cumulative Revenue Amount Prior to Operative Reserve Adjustment	**$ 51,058,823**

E. FY 2024 Statutory Fee Revenue Adjustments for Operating Reserve

BsUFA III sets forth an operating reserve adjustment to the fee revenue and fees. Specifically, for FY 2024, the statute directs FDA: (1) to increase the fee revenue and fees if such an adjustment is necessary to provide for at least 10 weeks of operating reserves of carryover user fees for the process for the review of biosimilar biological product applications and (2) if FDA has carryover balances for such process in excess of 27 weeks of such operating reserves, to decrease such fee revenue and fees to provide for not more than 27 weeks of such operating reserves (see section 744H(c)(4) of the FD&C Act).

To calculate the 10-week and 27-week threshold amounts for the FY 2024 operating reserve adjustment, the estimated adjusted revenue amount (*i.e.,* the base revenue amount and adjustments prior to the operating reserve adjustment), $51,058,823 is divided by 52, resulting in a $981,900 cost of operation for 1 week (rounded to the nearest dollar). The 1-week value (981,900) is then multiplied by 10 weeks to generate the 10-week operating reserve threshold amount for FY 2024 of $9,819,004. The 1-week value is multiplied by 27 to generate the 27-week operating reserve threshold amount for FY 2024 of $26,511,312.

To calculate the estimated operating reserve of carryover user fees at the end of FY 2023, FDA estimated the operating reserves of carryover fees at the end of June 2023. The balance of operating reserves of carryover fees at the end of June 2023 is combined with the forecasted collections and obligations for the remainder of FY 2023 to generate a full year estimate for FY 2023. The estimated operating reserve of carryover user fees at the end of FY 2023 is $46,551,292.

The estimated operating reserve of carryover user fees at the end of FY 2023 of $46,551,292 is above the 27-week threshold allowable operating reserve of carryover user fees for FY 2024 of $26,511,312. As such, FDA is applying a downward operating reserve adjustment of $20,039,980 (rounded to the nearest dollar), an amount equivalent to a reduction of approximately 20 weeks of operations, to bring the operating reserve of carryover user fees to $26,511,312 or 27 weeks of operations at the start of FY 2024. With this operating reserve adjustment, the estimated adjusted revenue amount of $51,058,823 will be lowered by $20,039,980, yielding the FY 2024 target revenue amount of $31,019,000 (rounded to the nearest thousand), summarized below.

Table 8.--Total Estimated Adjusted Revenue Amount

Fee	Amount
Base Revenue Amount	$ 48,700,243
Inflation Adjustment	$ 1,888,011
Strategic Hiring and Retention Adjustment	$ 150,000
Capacity Planning Adjustment	$ -
Additional Dollar Amount	$ 320,569
Operating Reserve Adjustment	$ (20,039,980)
Total Revenue Amount (rounded to the nearest thousand dollars)	**$ 31,019,000**

III. Fee Amounts for FY 2024

Under section 744H(b)(2)(A) of the FD&C Act, FDA must determine the percentage of the total revenue amount for a fiscal year to be derived from: (1) initial and annual BPD fees, and reactivation fees; (2) biosimilar biological product application fees; and (3) biosimilar biological product program fees. As described above, a downward operating reserve adjustment is required for FY 2024. The operating reserve adjustment in subsequent years may not be as large. As such, the target revenue in FY 2024 may be lower than in prior or future years, and thereby the fee amounts may also be lower than in prior or future years.

A. Application Fees

In establishing the biosimilar biological product application fee amount for FY 2024, FDA assessed multiple modeling options. The model performing the best when tested against historical data forecasts 14 biosimilar biological product applications requiring clinical data submitted for approval in FY 2024 and 0 applications that do not require clinical data. Given recent years' data regarding biosimilar biological product applications that are refused to file and withdrawals before filing, the 14 submissions will be assumed to equate to 13.25 full application equivalents.

For FY 2024 the biosimilar biological product application fee for applications requiring clinical data is $1,018,753. Applications not requiring clinical data pay half that fee, or $509,377. This is estimated to provide a total of $13,498,477 representing 44 percent (rounded to the nearest whole number) of the FY 2024 target revenue amount.

B. Biosimilar Biological Product Program Fee

Under BsUFA III, FDA assesses biosimilar biological product program fees (''program fees''). An applicant in a biosimilar biological product application shall not be assessed more than five program fees for a fiscal year for biosimilar biological products identified in a single biosimilar biological product application (see

section 744H(a)(3)(D) of the FD&C Act). Applicants are assessed a program fee for a fiscal year for biosimilar biological products that are identified in a biosimilar biological product application approved as of October 1 of such fiscal year; that may be dispensed only under prescription pursuant to section 503(b) of the FD&C Act (21 U.S.C. 353(b)); and that, as of October 1 of such fiscal year, do not appear on a list developed and maintained by FDA of discontinued biosimilar biological products. An approved biosimilar biological product that appears on the list of discontinued biosimilar biological products as of October 1 of a fiscal year would also be assessed the program fee if it is removed from the discontinued list during the fiscal year and the other statutory criteria for fee assessment are satisfied (see section 744H(a)(3)(E)(iii) of the FD&C Act).

Based on available information, FDA estimates that 92 program fees will be invoiced for FY 2024. For products invoiced in the FY 2024 regular billing cycle, FDA anticipates that zero program fees will be refunded.

For FY 2024, the biosimilar biological product program fee is $177,397. This is estimated to provide a total of $16,320,524, representing 53 percent (rounded to the nearest whole number) of the FY 2024 target revenue amount.

C. Initial and Annual BPD Fees, and Reactivation Fees

To estimate the number of BPD fees to be paid in FY 2024, FDA must consider the number of new BPD programs, the number of current BPD programs, and the number of BPD programs that will be reactivated. These estimates provide information that, when aggregated, allows FDA to set BPD fees (initial BPD fees, annual BPD fees, reactivation fees).

FDA analyzed available data to estimate the total number of BPD programs for FY 2024. In FY 2024, FDA estimates approximately 23 new BPD programs, no reactivations (a single reactivation is weighted as two BPD fees), and approximately 97 BPD programs to pay the annual BPD fee, yielding a rounded total estimated equivalent of 120 BPD fees to be collected in FY 2024. The remainder of the target revenue of $1,199,999 or 4 percent is to be collected from the BPD fees. Dividing this amount by the estimated 120 BPD fees to be paid equals an initial BPD and annual BPD fee amount of $10,000 (rounded to the nearest dollar). The reactivation fee is set at twice the initial/annual BPD amount at $20,000 (rounded to the nearest dollar).

IV. Fee Schedule for FY 2024

The fee rates for FY 2024 are displayed in table 9.

Table 9.--Fee Schedule for FY 2024

Fee Category	Fee Rates for FY 2024
Initial BPD	$10,000
Annual BPD	$10,000
Reactivation	$20,000
Applications	
Requiring clinical data	$1,018,753
Not requiring clinical data	$509,377
Program	$177,397

V. Fee Payment Options and Procedures

A. Initial BPD, Reactivation, and Application Fees

The fees established in the new fee schedule apply to FY 2024, *i.e.,* the period from October 1, 2023, through September 30, 2024. The initial BPD fee for a product is due when the sponsor submits an IND that FDA determines is intended to support a biosimilar biological product application for the product or within 7 calendar days after FDA grants the first BPD meeting for the product, whichever occurs first. Sponsors who have discontinued participation in the BPD program for a product or have been administratively removed from the BPD program for a product, and seek to resume participation in the BPD program for the product must pay all annual BPD fees previously assessed for such product and still owed and the reactivation fee by the earlier of the following dates: no later than 7 calendar days after FDA grants the sponsor's request for a BPD meeting for that product, or upon the date of submission by the sponsor of an IND describing an investigation that FDA determines is intended to support a biosimilar biological product application for that product.

The application fee for a biosimilar biological product is due upon submission of the application (see section 744H(a)(2)(C) of the FD&C Act).

To make a payment of the initial BPD, reactivation, or application fee, complete the Biosimilar User Fee Cover Sheet, available on FDA's website (*https://www.fda.gov/bsufa*) and generate a user fee identification (ID) number. Payment must be made in U.S. currency by electronic check, check, bank draft, U.S. postal money order, or wire transfer. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). FDA has partnered with the U.S. Department of the Treasury to use *www.pay.gov,* a web-based payment application, for online electronic payment. The *www.pay.gov* feature is available on the FDA website after the user fee ID number is generated. Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay* (Note: only full payments are accepted. No partial

payments can be made online.) Once you search for your invoice, click ''Pay Now'' to be redirected to *www.pay.gov*. Electronic payment options are based on the balance due. Payment by credit card is available for balances that are less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

If a check, bank draft, or postal money order is submitted, make it payable to the order of the Food and Drug Administration and include the user fee ID number to ensure that the payment is applied to the correct fee(s). Payments can be mailed to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000. If a check, bank draft, or money order is to be sent by a courier that requests a street address, the courier should deliver your payment to U.S. Bank, Attention: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (Note: this U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery, contact U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery). Please make sure that the FDA post office box number (P.O. Box 979108) and ID number is written on the check, bank draft, or postal money order.

For payments made by wire transfer, include the unique user fee ID number to ensure that the payment is applied to the correct fee(s). Without the unique user fee ID number, the payment may not be applied. The originating financial institution may charge a wire transfer fee. Include applicable wire transfer fees with payment to ensure fees are fully paid. Questions about wire transfer fees should be addressed to the financial institution. The following account information should be used to send payments by wire transfer: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No: 75060099, Routing No: 021030004, SWIFT: FRNYUS33. FDA's tax identification number is 53–0196965.

B. Annual BPD and Program Fees

FDA will issue invoices with payment instructions for FY 2024 annual BPD and program fees under the new fee schedule in August 2023. Under section 744H(a)(1)(B)(ii) and (a)(3)(B) of the FD&C Act, annual BPD and program fees will be due on October 2, 2023.

If sponsors join the BPD program after the annual BPD invoices have been issued in August 2023, FDA will issue invoices in December 2023 to sponsors subject to fees for FY 2024 that qualify for the annual BPD fee after the August 2023 billing. FDA will issue invoices in December 2024 for any products that qualify for the annual program fee after the August 2023 billing.

C. Waivers and Refunds

To qualify for consideration for a small business waiver under section 744H(d) of the FD&C Act, or the return of any fee paid under section 744H of the FD&C Act, including if the fee is claimed to have been paid in error, a person shall submit to FDA a written request justifying such waiver or return and, except as otherwise specified in section 744H of the FD&C Act, such written request shall be submitted to FDA not later than 180 days after such fee is due. Such written request shall include any legal authorities under which the request is made. See section 744H(h) of the FD&C Act.

Dated: July 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–15918 Filed 7–27–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–2896]

Food Safety Modernization Act Domestic and Foreign Facility Reinspection, Recall, and Importer Reinspection Fee Rates for Fiscal Year 2024

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the fiscal year (FY) 2024 fee rates for certain domestic and foreign facility reinspections, failures to comply with a recall order, and importer reinspections that are authorized by the Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the FDA Food Safety Modernization Act (FSMA).

DATES: These fees are effective on October 1, 2023, and will remain in effect through September 30, 2024.

FOR FURTHER INFORMATION CONTACT: Olufunmilayo Ariyo, Office of Food Policy and Response, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 240–402–4989, *FSMAFeeStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 107 of the FSMA (Pub. L. 111–353) added section 743 to the FD&C Act (21 U.S.C. 379j–31) to provide FDA with the authority to assess and collect fees from, in part: (1) the responsible party for each domestic facility and the U.S. agent for each foreign facility subject to a reinspection to cover reinspection-related costs; (2) the responsible party for a domestic facility and an importer who does not comply with a recall order to cover food [1] recall activities associated with such order; and (3) each importer subject to a reinspection to cover reinspection-related costs (sections 743(a)(1)(A), (B), and (D) of the FD&C Act). Section 743 of the FD&C Act directs FDA to establish fees for each of these activities based on an estimate of 100 percent of the costs of each activity for each year (sections 743(b)(2)(A)(i), (ii), and (iv)), and these fees must be made available solely to pay for the costs of each activity for which the fee was incurred (section 743(b)(3)). These fees are effective on October 1, 2023, and will remain in effect through September 30, 2024. Section 743(b)(2)(B)(iii) of the FD&C Act directs FDA to develop a proposed set of guidelines in consideration of the burden of fee amounts on small businesses. As a first step in developing these guidelines, FDA invited public comment on the potential impact of the fees authorized by section 743 of the FD&C Act on small businesses (76 FR 45818, August 1, 2011). The comment period for this request ended November 30, 2011. As stated in FDA's September 2011 ''Guidance for Industry: Implementation of the Fee Provisions of Section 107 of the FDA Food Safety Modernization Act,'' (*https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-implementation-fee-provisions-section-107-fda-food-safety-modernization-act*), because FDA recognizes that for small businesses the full cost recovery of FDA reinspection or recall oversight could impose severe economic hardship, FDA intends to consider reducing certain fees for those firms. FDA does not intend to issue invoices for reinspection or recall order fees until FDA publishes a guidance document outlining the process through which firms may request a reduction in fees.

In addition, as stated in the September 2011 Guidance, FDA is in the process of considering various issues associated with the assessment

[1] The term ''food'' for purposes of this document has the same meaning as such term in section 201(f) of the FD&C Act (21 U.S.C. 321(f)).

and collection of importer reinspection fees. The fee rates set forth in this notice will be used to determine any importer reinspection fees assessed in FY 2024.

II. Estimating the Average Cost of a Supported Direct FDA Work Hour for FY 2024

FDA is required to estimate 100 percent of its costs for each activity in order to establish fee rates for FY 2024. In each year, the costs of salary (or personnel compensation) and benefits for FDA employees account for between 50 and 60 percent of the funds available to, and used by, FDA. Almost all the remaining funds (operating funds) available to FDA are used to support FDA employees for paying rent, travel, utility, information technology (IT), and other operating costs.

A. Estimating the Full Cost per Direct Work Hour in FY 2024

Full-time Equivalent (FTE) reflects the total number of regular straight-time hours—not including overtime or holiday hours—worked by employees, divided by the number of compensable hours applicable to each fiscal year. Annual leave, sick leave, compensatory time off, and other approved leave categories are considered ''hours worked'' for purposes of defining FTE employment.

In general, the starting point for estimating the full cost per direct work hour is to estimate the cost of an FTE or paid staff year. Calculating an Agency-wide total cost per FTE requires three primary cost elements: payroll, nonpayroll, and rent.

We have used an average of past year cost elements to predict the FY 2024 cost. The FY 2024 FDA-wide average cost for payroll (salaries and benefits) is $192,848; nonpayroll (including equipment, supplies, IT, and general and administrative overhead) is $99,316; and rent, including cost allocation analysis and adjustments for other rent and rent-related costs, is $23,239 per paid staff year, excluding travel costs.

Summing the average cost of an FTE for payroll, nonpayroll, and rent, brings the FY 2024 average fully supported cost to $315,403 [2] per FTE, excluding travel costs. FDA will use this base unit fee in determining the hourly fee rate for reinspection and recall order fees for FY 2024 prior to including domestic or foreign travel costs as applicable for the activity.

To calculate an hourly rate, FDA must divide the FY 2024 average fully supported cost of $315,403 per FTE by the average number of supported direct FDA work hours in FY 2022 (the last fiscal year for which data are available). See table 1.

TABLE 1—SUPPORTED DIRECT FDA WORK HOURS IN A PAID STAFF YEAR IN FY 2022

Total number of hours in a paid staff year	2,080
Less:	
11 paid holidays	−88
20 days of annual leave	−160
10 days of sick leave	−0
12.5 days of training	−100
22 days of general administration	−176
26.5 days of travel	−212
2 hours of meetings per week	−104
Net Supported Direct FDA Work Hours Available for Assignments	−1,160

Dividing the average fully supported FTE cost in FY 2024 ($315,403) by the total number of supported direct work hours available for assignment in FY 2022 (1,160) results in an average fully supported cost of $272 (rounded to the nearest dollar), excluding inspection travel costs, per supported direct work hour in FY 2024.

B. Adjusting FY 2022 Travel Costs for Inflation To Estimate FY 2024 Travel Costs

To adjust the hourly rate for FY 2024, FDA must estimate the cost of inflation in each year for FY 2023 and FY 2024. FDA uses the method prescribed for estimating inflationary costs under the Prescription Drug User Fee Act (PDUFA) provisions of the FD&C Act (section 736(c)(1) (21 U.S.C. 379h(c)(1)), the statutory method for inflation adjustment in the FD&C Act that FDA has used consistently. FDA previously determined the FY 2023 inflation rate to be 1.6404 percent; this rate was published in the FY 2023 PDUFA user fee rates notice in the **Federal Register** (October 7, 2022, 87 FR 61063). Utilizing the method set forth in section 736(c)(1) of the FD&C Act, FDA has calculated an inflation rate of 1.6404 percent for FY 2023 and 3.8896 percent for FY 2024, and FDA intends to use these inflation rates to make inflation adjustments for FY 2024 for several of its user fee programs; the derivation of this rate will be published in the **Federal Register** in the FY 2024 notice for the PDUFA user fee rates.

The average fully supported cost per supported direct FDA work hour, excluding travel costs, of $272 already takes into account inflation as the calculation above is based on FY 2024 predicted costs. FDA will use this base unit fee in determining the hourly fee rate for reinspection and recall order fees for FY 2024 prior to including domestic or foreign travel costs as applicable for the activity. In FY 2022, FDA's Office of Regulatory Affairs (ORA) spent a total of $6,566,835 for domestic regulatory inspection travel costs and General Services Administration Vehicle costs related to FDA's Center for Food Safety and Applied Nutrition (CFSAN) and Center for Veterinary Medicine (CVM) field activities programs. The total ORA domestic travel costs spent is then divided by the 7,930 CFSAN and CVM domestic inspections, which averages a total of $828 per inspection. These inspections average 46.29 hours per inspection. Dividing $828 per inspection by 46.29 hours per inspection results in a total and an additional cost of $18 (rounded to the nearest dollar) per hour spent for domestic inspection travel costs in FY 2022. To adjust for the $18 per hour additional domestic cost inflation increases for FY 2023 and FY 2024, FDA must multiply the FY 2023 PDUFA inflation rate adjustor (1.016404) times the FY 2024 PDUFA inflation rate adjustor (1.038896) times the $18 additional domestic cost, which results in an estimated cost of $19 (rounded to the nearest dollar) per paid hour in

[2] Total includes rounding.

addition to $272 for a total of $291 per paid hour ($272 plus $19) for each direct hour of work requiring domestic inspection travel. FDA will use these rates in charging fees in FY 2024 when domestic travel is required.

In FY 2022, ORA spent a total of $802,057 on 175 foreign inspection trips related to FDA's CFSAN and CVM field activities programs, which averaged a total of $4,583 per foreign inspection trip. These trips averaged 3 weeks (or 120 paid hours) per trip. Dividing $4,583 per trip by 120 hours per trip results in a total and an additional cost of $38 (rounded to the nearest dollar) per paid hour spent for foreign inspection travel costs in FY 2022. To adjust $38 for inflationary increases in FY 2023, and FY 2024, FDA must multiply it by the same inflation factors mentioned previously in this document (1.016404 and 1.038896), which results in an estimated cost of $40 (rounded to the nearest dollar) per paid hour in addition to $272 for a total of $312 per paid hour ($272 plus $40) for each direct hour of work requiring foreign inspection travel. FDA will use these rates in charging fees in FY 2024 when foreign travel is required.

TABLE 2—FSMA FEE SCHEDULE FOR FY 2024

Fee category	Fee rates for FY 2024
Hourly rate if domestic travel is required	$291
Hourly rate if foreign travel is required	312

III. Fees for Reinspections of Domestic or Foreign Facilities Under Section 743(a)(1)(A)

A. What will cause this fee to be assessed?

The fee will be assessed for a reinspection conducted under section 704 of the FD&C Act (21 U.S.C. 374) to determine whether corrective actions have been implemented and are effective and compliance has been achieved to the Secretary of Health and Human Services' (the Secretary) (and, by delegation, FDA's) satisfaction at a facility that manufactures, processes, packs, or holds food for consumption necessitated as a result of a previous inspection (also conducted under section 704) of this facility, which had a final classification of Official Action Indicated (OAI) conducted by or on behalf of FDA, when FDA determined the noncompliance was materially related to food safety requirements of the FD&C Act. FDA considers such noncompliance to include noncompliance with a statutory or regulatory requirement under section 402 of the FD&C Act (21 U.S.C. 342) and section 403(w) of the FD&C Act (21 U.S.C. 343(w)). However, FDA does not consider noncompliance that is materially related to a food safety requirement to include circumstances where the noncompliance is of a technical nature and not food safety related (*e.g.,* failure to comply with a food standard or incorrect font size on a food label). Determining when noncompliance, other than under sections 402 and 403(w) of the FD&C Act, is materially related to a food safety requirement of the FD&C Act may depend on the facts of a particular situation. FDA intends to issue guidance to provide additional information about the circumstances under which FDA would consider noncompliance to be materially related to a food safety requirement of the FD&C Act.

Under section 743(a)(1)(A) of the FD&C Act, FDA is directed to assess and collect fees from ''the responsible party for each domestic facility (as defined in section 415(b) (21 U.S.C. 350d(b))) and the U.S. agent for each foreign facility subject to a reinspection'' to cover reinspection-related costs.

Section 743(a)(2)(A)(i) of the FD&C Act defines the term ''reinspection'' with respect to domestic facilities as ''1 or more inspections conducted under section 704 subsequent to an inspection conducted under such provision which identified noncompliance materially related to a food safety requirement of the Act, specifically to determine whether compliance has been achieved to the Secretary's satisfaction.''

The FD&C Act does not contain a definition of ''reinspection'' specific to foreign facilities. In order to give meaning to the language in section 743(a)(1)(A) of the FD&C Act to collect fees from the U.S. agent of a foreign facility subject to a reinspection, the Agency is using the following definition of ''reinspection'' for purposes of assessing and collecting fees under section 743(a)(1)(A), with respect to a foreign facility: ''1 or more inspections conducted by officers or employees duly designated by the Secretary subsequent to such an inspection which identified noncompliance materially related to a food safety requirement of the FD&C Act, specifically to determine whether compliance has been achieved to the Secretary's (and, by delegation, FDA's) satisfaction.''

This definition allows FDA to fulfill the mandate to assess and collect fees from the U.S. agent of a foreign facility in the event that an inspection reveals noncompliance materially related to a food safety requirement of the FD&C Act, causing one or more subsequent inspections to determine whether compliance has been achieved to the Secretary's (and, by delegation, FDA's) satisfaction. By requiring the initial inspection to be conducted by officers or employees duly designated by the Secretary, the definition ensures that a foreign facility would be subject to fees only in the event that FDA, or an entity designated to act on its behalf, has made the requisite identification at an initial inspection of noncompliance materially related to a food safety requirement of the FD&C Act. The definition of ''reinspection-related costs'' in section 743(a)(2)(B) of the FD&C Act relates to both a domestic facility reinspection and a foreign facility reinspection, as described in section 743(a)(1)(A).

B. Who will be responsible for paying this fee?

The FD&C Act states that this fee is to be paid by the responsible party for each domestic facility (as defined in section 415(b) of the FD&C Act) and by the U.S. agent for each foreign facility (section 743(a)(1)(A) of the FD&C Act). This is the party to whom FDA will send the invoice for any fees that are assessed under this section.

C. How much will this fee be?

The fee is based on the number of direct hours spent on such reinspections, including time spent conducting the physical surveillance and/or compliance reinspection at the facility, or whatever components of such an inspection are deemed necessary, making preparations and arrangements for the reinspection, traveling to and from the facility, preparing any reports, analyzing any samples or examining any labels if required, and performing other activities as part of the OAI reinspection until the facility is again determined to be in compliance. The direct hours spent on each such reinspection will be billed at the appropriate hourly rate shown in table 2 of this document.

IV. Fees for Noncompliance With a Recall Order Under Section 743(a)(1)(B)

A. What will cause this fee to be assessed?

The fee will be assessed for not complying with a recall order under section 423(d) (21 U.S.C. 350l(d)) or section 412(f) of the FD&C Act (21 U.S.C. 350a(f)) to cover food recall activities associated with such order performed by the Secretary (and by delegation, FDA) (section 743(a)(1)(B) of

the FD&C Act). Noncompliance may include the following: (1) not initiating a recall as ordered by FDA; (2) not conducting the recall in the manner specified by FDA in the recall order; or (3) not providing FDA with requested information regarding the recall, as ordered by FDA.

B. Who will be responsible for paying this fee?

Section 743(a)(1)(B) of the FD&C Act states that the fee is to be paid by the responsible party for a domestic facility (as defined in section 415(b) of the FD&C Act) and an importer who does not comply with a recall order under section 423 or under section 412(f) of the FD&C Act. In other words, the party paying the fee would be the party that received the recall order.

C. How much will this fee be?

The fee is based on the number of direct hours spent on taking action in response to the firm's failure to comply with a recall order. Types of activities could include conducting recall audit checks, reviewing periodic status reports, analyzing the status reports and the results of the audit checks, conducting inspections, traveling to and from locations, and monitoring product disposition. The direct hours spent on each such recall will be billed at the appropriate hourly rate shown in table 2 of this document.

D. How must the fees be paid?

An invoice will be sent to the responsible party for paying the fee after FDA completes the work on which the invoice is based. Payment must be made within 30 days of the invoice date in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration. Detailed payment information will be included with the invoice when it is issued.

V. What are the consequences of not paying these fees?

Under section 743(e)(2) of the FD&C Act, any fee that is not paid within 30 days after it is due shall be treated as a claim of the U.S. Government subject to provisions of subchapter II of chapter 37 of title 31, United States Code.

Dated: July 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–15927 Filed 7–27–23; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–3059]

Generic Drug User Fee Rates for Fiscal Year 2024

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Federal Food, Drug, and Cosmetic Act (FD&C Act or statute), as amended by the Generic Drug User Fee Amendments of 2022 (GDUFA III), authorizes the Food and Drug Administration (FDA, Agency, or we) to assess and collect fees for abbreviated new drug applications (ANDAs); drug master files (DMFs); generic drug active pharmaceutical ingredient (API) facilities, finished dosage form (FDF) facilities, and contract manufacturing organization (CMO) facilities; and generic drug applicant program user fees. In this document, FDA is announcing fiscal year (FY) 2024 rates for GDUFA III fees. These fees are effective on October 1, 2023, and will remain in effect through September 30, 2024.

FOR FURTHER INFORMATION CONTACT: Olufunmilayo Ariyo, Office of Financial Management, Food and Drug Administration, 4041 Powder Mill Rd., Rm. 62080, Beltsville, MD 20705–4304, 240–402–4989; or the User Fees Support Staff at *OO-OFBAP-OFM-UFSS-Government@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Sections 744A and 744B of the FD&C Act (21 U.S.C. 379j–41 and 379j–42), as amended by GDUFA III, authorize FDA to assess and collect fees associated with human generic drug products. Fees are assessed on: (1) certain types of applications for human generic drug products; (2) certain facilities where APIs and FDFs are produced; (3) certain DMFs associated with human generic drug products; and (4) generic drug applicants who have ANDAs (the program fee) (see section 744B(a)(2) through (5) of the FD&C Act). For more information about GDUFA III, please refer to the FDA website (*https://www.fda.gov/gdufa*).

For FY 2024, the generic drug fee rates are ANDA ($252,453), DMF ($94,682), domestic API facility ($40,464), foreign API facility ($55,464), domestic FDF facility ($220,427), foreign FDF facility ($235,427), domestic CMO facility ($52,902), foreign CMO facility ($67,902), large size operation generic drug applicant program ($1,729,629), medium size operation generic drug applicant program ($691,852), and small business generic drug applicant program ($172,963). These fees are effective on October 1, 2023, and will remain in effect through September 30, 2024. The fee rates for FY 2024 are set out in table 1.

TABLE 1—FEE SCHEDULE FOR FY 2024

Generic drug fee category	Fees rates for FY 2024
Applications	
Abbreviated New Drug Application (ANDA)	$252,453
Drug Master File (DMF)	94,682
Facilities	
Active Pharmaceutical Ingredient (API)—Domestic	40,464
API—Foreign	55,464
Finished Dosage Form (FDF)—Domestic	220,427
FDF—Foreign	235,427
Contract Manufacturing Organization (CMO)—Domestic	52,902
CMO—Foreign	67,902
GDUFA Program	
Large size operation generic drug applicant	1,729,629
Medium size operation generic drug applicant	691,852
Small business generic drug applicant	172,963

II. Fee Revenue Amount for FY 2024

Under section 744B(b)(1)(B)(ii) of the FD&C Act, the base revenue amount for FY 2024 for GDUFA III is $582,500,000. Under section 744B(c)(1) of the FD&C Act, applicable inflation adjustments to base revenue shall be made beginning with FY 2024.

Under section 744B(c)(2) of the FD&C Act, beginning with FY 2024, FDA shall, in addition to the inflation adjustment, apply a capacity planning adjustment to further adjust, as needed, the fee revenue and fees to reflect changes in the resource capacity needs of FDA for human generic drug activities.

Under section 744B(c)(3) of the FD&C Act, beginning with FY 2024, FDA may, in addition to the inflation and capacity planning adjustments, apply an operating reserve adjustment to further increase the fee revenue and fees if necessary to provide operating reserves of carryover user fees for human generic drug activities for not more than the number of weeks specified in such section (or as applicable, shall apply such adjustment to decrease the fee revenues and fees to provide for not

more than 12 weeks of such operating reserves).

A. Inflation Adjustment

As noted, above, the base revenue amount for FY 2024 is $582,500,000. This is the total revenue amount specified for the prior fiscal year, FY 2023, pursuant to the statute (see section 744B(b)(1)(A) of the FD&C Act).[1] GDUFA III specifies that the $582,500,000 is to be adjusted for inflation for FY 2024 using two separate adjustments—one for personnel compensation and benefits (PC&B) and one for non-PC&B costs (see sections 744B(c)(1)(B) and (C) of the FD&C Act).

The component of the inflation adjustment for PC&B costs shall be the average annual percent change in the cost of all PC&B paid per full-time equivalent (FTE) position at FDA for the first 3 of the 4 preceding fiscal years, multiplied by the proportion of PC&B costs to total FDA costs of human generic drug activities for the first 3 of the preceding 4 fiscal years (see section 744B(c)(1)(B) of the FD&C Act).

Table 2 summarizes the actual cost and total FTEs for the specified fiscal years and provides the percent change from the previous fiscal year and the average percent change over the first 3 of the 4 fiscal years preceding FY 2024. The 3-year average is 3.9280 percent.

TABLE 2—FDA PERSONNEL COMPENSATION AND BENEFITS (PC&B) EACH YEAR AND PERCENT CHANGE

Fiscal year	2020	2021	2022	3-Year average
Total PC&B	$2,875,592,000	$3,039,513,000	$3,165,477,000	.....
Total FTEs	17,535	18,501	18,474	.....
PC&B per FTE	$163,992	$164,289	$171,348	.....
Percent Change from Previous Year	7.3063%	0.1811%	4.2967%	3.9280%

The statute specifies that this 3.9280 percent should be multiplied by the proportion of PC&B expended for human generic drug activities for the first 3 of the preceding 4 fiscal years. Table 3 shows the amount of PC&B and the total amount obligated for human generic drug activities from FY 2020 through FY 2022.

TABLE 3—PC&B AS A PERCENT OF FEE REVENUES SPENT ON HUMAN GENERIC DRUG ACTIVITIES OVER THE LAST 3 YEARS

Fiscal year	2020	2021	2022	3-Year average
PC&B	$397,392,785	$410,587,565	$391,922,747	.....
Non-PC&B	300,692,399	271,328,560	289,479,265	.....
Total Costs	698,085,185	681,916,125	681,402,012	.....
PC&B Percent	56.9261%	60.2109%	57.5171%	58.2180%
Non-PC&B Percent	43.0739%	39.7891%	42.4829%	41.7820%

The payroll adjustment is 3.9280 percent multiplied by 58.2180 percent (or 2.2868 percent).

The statute specifies that the portion of the inflation adjustment for non-PC&B costs for FY 2024 is the average annual percent change that occurred in the Consumer Price Index (CPI) for urban consumers (Washington-Arlington-Alexandria Area, DC-VA-MD-WV; not seasonally adjusted; all items; annual index) for the first 3 of the preceding 4 years of available data multiplied by the proportion of all costs other than PC&B costs to total costs of human generic drug activities for the first 3 years of the preceding 4 fiscal years (see section 744B(c)(1)(C) of the FD&C Act). Table 4 provides the summary data for the percent change in the specified CPI. The data are published by the Bureau of Labor Statistics and can be found on its website at: *https://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUURS35ASA0,CUUSS35ASA0.*

TABLE 4—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN CPI FOR WASHINGTON-ARLINGTON-ALEXANDRIA AREA

Year	2020	2021	2022	3-Year average
Annual CPI	267.16	277.73	296.12	.....
Annual Percent Change	0.8989%	3.9568%	6.6212%	3.8256%

To calculate the inflation adjustment for non-pay costs, we multiply the 3-year average percent change in the CPI (3.8256 percent) by the proportion of all costs other than PC&B to total costs of human generic drug activities obligated. Because 58.2180 percent was obligated for PC&B as shown in table 3, 41.7820 percent is the portion of costs other than PC&B. The non-pay adjustment is 3.8256 percent times 41.7820 percent, or 1.5984 percent.

To complete the inflation adjustment for FY 2024, we add the PC&B component (2.2868 percent) to the non-PC&B component (1.5984 percent) for a total inflation adjustment of 3.8852 percent (rounded), and then add 1,

[1] Under section 744B(b)(1)(B)(ii), the base revenue amount for a fiscal year is equal to the total revenue amount established for the previous fiscal year, not including any adjustments for such previous fiscal year under section 744B(c)(3). For FY 2023, adjustments under section 744B(c)(3) were inapplicable.

making an inflation adjustment multiple of 1.038852. We then multiply the base revenue amount for FY 2024 ($582,500,000) by 1.038852, yielding an inflation-adjusted amount of $605,131,290.

B. FY 2024 Statutory Fee Revenue Adjustments for Capacity Planning

The statute specifies that after the base revenue amount for FY 2024 of $582,500,000 has been adjusted for inflation as described in section A above, the resulting amount shall be further adjusted to reflect changes in the resource capacity needs for human generic drug activities (see section 744B(c)(2) of the FD&C Act). Following a process required in the statute, FDA established the capacity planning adjustment (CPA) methodology that is derived from the methodology and recommendations made in the report titled ''Independent Evaluation of the GDUFA Resource Capacity Planning Adjustment Methodology: Evaluation and Recommendations'' as announced in the **Federal Register** of August 3, 2020, and incorporating approaches and attributes determined appropriate by the Agency, except that the workload drivers are limited to those specified in the GDUFA Reauthorization Performance Goals and Program Enhancements Fiscal Years 2023–2027 (GDUFA III Commitment Letter).[2] This methodology includes a continuous, iterative improvement approach, under which the Agency intends to refine its data and estimates for the core review activities to improve the accuracy of its data and estimates over time.[3]

The CPA methodology consists of four steps:

1. Forecast workload volumes: Predictive models estimate the volume of workload for the upcoming FY.
2. Forecast the resource needs: Forecast algorithms are generated utilizing time reporting data. These algorithms estimate the required demand in FTEs[4] for direct review-related effort. This is then compared to current available resources for the direct review-related workload.
3. Assess the resource forecast in the context of additional internal factors: Program leadership examines operational, financial, and resourcing data to assess whether FDA will be able to utilize additional funds during the fiscal year, and whether the additional funds are required to support additional review capacity. FTE amounts are adjusted, if needed.
4. Convert the FTE need to dollars: Utilizing FDA's fully loaded FTE cost model, the final feasible FTEs are converted to an equivalent dollar amount.

Table 5 summarizes the forecasted workload volumes for the Center for Drug Evaluation and Research (CDER) for FY 2024 based on predictive models, as well as historical actuals from FY 2022 for comparison.

TABLE 5—CDER ACTUAL FY 2022 WORKLOAD VOLUMES AND PREDICTED FY 2024 WORKLOAD VOLUMES

Workload driver category	FY 2022 actuals	FY 2024 predictions
ANDA Originals[1]	813	801
ANDA Supplements[2]	9,716	10,434
Pre-ANDA Meetings	132	103
Controlled Correspondences[3]	3,677	3,505
Suitability Petitions	21	25
Annual Reports[4]	11,826	12,624
Active REMS Programs[4 5]	45	45

[1] Excludes response to refused to receive (RTR) and Orig-2+. ANDA Original and Resubmissions/Amendments captured in time reporting data.
[2] Includes changes being effected and prior approval supplement Manufacturing and Labeling Supplements. PAS exclude response to RTRs, risk evaluation and mitigation strategies (REMS) and Bioequivalence Supplements. ANDA Supplement and Resubmissions/Amendments captured in time reporting data.
[3] Includes all requesting controlled correspondences.
[4] Represents post-marketing safety activities developed in alignment with Prescription Drug User Fee Act and biosimilar user fee amendments as applicable.
[5] Represents the percentage of Active REMS Programs proportional to Center and User Fee by total number of qualifying products with the exclusion of the Opioid Shared System.

Utilizing the resource forecast algorithms, the forecasted workload volumes for FY 2024 were then converted into estimated FTE needs for FDA's GDUFA direct review-related work. The resulting expected FY 2024 FTE need for GDUFA was compared to current onboard capacity for GDUFA direct review-related work to determine the FY 2024 resource delta, as summarized in table 6.

TABLE 6—CDER FY 2024 GDUFA RESOURCE DELTA

Center	Current resource capacity	FY 2024 resource forecast	Predicted FY 2024 FTE delta
CDER	1,024	1,059	35

The projected 35 FTE delta was assessed by FDA in the context of additional operational and internal factors to ensure that a fee adjustment is only made for resources that can be utilized in the fiscal year and for which funds are required to support additional review capacity.

After assessing current hiring capacity and existing funded vacancies, CDER adjusted the 35 FTE delta to 25 FTEs.

[2] Section 744B(c)(2)(B) of the FD&C Act; see also section VIII.B.2.e. of the GDUFA III Commitment Letter available at *https://www.fda.gov/media/153631/download*.

[3] For example, starting with FY 2025, FDA will aim to refine the CPA methodology to reflect a more comprehensive assessment of the applicable workload drivers across the Agency.

[4] Full-time equivalents refer to a paid staff year, rather than a count of individual employees.

The adjusted 25 FTE delta was then assessed by FDA to determine if the delta exceeded the CPA cap as specified in statute (section 744B(c)(2)(C)(ii)) which articulates that for FY 2024, the CPA shall not exceed 3 percent of inflation-adjusted base revenue, except that the CPA cap may be increased to 4 percent of inflation-adjusted base revenue if the following conditions are met during the period from April 1, 2021 through March 31, 2023: (1) the total number of ANDAs submitted was greater than or equal to 2,000 or (2) 35 percent or more of ANDAs submitted related to complex products (as defined in section XI of the letters described in section 3001(b) of the Generic Drug User Fee Amendments of 2022).[5]

Table 7 summarizes the total number of ANDAs submitted and the percentage of such applications that were related to complex products from April 1, 2021 through March 31, 2023:

TABLE 7—GDUFA CPA CAP ASSESSMENT METRICS

Abbreviated New Drug Applications Submitted between April 1, 2021 through March 31, 2023	1,675
Percentage of Abbreviated New Drug Applications Submitted that are Complex Submitted between April 1, 2021 through March 31, 2023	16%

FDA determined that the criteria to increase the CPA cap was not, and therefore, the GDUFA CPA cap for FY 2024 is 3 percent of inflation-adjusted base revenue. FDA further determined that the 25 FTE delta when converted to dollars did not exceed 3 percent of FY 2024 inflation-adjusted base revenue, and therefore, this 25 FTE delta required no further adjustment.

The FY 2024 GDUFA CPA is therefore $8,406,725, as summarized in table 8.

TABLE 8—FY 2024 GDUFA CPA

Center	Additional FTEs for 2024	Cost for each additional FTE	CDER FY 2024 GDUFA CPA
CDER	25	$336,269	$8,406,725

TABLE 9—BASE REVENUE AMOUNT AND SECTION 744B(c)(1) AND (2) ADJUSTMENT AMOUNTS

Fee	Amount
Statutory Fee Revenue Base Amount (section 744B(b)(1) of the FD&C Act)	$582,500,000
Statutory Fee Revenue Adjustments for Inflation (section 744B(c)(1) of the FD&C Act)	22,631,290
Statutory Fee Revenue Adjustments for Capacity Planning (section 744B(c)(2) of the FD&C Act)	8,406,725
Cumulative Adjusted Revenue Amount (sections 744B(b)(1), 744B(c)(1), and 744B(c)(2) of the FD&C Act	613,538,015

C. FY 2024 Statutory Fee Revenue Adjustments for Operating Reserve

Under section 744B(c)(3) of the FD&C Act, beginning with FY 2024, FDA may, in addition to the inflation and capacity planning adjustments, apply an operating reserve adjustment to further increase the fee revenue and fees if necessary to provide operating reserves of carryover user fees for human generic drug activities for not more than the number of weeks specified in such section (or as applicable, shall apply such adjustment to decrease the fee revenues and fees to provide for not more than 12 weeks of such operating reserves).

The upward operating reserve adjustment is discretionary—for FY 2024, FDA may take an adjustment to provide for not more than 8 weeks of operating reserve. If carryover is more than 12 weeks of operating reserve, FDA must decrease the fee revenues and fees to provide for not more than 12 weeks of operating reserve. To calculate the 8-week and 12-week threshold amounts for the FY 2024 operating reserve adjustment, the FY 2024 estimated adjusted revenue amount, $613,538,015 is divided by 52, resulting in a $11,798,808 cost of operation for 1 week. The 1-week value is then multiplied by 8 weeks to generate the 8-week operating reserve threshold amount for FY 2024 of $94,390,464. The 1-week value is multiplied by 12 to generate the 12-week operating reserve threshold amount for FY 2024 of $141,585,696.

To determine the FY 2023 end-of-year operating reserves of carryover user fees, the Agency assessed the operating reserve of carryover fees at the end of June 2023 and forecast collections and obligations in the fourth quarter of FY 2023 combined. This provides an estimated end-of-year FY 2023 operating reserve of carryover user fees of $130,218,707 which equates to 11.04 weeks of operations.

The statutory criteria for an operating reserve adjustment were not met. Table 10 below summarizes FY 2024 fee revenue.

TABLE 10—TOTAL ESTIMATED ADJUSTED REVENUE AMOUNT

Fee	Amount
Statutory Fee Revenue Base Amount (section 744B(b)(1) of the FD&C Act)	$582,500,000
Statutory Fee Revenue Adjustments for Inflation (section 744B(c)(1) of the FD&C Act)	22,631,290
Statutory Fee Revenue Adjustments for Capacity Planning (section 744B(c)(2) of the FD&C Act)	8,406,725
Operating Reserve Adjustment (section 744B(c)(3) of the FD&C Act)	.....
Total Revenue Amount (rounded to the nearest thousand dollars) (sections 744B(b)(1), 744B(c)(1), 744B(c)(2) and 744B(c)(3) of the FD&C Act)	613,538,000

III. ANDA Filing Fee

Under GDUFA III, the FY 2024 ANDA filing fee is owed by each applicant that submits an ANDA on or after October 1, 2023.[6] This fee is due on the submission date of the ANDA. Section 744B(b)(2)(B) of the FD&C Act specifies that the ANDA fee will make up 33 percent of

[5] Definition of complex products in section XI of the GDUFA III Commitment Letter *https://www.fda.gov/media/153631/download.*

[6] Section 744B(a)(3) of the FD&C Act.

the $613,538,000, which is $202,467,540.

To calculate the ANDA fee, FDA estimated the number of full application equivalents (FAEs) that will be submitted in FY 2024. The submissions are broken down into three categories: new originals (submissions that have not been received by FDA previously), submissions that FDA RTR for reasons other than failure to pay fees, and applications that are resubmitted after an RTR decision for reasons other than failure to pay fees. An ANDA counts as one FAE; however, 75 percent of the fee paid for an ANDA that has been RTR shall be refunded according to GDUFA III if: (1) the ANDA is refused for a cause other than failure to pay fees or (2) the ANDA has been withdrawn prior to receipt (section 744B(a)(3)(D)(i) of the FD&C Act). Therefore, an ANDA that is considered not to have been received by FDA due to reasons other than failure to pay fees or withdrawn prior to receipt counts as one-fourth of an FAE. After an ANDA has been RTR, the applicant has the option of resubmitting. For user fee purposes, these resubmissions are equivalent to new original submissions: ANDA resubmissions are charged the full amount for an application (one FAE).

As shown in table 5, FDA estimates that 801 new original ANDAs will be submitted and incur filing fees in FY 2024. Not all of the new original ANDAs will be received by FDA and some of those not received will be resubmitted in the same fiscal year. Therefore, FDA expects that the FAE count for ANDAs will be 802 for FY 2024.

The FY 2024 ANDA filing fee is estimated by dividing the number of FAEs that will incur the fee in FY 2024 (802) into the fee revenue amount to be derived from ANDA filing fees in FY 2024 ($202,467,540). The result, rounded to the nearest dollar, is a fee of $252,453 per ANDA.

The statute provides that those ANDAs that include information about the production of APIs other than by reference to a DMF will pay an additional fee that is based on the number of such APIs and the number of facilities proposed to produce those ingredients (see section 744B(a)(3)(F) of the FD&C Act). FDA anticipates that this additional fee is unlikely to be assessed often; therefore, FDA has not included projections concerning the amount of this fee in calculating the fees for ANDAs.

IV. DMF Fee

Under GDUFA III, the DMF fee is owed by each person that owns a type II API DMF that is referenced, on or after October 1, 2012, in a generic drug submission by an initial letter of authorization.[7] This is a one-time fee for each DMF. This fee is due on the earlier of the date on which the first generic drug submission is submitted that references the associated DMF or the date on which the DMF holder requests the initial completeness assessment. Under section 744B(a)(2)(D)(iii) of the FD&C Act, if a DMF has successfully undergone an initial completeness assessment and the fee is paid, the DMF will be placed on a publicly available list documenting DMFs available for reference.

To calculate the DMF fee, FDA assessed the volume of DMF submissions over time. We assessed DMFs from October 1, 2021, to April 30, 2023, and concluded that averaging the number of fee-paying DMFs provided the most accurate model for predicting fee-paying DMFs for FY 2024. The monthly average of paid DMF submissions FDA received during FY 2022 and FY 2023 is 27. To determine the FY 2024 projected number of fee-paying DMFs, the average of 27 DMF submissions is multiplied by 12 months, which results in 324 estimated FY 2024 fee-paying DMFs. FDA is estimating 324 fee-paying DMFs for FY 2024.

The FY 2024 DMF fee is determined by dividing the DMF target revenue by the estimated number of fee-paying DMFs in FY 2024. Section 744B(b)(2)(A) of the FD&C Act specifies that the DMF fees will make up 5 percent of the $613,538,000, which is $30,676,900. Dividing the DMF revenue amount ($30,676,900) by the estimated fee-paying DMFs (324), and rounding to the nearest dollar, yields a DMF fee of $94,682 for FY 2024.

V. Foreign Facility Fee Differential

Under GDUFA III, the fee for a facility located outside the United States and its territories and possessions shall be $15,000 higher than the amount of the fee for a facility located in the United States and its territories and possessions.[8] The basis for this differential is the extra cost incurred by conducting an inspection outside the United States and its territories and possessions.

VI. FDF and CMO Facility Fees

Under GDUFA III, the annual FDF facility fee is owed by each person who owns an FDF facility that is identified in at least one approved generic drug submission owned by that person or its affiliates.[9] The CMO facility fee is owed by each person who owns an FDF facility that is identified in at least one approved ANDA but is not identified in an approved ANDA held by the owner of that facility or its affiliates.[10] Section 744B(b)(2)(C) of the FD&C Act specifies that the FDF and CMO facility fee revenue will make up 20 percent of the $613,538,000, which is $122,707,600.

To calculate the fees, data from FDA's Integrity Services (IS) were utilized as the primary source of facility information for determining the denominators of each facility fee type. IS is the master data steward for all facility information provided in generic drug submissions received by FDA. A facility's reference status in an approved generic drug submission is extracted directly from submission data rather than relying on data from self-identification. This information provided the number of facilities referenced as FDF manufacturers in at least one approved generic drug submission. Based on FDA's IS data, the FDF and CMO facility denominators are 173 FDF domestic, 307 FDF foreign, 81 CMO domestic, and 118 CMO foreign facilities for FY 2024.

GDUFA III specifies that the CMO facility fee is to be equal to 24 percent of the FDF facility fee.[11] Therefore, to generate the target collection revenue amount from FDF and CMO facility fees ($122,707,600), FDA must weight a CMO facility as 24 percent of an FDF facility. FDA set fees based on the estimate of 173 FDF domestic, 307 FDF foreign, 19.44 CMO domestic (81 multiplied by 24 percent), and 28.32 CMO foreign facilities (118 multiplied by 24 percent), which equals 528 total weighted FDF and CMO facilities for FY 2024.

To calculate the fee for domestic facilities, FDA first determines the total fee revenue that will result from the foreign facility differential by subtracting the fee revenue resulting from the foreign facility fee differential from the target collection revenue amount ($122,707,600) as follows: the foreign facility fee differential revenue equals the foreign facility fee differential ($15,000) multiplied by the number of FDF foreign facilities (307) plus the foreign facility fee differential ($15,000) multiplied by the number of CMO foreign facilities (118), totaling $6,375,000. This results in foreign fee differential revenue of $6,375,000 from

[7] Section 744B(a)(2) of the FD&C Act.

[8] Section 744B(b)(2)(C) and (D) of the FD&C Act.

[9] Section 744B(a)(4)(A) of the FD&C Act.

[10] Section 744A(5) and 744B(b)(2)(C) of the FD&C Act.

[11] Section 744B(b)(2)(C) of the FD&C Act.

the total FDF and CMO facility fee target collection revenue.

Subtracting the foreign facility differential fee revenue ($6,375,000) from the total FDF and CMO facility target collection revenue ($122,707,600) results in a remaining facility fee revenue balance of $116,332,600. To determine the domestic FDF facility fee, FDA divides the $116,332,600 by the total weighted number of FDF and CMO facilities (527.76), which results in a domestic FDF facility fee of $220,427. The foreign FDF facility fee is $15,000 more than the domestic FDF facility fee, or $235,427.

According to GDUFA III, the domestic CMO fee is calculated as 24 percent of the amount of the domestic FDF facility fee.[12] Therefore, the domestic CMO fee is $52,902, rounded to the nearest dollar. The foreign CMO fee is calculated as the domestic CMO fee plus the foreign fee differential of $15,000. Therefore, the foreign CMO fee is $67,902.

VII. API Facility Fee

Under GDUFA III, the annual API facility fee is owed by each person who owns a facility that is identified in at least one approved generic drug submission in which the facility is approved to produce one or more API or in a Type II API DMF referenced in at least one approved generic drug submission.[13] Section 744B(b)(2)(D) of the FD&C Act specifies the API facility fee will make up 6 percent of $613,538,000 in fee revenue, which is $36,812,280.

To calculate the API facility fee, data from FDA's IS were utilized as the primary source of facility information for determining the denominator. As stated above, IS is the master data steward for all facility information provided in generic drug submissions received by FDA. A facility's reference status in an approved generic drug submission is extracted directly from submission data rather than relying on data from self-identification. This information provided the number of facilities referenced as API manufacturers in at least one approved generic drug submission.

The total number of API facilities identified was 684; of that number, 75 were domestic and 609 were foreign facilities. The foreign facility differential is $15,000. To calculate the fee for domestic facilities, FDA must first subtract the fee revenue that will result from the foreign facility fee differential. FDA takes the foreign facility differential ($15,000) and multiplies it by the number of foreign facilities (609) to determine the total fee revenue that will result from the foreign facility differential. As a result of this calculation, the foreign fee differential revenue will make up $9,135,000 of the total API fee revenue. Subtracting the foreign facility differential fee revenue ($9,135,000) from the total API facility target revenue ($36,812,280) results in a remaining balance of $27,677,280. To determine the domestic API facility fee, we divide the $27,677,280 by the total number of facilities (684), which gives us a domestic API facility fee of $40,464. The foreign API facility fee is $15,000 more than the domestic API facility fee, or $55,464.

VIII. Generic Drug Applicant Program Fee

Under GDUFA III, if a person and its affiliates own at least one but not more than five approved ANDAs on October 1, 2023, the person and its affiliates shall owe a small business generic drug applicant program fee.[14] If a person and its affiliates own at least 6 but not more than 19 approved ANDAs, the person and its affiliates shall owe a medium size operation generic drug applicant program fee.[15] If a person and its affiliates own at least 20 approved ANDAs, the person and its affiliates shall owe a large size operation generic drug applicant program fee.[16] Section 744B(b)(2)(E) of the FD&C Act specifies the GDUFA program fee will make up 36 percent of $613,538,000 in fee revenue, which is $220,873,680.

To determine the appropriate number of parent companies for each tier, FDA asked companies to claim their ANDAs and affiliates in the CDER NextGen Portal. The companies were able to confirm relationships currently present in FDA's records, while also reporting newly approved ANDAs, newly acquired ANDAs, and new affiliations.

In determining the appropriate number of approved ANDAs, FDA has factored in a number of variables that could affect the collection of the target revenue: (1) inactive ANDAs: applicants who have not submitted an annual report for one or more of their approved applications within the past 2 years; (2) Program Fee Arrears List: parent companies that are on the arrears list for any fiscal year; (3) Large and Medium Tier Adjustment: the frequency of large-tiered companies dropping to the medium tier and medium-tiered companies moving to the small tier after the completion of the program fee methodology and tier determination; (4) CBER-approved ANDAs: applicants and their affiliates with CBER-approved ANDAs in addition to CDER's approved ANDAs; and (5) withdrawals of approved ANDAs by April 1: applicants who have submitted a written request for withdrawal of approval by April 1 of the previous fiscal year.

The list of original approved ANDAs from the Generic Drug Review Platform as of April 30, 2023, in addition to CBER's database, shows 248 applicants in the small business tier, 71 applicants in the medium size tier, and 82 applicants in the large size tier. Factoring in all the variables, we estimate there will be 205 applicants in the small business tier, 68 applicants in the medium size tier, and 80 applicants in the large size tier for FY 2024.

To calculate the GDUFA program fee, GDUFA III provides that large size operation generic drug applicants pay the full fee, medium size operation applicants pay two-fifths of the full fee, and small business applicants pay one-tenth of the full fee.[17] To generate the target collection revenue amount from GDUFA program fees ($220,873,680), we must weigh medium and small tiered applicants as a subset of a large size operation generic drug applicant. FDA will set fees based on the weighted estimate of 20.5 applicants in the small business tier (205 multiplied by 10 percent), 27.2 applicants in the medium size tier (68 multiplied by 40 percent), and 80 applicants in the large size tier, arriving at 127.7 total weighted applicants for FY 2024.

To generate the large size operation GDUFA program fee, FDA divides the target revenue amount of $220,873,680 by 127.7, which equals $1,729,629. The medium size operation GDUFA program fee is 40 percent of the full fee ($691,852), and the small business GDUFA program fee is 10 percent of the full fee ($172,963).

IX. Fee Schedule For FY 2024

The fee rates for FY 2024 are set out in table 11.

TABLE 11—FEE SCHEDULE FOR FY 2024

Generic drug fee category	Fees rates for FY 2024
Applications	
Abbreviated New Drug Application (ANDA)	$252,453
Drug Master File (DMF)	94,682
Facilities	

[12] Section 744B(b)(2)(C) of the FD&C Act.

[13] Section 744B(a)(4)(A)(ii) of the FD&C Act.

[14] Sections 744B(a)(5)(A) and 744B(b)(2)(E)(i) of the FD&C Act.

[15] Id.

[16] Id.

[17] Section 744B(b)(2)(E)(i) of the FD&C Act.

TABLE 11—FEE SCHEDULE FOR FY 2024—Continued

Generic drug fee category	Fees rates for FY 2024
Active Pharmaceutical Ingredient (API)—Domestic	40,464
API—Foreign	55,464
Finished Dosage Form (FDF)—Domestic	220,427
FDF—Foreign	235,427
Contract Manufacturing Organization (CMO)—Domestic	52,902
CMO—Foreign	67,902
GDUFA Program	
Large size operation generic drug applicant	1,729,629
Medium size operation generic drug applicant	691,852
Small business generic drug applicant	172,963

X. Fee Payment Options and Procedures

The new fee rates are effective on October 1, 2023, and will remain in effect through September 30, 2024. Under sections 744B(a)(4) and (5) of the FD&C Act, respectively, facility and program fees are generally due on the later of the first business day on or after October 1 of each fiscal year or the first business day after the enactment of an appropriations act providing for the collection and obligation of GDUFA fees for the fiscal year.

To pay the ANDA, DMF, API facility, FDF facility, CMO facility, and GDUFA program fees, complete the Generic Drug User Fee Cover Sheet, available at *https://www.fda.gov/gdufa and https://userfees.fda.gov/OA_HTML/gdufaCAcdLogin.jsp,* and generate a user fee identification (ID) number. Payment must be made in U.S. currency drawn on a U.S. bank by electronic check, check, bank draft, U.S. postal money order, credit card, or wire transfer. The preferred payment method is online using electronic check (Automated Clearing House (ACH), also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). FDA has partnered with the U.S. Department of the Treasury to utilize *Pay.gov,* a web-based payment application, for online electronic payment. The *Pay.gov* feature is available on the FDA website after completing the Generic Drug User Fee Cover Sheet and generating the user fee ID number.

Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay.* (Note: Only full payments are accepted; no partial payments can be made online.) Once an invoice is located, ''Pay Now'' should be selected to be redirected to *Pay.gov.* Electronic payment options are based on the balance due. Payment by credit card is available for balances less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

If a check, bank draft, or postal money order is submitted, make it payable to the order of the Food and Drug Administration and include the user fee ID number to ensure that the payment is applied to the correct fee(s). Payments can be mailed to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000. If checks are to be sent by a courier that requests a street address, the courier can deliver checks to U.S. Bank, Attention: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This U.S. Bank address is for courier delivery only. For questions concerning courier delivery, U.S. Bank can be contacted at 314–418–4013. This telephone number is only for questions about courier delivery.) The FDA post office box number (P.O. Box 979108) must be written on the check, bank draft, or postal money order.

For payments made by wire transfer, include the unique user fee ID number to ensure that the payment is applied to the correct fee(s). Without the unique user fee ID number, the payment may not be applied. If the payment amount is not applied, the invoice amount will be referred to collections. The originating financial institution may charge a wire transfer fee. Include applicable wire transfer fees with payment to ensure fees are fully paid. Questions about wire transfer fees should be addressed to the financial institution. The following account information should be used to send payments by wire transfer: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, account number: 75060099, routing number: 021030004, SWIFT: FRNYUS33. FDA's tax identification number is 53–0196965.

Dated: July 25, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–16081 Filed 7–27–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–2965]

Medical Device User Fee Rates for Fiscal Year 2024

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fee rates and payment procedures for medical device user fees for fiscal year (FY) 2024. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Medical Device User Fee Amendments of 2022 (MDUFA V), authorizes FDA to collect user fees for certain medical device submissions and annual fees both for certain periodic reports and for establishments subject to registration. This notice establishes the fee rates for FY 2024, which apply from October 1, 2023, through September 30, 2024, and provides information on how the fees for FY 2024 were determined, the payment procedures you should follow, and how you may qualify for reduced small business fees.

FOR FURTHER INFORMATION CONTACT:

For information on Medical Device User Fees: https://www.fda.gov/industry/fda-user-fee-programs/medical-device-user-fee-amendments-mdufa.

For questions relating to the MDUFA Small Business Program, please visit the Center for Devices and Radiological Health's website: https://www.fda.gov/medical-devices/premarket-submissions/reduced-medical-device-user-fees-small-business-determination-sbd-program.

For questions relating to this notice: Olufunmilayo Ariyo, Office of Financial Management, Food and Drug Administration, 4041 Powder Mill Rd., Beltsville, MD 20705–4304, 240–402–4989; or the User Fee Support Staff at *OO-OFBAP-OFM-UFFS-Government@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The FD&C Act, as amended by MDUFA V, authorizes FDA to collect user fees for certain medical device submissions and annual fees both for certain periodic reports and for establishments subject to registration. Section 738 of the FD&C Act (21 U.S.C. 379j) establishes fees for certain medical device applications, submissions, supplements, notices, and requests (for

simplicity, this document refers to these collectively as ''submissions'' or ''applications''); for periodic reporting on class III devices; and for the registration of certain establishments.

Under the FD&C Act, the fee rate for each type of submission is set at a specified percentage of the standard fee for a premarket application (a premarket application is a premarket approval application (PMA), a product development protocol (PDP), or a biologics license application (BLA)). The FD&C Act specifies the base fee for a premarket application for each year from FY 2023 through FY 2027; the base fee for a premarket application received by FDA during FY 2024 is $435,000. From this starting point, this document establishes FY 2024 fee rates for certain types of submissions, and for periodic reporting, by applying criteria specified in the FD&C Act. Under statutorily defined conditions, a qualified applicant may receive a fee waiver or may pay a lower small business fee (see 21 U.S.C. 379j(d) and (e)). For more information on fee waivers, please see Section IX. Small Business Fee Reductions and Fee Waivers.

The FD&C Act specifies the base fee for establishment registration for each year from FY 2023 through FY 2027; the base fee for an establishment registration in FY 2024 is $6,875. Each establishment that is registered (or is required to register) with the Secretary of Health and Human Services under section 510 of the FD&C Act (21 U.S.C. 360) because such establishment is engaged in the manufacture, preparation, propagation, compounding, or processing of a device is required to pay the annual fee for establishment registration.

II. Total Revenue Amount for FY 2024

The total revenue amount for FY 2024 is $335,750,000, as set forth in the statute prior to the inflation adjustment (see 21 U.S.C. 379j(b)(3)). MDUFA V directs FDA to use the yearly total revenue amount as a starting point to set the standard fee rates for each fee type. The fee calculations for FY 2024 are described in this document.

Inflation Adjustment

MDUFA specifies that the $335,750,000 is to be adjusted for inflation increases for FY 2024 using two separate adjustments: one for payroll costs and one for non-payroll costs (see 21 U.S.C. 379j(c)(2)). The base inflation adjustment for FY 2024 is the sum of one plus the two separate adjustments and is compounded as specified in the statute (see 21 U.S.C. 379j(c)(2)(C) and 379j(c)(2)(B)).

The component of the inflation adjustment for payroll costs is the average annual percent change in the cost of all personnel compensation and benefits (PC&B) paid per full-time equivalent position (FTE) at FDA for the first 3 of the 4 preceding FYs, multiplied by 0.60, or 60 percent (see 21 U.S.C. 379j(c)(2)(C)).

Table 1 summarizes the actual cost and FTE data for the specified FYs, provides the percent change from the previous fiscal year, and provides the average percent change over the first 3 of the 4 fiscal years preceding FY 2024. The 3-year average is 3.9280 percent (rounded).

TABLE 1—FDA PC&Bs EACH YEAR AND PERCENT CHANGE

	FY 2020	FY 2021	FY 2022	3-Year average
Total PC&B	$2,875,592,000	$3,039,513,000	$3,165,477,000	
Total FTE	$17,535	$18,501	$18,474	
PC&B per FTE	$163,922	$164,289	$171,348	
Percent change from previous year	7.3063%	0.1811%	4.2967%	3.9280%

The payroll adjustment is 3.9280 percent multiplied by 60 percent, or 2.3568 percent. The statute specifies that the component of the inflation adjustment for non-payroll costs for FY 2024 is the average annual percent change that occurred in the Consumer Price Index (CPI) for urban consumers (Washington-Arlington-Alexandria, DC-VA-MD-WV; Not Seasonally Adjusted; All Items; Annual Index) for the first 3 of the preceding 4 years of available data multiplied by 0.40, or 40 percent (see 21 U.S.C. 379j(c)(2)(C)).

Table 2 provides the summary data and the 3-year average percent change in the specified CPI for the Washington-Arlington-Alexandria area. These data are published by the Bureau of Labor Statistics and can be found on their website under series Id CUURS35ASA0 at: *https://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUURS35ASA0,CUUSS35ASA0.*

TABLE 2—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN WASHINGTON-ARLINGTON-ALEXANDRIA AREA CPI

	2020	2021	2022	3-Year average
Annual CPI	267.157	277.728	296.117	
Annual Percent Change	0.8989%	3.9568%	6.6212%	
3-Year Average Percent Change in CPI				3.8256%

The non-payroll adjustment is 3.8256 percent multiplied by 40 percent, or 1.5302 percent. Next, the payroll adjustment (2.3568 percent or 0.023568) is added to the non-payroll adjustment (1.5302 percent or .015302), for a total of 3.8870 percent (or 0.038870). To complete the inflation adjustment, 1 (100 percent or 1.0) is added for a total base inflation adjustment of 1.03887 for FY 2024.

MDUFA V provides for this inflation adjustment to be compounded for FY 2023 and each subsequent fiscal year (see 21 U.S.C. 379j(c)(2)(B)(ii)). To complete the compounded inflation adjustment for FY 2024, the FY 2023 compounded adjustment (1.038870) is multiplied by the FY 2024 base inflation adjustment (1.038935) to reach the applicable inflation adjustment of 1.079318 (rounded) for FY 2024. We then multiply the total revenue amount for FY 2024 ($335,750,000) by 1.079318, yielding an inflation adjusted total revenue amount of $362,381,000 (rounded to the nearest thousand dollars).

III. Adjustments to Base Fee Amounts for FY 2024

Under the FD&C Act, all submission fees and the periodic reporting fee are set as a percent of the standard (full) fee for a premarket application (see 21 U.S.C. 379j(a)(2)(A)).

A. Inflation Adjustment

MDUFA specifies that the base fees of $435,000 (premarket application) and $6,875 (establishment registration) are to be adjusted for FY 2024 using the same methodology as that for the total revenue inflation adjustment in section II (see 21 U.S.C. 379j(c)(2)(D)(i)). Multiplying the base fees by the compounded inflation adjustment of 1.079318 yields inflation adjusted base fees of $469,503 (premarket application) and $7,420 (establishment registration).

B. Further Adjustments To Generate the Inflation-Adjusted Total Revenue Amount

After the applicable inflation adjustment to fees is done, FDA may increase, if necessary to achieve the inflation adjusted total revenue amount, the base fee amounts on a uniform proportionate basis (see 21 U.S.C. 379j(c)(2)(D)(ii)). After this adjustment, if necessary, FDA may further increase the base establishment registration fees to generate the inflation-adjusted total revenue amount (see 21 U.S.C. 379j(c)(3)).

C. MDUFA V Adjustments Solely to Registration Fees

MDUFA V has three new potential adjustments that will not change the total revenue amount but may impact collections by increasing or decreasing establishment registration base fees only. These adjustments are the performance improvement adjustment, the hiring adjustment, and the operating reserve adjustment. Only the operating reserve adjustment is potentially applicable in FY 2024.

1. Performance Improvement Adjustment

For FY 2024, there is no performance improvement adjustment. Beginning with FY 2025, this adjustment allows FDA to collect fees in addition to the total revenue amount in FYs 2025, 2026, and 2027, if the Agency meets certain performance goals in FYs 2023, 2024, and 2025. If applicable, this provision further increases base establishment registration fee amounts to achieve an increase in total fee collections equal to the applicable performance improvement adjustment, which is set forth in the statute (see 21 U.S.C. 379j(c)(4)).

2. Hiring Adjustment

For FY 2024, there is no hiring adjustment. Beginning with FY 2025, this adjustment provides for the reduction of base establishment registration fees in FYs 2025, 2026, and 2027, if specified hiring goals for FYs 2023, 2024, and 2025 are not met by a certain threshold. The hiring adjustment would serve to decrease the base establishment registration fee amounts as necessary to achieve a reduction in total fee collections equal to the hiring adjustment amount, which is set forth in the statute (see 21 U.S.C. 379j(c)(5)).

3. Operating Reserve Adjustment

For FYs 2023 to 2027, the operating reserve adjustment requires FDA to decrease base establishment registration fees if the amount of operating reserves of carryover user fees exceeds the ''designated amount'' and such reduction is necessary to provide for not more than such designated amount of operating reserves of carryover user fees (see 21 U.S.C. 379j(c)(6)). In making this calculation for FYs 2023 to 2026, a certain amount is excluded from the designated amount and is not subject to the decrease (see 21 U.S.C. 379j(c)(6)(C)). For FY 2024, this excluded amount is $100,600,981.

The designated amount is equal to the sum of 13 weeks of operating reserves of carryover user fees plus 1 month of operating reserves described in 21 U.S.C. 379j(c)(8) (see 21 U.S.C. 379j(c)(6)(B)).

To determine the 13-week operating reserves of carryover user fees amount, the FY 2024 inflation-adjusted total revenue amount, $362,381,000 is divided by 52, and then multiplied by 13. The 13-week operating reserve amount for FY 2024 is $90,595,250.

To determine the 1 month of operating reserves described in 21 U.S.C. 379j(c)(8), the FY 2024 inflation-adjusted total revenue amount of $362,381,000 is divided by 12. The 1 month of operating reserves for FY 2024 is $30,198,417.

For FY 2024, the designated amount is equal to the 13-week operating reserve of $90,595,250 plus the 1 month of operating reserves of $30,198,417, totaling $120,793,667.

To determine the FY 2023 end-of-year operating reserves of carryover user fees amount, FDA combined the actual collections and obligations at the end of the third quarter (June 2023) and added the forecasted collections and obligations for the fourth quarter of FY 2023 to generate a full year estimate for FY 2023. The estimated end-of-year FY 2023 operating reserves of carryover user fees is $30,019,132. (Note, this amount includes the 1-month reserve.)

Note that under MDUFA V, for the purposes of calculating the operating reserve adjustment, this amount does not include user fee funds considered unappropriated ($26,680,243) or unearned revenue ($65,418,275). In addition, as noted above, for purposes of the operating reserve adjustment, operating reserves of carryover user fees do not include the estimated $100,600,981 remaining to spend at the end of FY 2023 from the total of $118,000,000 intended to support the Total Product Life Cycle Advisory Program Pilot and Third-Party Review programs.

Because the estimated end-of-year FY 2023 MDUFA operating reserves of carryover user fees amount totaling $30,019,132 does not exceed the FY 2024 designated amount of $120,793,667 FDA will not decrease the base establishment registration fee amounts for FY 2024 to provide for not more than such designated amount.

IV. Calculation of Fee Rates

As noted in section II, the total revenue amount after the applicable inflation adjustment is $362,381,000 (rounded to the nearest thousand dollar). As noted in section III, there is no MDUFA V adjustment solely to registration fees for FY 2024.

Table 3A provides fee-paying submission counts excluding establishment registration for the last 3 years and the 3-year average. Table 3B provides establishment registration fee-paying submission counts for the last 5 years and the 5-year average. Historically, FDA has estimated the total number of fee-paying submission counts it expects to receive during the next fiscal year by averaging the number of fee-paying submission counts received in the 3 most recently completed fiscal years; for FY 2024 fee-setting, this would be an average of FY 2020 through FY 2022. FDA received an abnormally high volume of fee paying establishment registrations due to the COVID–19 pandemic in FY 2020 and FY 2021. The surge in fee-paying establishment registrations has been declining starting in FY 2022, trending back toward pre-pandemic levels. In an effort to normalize the projected volume of establishment registration submissions for the FY 2024 fee-setting calculation and more accurately project the associated establishment registration revenue, FDA decided to average the number of establishment registrations from FY 2018 through FY 2022. FDA believes a 5-year average to estimate establishment registration volume will

minimize the impact of the surge in fee paying establishment registration volume in FY 2020 and FY 2021.

TABLE 3A—THREE-YEAR AVERAGE OF FEE-PAYING SUBMISSIONS (EXCLUDING ESTABLISHMENT REGISTRATION)

Application type	FY 2020 actual	FY 2021 actual	FY 2022 actual	3-Year average
Full Fee applications	29	25	18	24
Small Business	7	5	3	5
Panel-Track Supplements	23	31	21	25
Small Business	6	6	1	4
De Novo Classifications	20	16	23	20
Small Business	47	42	53	47
180-Day Supplements	124	98	93	105
Small Business	20	34	31	28
Real-Time Supplements	175	150	140	155
Small Business	28	20	12	20
510(k)s	2,048	2,133	2,012	2,064
Small Business	1,667	1,846	1,757	1,757
30-Day Notice (Note also includes counts for 135 Day Supplements)	870	843	782	832
Small Business	104	77	67	83
513(g)(21 U.S.C. 360c(g)) Request for Classification Information	96	83	93	91
Small Business	57	53	58	56
Annual Fee for Periodic Reporting	622	613	620	618
Small Business	95	84	87	89

TABLE 3B—FIVE-YEAR AVERAGE OF FEE-PAYING ESTABLISHMENT REGISTRATION SUBMISSIONS

Application type	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	5-Year average
Establishment Registrations	27,544	27,728	41,942	33,812	31,748	32,555

The information in tables 3A and 3B is necessary to estimate the amount of revenue that will be collected based on the fee amounts. Tables 4A and B display the FY 2024 base fees set in statute (column one) and the inflation adjusted base fees (per calculations in section III.A.) (column two). Using the inflation adjusted fees, the 3-year average of fee-paying submissions (excluding establishment registration), and the 5-year average of fee-paying establishment registration submissions, collections are projected to total $351,531,781 which is $10,849,219 lower than the inflation adjusted total revenue amount (in section II). Accordingly, the next step in the fee setting process is to increase the base fee amounts on a uniform proportionate basis to generate the inflation adjusted total revenue amounts (see 21 U.S.C. 379j(c)(2)(D)(ii) and table 4A, column three).

Applying these further adjusted fee rates to the 3-year average of fee paying submissions, and the 5-year average of fee-paying establishment registration submissions results in estimated total fee collections of $362,040,886, which is still $340,114 lower than the inflation adjusted total revenue amount (in Section II). The next step in the fee setting process, after the adjustment in (2)(D) is done, is to increase the base establishment registration fee amount as necessary for total fee collections to generate the inflation adjusted total revenue amount, as adjusted under paragraph (2) (see 21 U.S.C. 379j(c)(3)). Accordingly, the base establishment registration fee was increased by $11 for an establishment registration fee rate of $7,653 (see 21 U.S.C. 379j(c)(3)). The fees in column three in tables 4A and 4B are those we are establishing for FY 2024, which are the standard fees.

TABLE 4A—FEES NEEDED TO ACHIEVE NEW FY 2024 REVENUE TARGET

Application type	FY 2024 statutory fees (base fees)	FY 2024 inflation adjusted statutory base fees (standard fees)	Adjusted FY 2024 fees to meet revenue target (standard fees)	3-Year average of fee-paying submissions	FY 2024 revenue from adjusted fees
Full Fee Applications	$435,000	$469,503	$483,560	24	$11,605,440
Small Business	108,750	117,376	120,890	5	604,450
Panel-Track Supplement	348,000	375,603	386,848	25	9,671,200
Small Business	87,000	93,901	96,712	4	386,848
De Novo Classification Request	130,500	140,851	145,068	20	2,901,360
Small Business	32,625	35,213	36,267	47	1,704,549
180-Day Supplements	65,250	70,425	72,534	105	7,616,070
Small Business	16,313	17,606	18,134	28	507,752
Real-Time Supplements	30,450	32,865	33,849	155	5,246,595
Small Business	7,613	8,216	8,462	20	169,240
510(k)s	19,575	21,128	21,760	2,064	44,912,640
Small Business	4,894	5,282	5,440	1,757	9,558,080
30-Day Notice	6,960	7,512	7,737	832	6,437,184

TABLE 4A—FEES NEEDED TO ACHIEVE NEW FY 2024 REVENUE TARGET—Continued

Application type	FY 2024 statutory fees (base fees)	FY 2024 inflation adjusted statutory base fees (standard fees)	Adjusted FY 2024 fees to meet revenue target (standard fees)	3-Year average of fee-paying submissions	FY 2024 revenue from adjusted fees
Small Business	3,480	3,756	3,869	83	321,127
513(g) Request for Classification Information	5,873	6,338	6,528	91	594,048
Small Business	2,937	3,169	3,264	56	182,784
Annual Fee for Periodic Reporting	15,225	16,433	16,925	618	10,459,650
Small Business	3,806	4,108	4,231	89	376,559
Total					113,255,576

TABLE 4B—FEES NEEDED TO ACHIEVE NEW FY 2024 REVENUE TARGET

Application type	FY 2024 statutory fees (base fees)	FY 2024 inflation adjusted statutory base fees (standard fees)	Adjusted FY 2024 fees to meet revenue target (standard fees)	5-Year average of fee-paying submissions	FY 2024 revenue from adjusted fees
Establishment Registrations	$6,875	$7,420	$7,653	32,555	$249,143,415

The standard fee (adjusted base amount) for a premarket application, including a BLA, and for a premarket report and a BLA efficacy supplement, is $483,560 for FY 2024. The fees set by reference to the standard fee for a premarket application are:

- For a panel-track supplement, 80 percent of the standard fee;
- For a de novo classification request, 30 percent of the standard fee;
- For a 180-day supplement, 15 percent of the standard fee;
- For a real-time supplement, 7 percent of the standard fee;
- For an annual fee for periodic reporting concerning a class III device, 3.5 percent of the standard fee;
- For a 510(k) premarket notification, 4.5 percent of the standard fee;
- For a 30-day notice, 1.6 percent of the standard fee; and
- For a 513(g) request for classification information, 1.35 percent of the standard fee.

For all submissions other than a 30-day notice and a 513(g) request for classification information, the small business fee is 25 percent of the standard (full) fee for the submission (see 21 U.S.C. 379j(d)(2)(C) and (e)(2)(C)). For a 30-day notice and a 513(g) request for classification information, the small business fee is 50 percent of the standard (full) fee for the submission (see 21 U.S.C. 379j(d)(2)(C)).

The annual fee for establishment registration, after adjustments, is set at $7,653 for FY 2024. For FY 2024, there is no small business waiver for the annual establishment registration fee; all establishments pay the same fee.

For more information on reduced fees and waivers for small businesses, please see Section IX. Small Business Fee Reductions and Fee Waivers.

Table 5 summarizes the FY 2024 rates for all medical device fees.

TABLE 5—MEDICAL DEVICE FEES FOR FY 2024

Application fee type	Standard fee (as a percent of the standard fee for a premarket application)	FY 2024 standard fee	FY 2024 small business fee
Premarket application (a PMA submitted under section 515(c)(1) of the FD&C Act (21 U.S.C. 360e(c)(1)), a PDP submitted under section 515(f) of the FD&C Act, or a BLA submitted under section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262)).	Base fee specified in statute.	$483,560	$120,890
Premarket report (submitted under section 515(c)(2) of the FD&C Act)	100	483,560	120,890
Efficacy supplement (to an approved BLA under section 351 of the PHS Act)	100	483,560	120,890
Panel-track supplement	80	386,848	96,712
De novo classification request	30	145,068	36,267
180-day supplement	15	72,534	18,134
Real-time supplement	7	33,849	8,462
510(k) premarket notification submission	4.5	21,760	5,440
30-day notice	1.60	7,737	3,869
513(g) request for classification information	1.35	6,528	3,264
Annual Fee Type			
Annual fee for periodic reporting on a class III device	3.50	16,925	4,231
Annual establishment registration fee (to be paid by the establishment engaged in the manufacture, preparation, propagation, compounding, or processing of a device, as defined by 21 U.S.C. 379i(14)).	Base fee specified in statute.	7,653	7,653

V. How To Qualify as a Small Business for Purposes of Medical Device Fees

If your business, including your affiliates, has gross receipts or sales of no more than $100 million for the most recent tax year, you may qualify for reduced small business fees. If your business, including your affiliates, has gross sales or receipts of no more than $30 million, you may also qualify for a waiver of the fee for your first premarket application (*i.e.,* PMA, PDP, or BLA) or premarket report. If you want to pay the small business fee rate for a submission or you want to receive a waiver of the fee for your first premarket application or premarket report, you must submit the materials showing you qualify as a small business at least 60 days before you send your submission to FDA. For more information on fee waivers or reductions, please see Section IX. Small Business Fee Reductions and Fee Waivers.

Please note that the establishment registration fee is not eligible for a reduced small business fee. As a result, if the establishment registration fee is the only medical device user fee that you will pay in FY 2024, you should not submit a Small Business Certification Request. FDA will review your information and determine whether you qualify as a small business eligible for the reduced fee and/or fee waiver. If you make a submission before FDA finds that you qualify as a small business, you must pay the standard (full) fee for that submission.

If your business qualified as a small business for FY 2023, your status as a small business will expire at the close of business on September 30, 2023. You must re-qualify for FY 2024 in order to pay small business fees during FY 2024.

A. Domestic (U.S.) Businesses

If you are a domestic (U.S.) business and wish to qualify as a small business for FY 2024, submit the following to FDA:

1. A completed MDUFA Small Business Certification Request for a Business Headquartered in the United States (Form FDA 3602). Form FDA 3602 is provided in the FDA Forms database: *https://www.fda.gov/media/128050/download.*

2. A signed copy of your Federal (U.S.) Income Tax Return for the most recent tax year. The most recent tax year will be 2023, except:

- If you submit your MDUFA Small Business Certification Request for FY 2024 before April 15, 2024, and you have not yet filed your return for 2023, you may use tax year 2022.
- If you submit your MDUFA Small Business Certification Request for FY 2024 on or after April 15, 2024, and have not yet filed your 2023 return because you obtained an extension, you may submit your most recent return filed prior to the extension.

3. For each of your affiliates, either:

- If the affiliate is a domestic (U.S.) business, a signed copy of the affiliate's Federal (U.S.) Income Tax Return for the most recent tax year, or
- If the affiliate is a foreign business and cannot submit a Federal (U.S.) Income Tax Return, a National Taxing Authority Certification completed by, and bearing the official seal of, the National Taxing Authority, if extant, of the country in which the firm is headquartered. The National Taxing Authority is the foreign equivalent of the U.S. Internal Revenue Service. This certification must show the amount of gross receipts or sales for the most recent tax year, in both U.S. dollars and the local currency of the country, the exchange rate used in converting the local currency to U.S. dollars, and the dates of the gross receipts or sales collected. The business must also submit a statement signed by the head of the business's firm or by its chief financial officer that the business has submitted certifications for all of its affiliates, identifying the name of each affiliate, or that the business has no affiliates.
- If your affiliate is headquartered in a country without a National Taxing Authority, please contact the Division of Industry and Consumer Education at 800–638–2041 or 301–796–7100 or email at *DICE@fda.hhs.gov.*

4. Once you have completed your Form FDA 3602, print and sign the form. Mail the completed form and your supporting documentation (copies of the Federal (U.S.) income tax returns) to Medical Device User Fee Small Business Certification Request mailing address, which is available at the following website: *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/HowtoMarketYourDevice/PremarketSubmissions/ucm577696.htm.*

If you need assistance, please contact the Division of Industry and Consumer Education at 800–638–2041 or 301–796–7100 or email at *DICE@fda.hhs.gov.*

B. Foreign Businesses

If you are a foreign business, and wish to qualify as a small business for FY 2024, submit the following:

1. A completed MDUFA Foreign Small Business Certification Request for a Business Headquartered Outside the United States (Form FDA 3602A). Form FDA 3602A is provided in the FDA Forms database: *https://www.fda.gov/media/128059/download.*

2. A National Taxing Authority Certification, completed by, and bearing the official seal of, the National Taxing Authority, if extant, of the country in which the firm is headquartered. This certification must show the amount of gross receipts or sales for the most recent tax year, in both U.S. dollars and the local currency of the country, the exchange rate used in converting the local currency to U.S. dollars, and the dates of the gross receipts or sales collected.

If your firm is headquartered in a country without a National Taxing Authority, please contact the Division of Industry and Consumer Education at 800–638–2041 or 301–796–7100 or email at *DICE@fda.hhs.gov.*

3. For each of your affiliates, either:

- If the affiliate is a domestic (U.S.) business, a signed copy of the affiliate's Federal (U.S.) Income Tax Return for the most recent tax year (2022 or later), or
- If the affiliate is a foreign business and cannot submit a Federal (U.S.) Income Tax Return, a National Taxing Authority Certification completed by, and bearing the official seal of, the National Taxing Authority, if extant, of the country in which the firm is headquartered. The National Taxing Authority is the foreign equivalent of the U.S. Internal Revenue Service. This certification must show the amount of gross receipts or sales for the most recent tax year, in both U.S. dollars and the local currency of the country, the exchange rate used in converting the local currency to U.S. dollars, and the dates for the gross receipts or sales collected. The business must also submit a statement signed by the head of the business's firm or by its chief financial officer that the applicant has submitted certifications for all of its affiliates, identifying the name of each affiliate, or that the business has no affiliates.
- If your affiliate is headquartered in a country without a National Taxing Authority, please contact the Division of Industry and Consumer Education at 800–638–2041 or 301–796–7100 or email at *DICE@fda.hhs.gov.*

4. Once you have completed your Form FDA 3602A, print and sign the form. Mail the completed form and your supporting documentation, including the following, to CDRH's Medical Device User Fee Small Business Certification Request address, which is available at the following website: *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/HowtoMarketYourDevice/PremarketSubmissions/ucm577696.htm.*

• A copy of the most recent Federal (U.S.) income tax return for each of your affiliates headquartered in the U.S. and

• A copy of an MDUFA Foreign Small Business Certification Request for each of your foreign affiliates.

If you need assistance, please contact the Division of Industry and Consumer Education at 800–638–2041 or 301–796–7100 or email at *DICE@fda.hhs.gov.*

VI. Procedures for Paying Application Fees

If your application or submission is subject to a fee and your payment is received by FDA between October 1, 2023, and September 30, 2024, you must pay the fee in effect for FY 2024. To avoid delay in the review of your application, you should pay the application fee at the time you submit your application to FDA. The later of the date that the application is received in the reviewing center's document room or the date the U.S. Treasury recognizes the payment determines whether the fee rates for FY 2023 or FY 2024 apply. FDA must receive the correct fee at the time that an application is submitted, or the application will not be accepted for filing or review.

FDA requests that you follow the steps below before submitting a medical device application subject to a fee to ensure that FDA links the fee with the correct application. (Note: Do not send your user fee check to FDA with the application.)

A. Secure a Payment Identification Number (PIN) and Medical Device User Fee Cover Sheet From FDA Before Submitting Either the Application or the Payment

Log into the User Fee System at: *https://userfees.fda.gov/OA_HTML/mdufmaCAcdLogin.jsp.* Complete the Medical Device User Fee cover sheet. Be sure you choose the correct application submission date range. (Two choices will be offered until October 1, 2023. One choice is for applications and fees that will be received on or before September 30, 2023, which are subject to FY 2023 fee rates. A second choice is for applications and fees received on or after October 1, 2024, which are subject to FY 2024 fee rates.) After completing data entry, print a copy of the Medical Device User Fee cover sheet and note the unique PIN located in the upper right-hand corner of the printed cover sheet.

B. Electronically Transmit a Copy of the Printed Cover Sheet With the PIN

When you are satisfied that the data on the cover sheet is accurate, electronically transmit that data to FDA according to instructions on the screen. Applicants are required to set up a user account and password to assure data security in the creation and electronic submission of cover sheets.

C. Submit Payment for the Completed Medical Device User Fee Cover Sheet

1. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). FDA has partnered with the U.S. Department of the Treasury to utilize *Pay.gov,* a web-based payment system, for online electronic payment. You may make a payment via electronic check or credit card after submitting your cover sheet. Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay.* Note: Only full payments are accepted. No partial payments can be made online. Once you search for your invoice, select ''Pay Now'' to be redirected to *Pay.gov.* Electronic payment options are based on the balance due. Payment by credit card is available for balances that are less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

2. If paying with a paper check:

• All paper checks must be in U.S. currency from a U.S. bank and made payable to the Food and Drug Administration. If needed, FDA's tax identification number is 53–0196965.

• Please write your application's unique PIN (from the upper right-hand corner of your completed Medical Device User Fee cover sheet) on your check.

• *Mail the paper check and a copy of the completed cover sheet to:* Food and Drug Administration, P.O. Box 979033, St. Louis, MO 63197–9000. (Please note that this address is for payments of application and annual report fees only and is not to be used for payment of annual establishment registration fees.)

If you prefer to send a check by a courier, the courier may deliver the check to: U.S. Bank, Attn: Government Lockbox 979033, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery contact U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery.)

3. If paying with a wire transfer:

• Please include your application's unique PIN (from the upper right-hand corner of your completed Medical Device User Fee cover sheet) in your wire transfer. Without the PIN, your payment may not be applied to your cover sheet and review of your application may be delayed.

• The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee it is required that you add that amount to the payment to ensure that the invoice is paid in full.

Use the following account information when sending a wire transfer: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33.

FDA records the official application receipt date as the later of the following: (1) the date the application was received by the FDA Document Control Center for the reviewing Center or (2) the date the U.S. Treasury recognizes the payment.

D. Submit Your Application to FDA With a Copy of the Completed Medical Device User Fee Cover Sheet

Please submit your application and a copy of the completed Medical Device User Fee cover sheet to the address located at *https://www.fda.gov/cdrhsubmissionaddress.*

VII. Procedures for Paying the Annual Fee for Periodic Reporting

You will be invoiced at the end of the quarter in which your PMA Periodic Report is due. Invoices will be sent based on the details included on your PMA file. You are responsible for ensuring FDA has your current billing information, and you may update your contact information for the PMA by submitting an amendment to the pending PMA or a supplement to the approved PMA.

1. The preferred payment method is online using electronic check (ACH also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay* (Note: Only full payments are accepted. No partial payments can be made online). Once you search for your invoice, select ''Pay Now'' to be redirected to *Pay.gov.* Note that electronic payment options are based on the balance due. Payment by credit card is available for balances that are less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

2. *If paying with a paper check:* The check must be in U.S. currency from a U.S. bank and made payable to the Food and Drug Administration. If needed, FDA's tax identification number is 53–0196965.

• Please write your invoice number on the check.

• *Mail the paper check and a copy of the invoice to:* Food and Drug Administration, P.O. Box 979033, St. Louis, MO 63197–9000. (Please note that this address is for payments of application and annual report fees only and is not to be used for payment of annual establishment registration fees.)

To send a check by a courier, the courier must deliver the check and printed copy of the cover sheet to U.S. Bank, Attn: Government Lockbox 979033, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery, contact U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery.)

3. When paying by a wire transfer, it is required that the invoice number is included; without the invoice number the payment may not be applied. If the payment amount is not applied, the invoice amount would be referred to collections. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required that you add that amount to the payment to ensure that the invoice is paid in full.

Use the following account information when sending a wire transfer: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33.

VIII. Procedures for Paying Annual Establishment Registration Fees

To pay the annual establishment registration fee, firms must access the Device Facility User Fee (DFUF) website at *https://userfees.fda.gov/OA_HTML/furls.jsp.* (FDA has verified the website address, but FDA is not responsible for any subsequent changes to the website address after this document publishes in the **Federal Register**.) Create a DFUF order and you will be issued a PIN when you place your order. After payment has been processed, you will be issued a payment confirmation number (PCN). You will not be able to register your establishment if you do not have a PIN and a PCN. An establishment required to pay an annual establishment registration fee is not legally registered in FY 2024 until it has completed the steps below to register and pay any applicable fee (see 21 U.S.C. 379j(f)(2)).

Companies that do not manufacture any product other than a licensed biologic are required to register in the Blood Establishment Registration (BER) system. FDA's Center for Biologics Evaluation and Research (CBER) will send establishment registration fee invoices annually to these companies.

A. Submit a DFUF Order With a PIN From FDA Before Registering or Submitting Payment

To submit a DFUF Order, you must create or have previously created a user account and password for the user fee website listed previously in this section. After creating a username and password, log into the Establishment Registration User Fee FY 2024 store. Complete the DFUF order by entering the number of establishments you are registering that require payment. When you are satisfied that the information in the order is accurate, electronically transmit that data to FDA according to instructions on the screen. Print a copy of the final DFUF order and note the unique PIN located in the upper right-hand corner of the printed order.

B. Pay for Your DFUF Order

Unless paying by U.S. credit card, all payments must be in U.S. currency and drawn on a U.S. bank.

1. *If paying by credit card or electronic check (ACH or eCheck):* The DFUF order will include payment information, including details on how you can pay online using a credit card or electronic check. Follow the instructions provided to make an electronic payment.

2. *If paying with a paper check:* The check must be in U.S. currency and drawn on a U.S. bank, and mailed to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000. (*Note:* This address is different from the address for payments of application and annual report fees and is to be used only for payment of annual establishment registration fees.)

If a check is sent by a courier that requests a street address, the courier can deliver the check to: U.S. Bank, Attn: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (*Note:* This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery, contact U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery.)

Please make sure that both of the following are written on your check: (1) the FDA post office box number (P.O. Box 979108) and (2) the PIN that is printed on your order. Include a copy of your printed order when you mail your check.

3. *If paying with a wire transfer:* Wire transfers may also be used to pay annual establishment registration fees. To send a wire transfer, please read and comply with the following information:

Include your order's unique PIN (in the upper right-hand corner of your completed DFUF order) in your wire transfer. Without the PIN, your payment may not be applied to your facility and your registration may be delayed.

The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required that you add that amount to the payment to ensure that the invoice is paid in full. Use the following account information when sending a wire transfer: U.S. Dept. of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33. If needed, FDA's tax identification number is 53–0196965.

C. Complete the Information Online To Update Your Establishment's Annual Registration for FY 2024, or To Register a New Establishment for FY 2024

Go to the Center for Devices and Radiological Health's website at *https://www.fda.gov/medical-devices/how-study-and-market-your-device/device-registration-and-listing* and click the ''Access Electronic Registration'' link on the left side of the page. This opens a new page with important information about the FDA Unified Registration and Listing System (FURLS). After reading this information, click on the ''Access Electronic Registration'' link in the middle of the page. This link takes you to an FDA Industry Systems page with tutorials that demonstrate how to create a new FURLS user account if your establishment did not create an account in FY 2023. Manufacturers of licensed biologics should register in the electronic Blood Establishment Registration (eBER) system at *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-establishment-registration.*

Enter your existing account ID and password to log into FURLS. From the FURLS/FDA Industry Systems menu, click on the Device Registration and Listing Module (DRLM) of FURLS button. New establishments will need to register, and existing establishments will update their annual registration using choices on the DRLM menu. When you choose to register or update your annual registration, the system will

prompt you through the entry of information about your establishment and your devices. If you have any problems with this process, email: *reglist@cdrh.fda.gov* or call 301–796–7400 for assistance. (*Note:* This email address and this telephone number are for assistance with establishment registration only; they are not to be used for questions related to other aspects of medical device user fees.) Problems with the eBER system should be directed to *https://www.accessdata.fda.gov/scripts/email/cber/bldregcontact.cfm* or call 240–402–8360.

D. Enter Your DFUF Order PIN and PCN

After completing your annual or initial registration and device listing, you will be prompted to enter your DFUF order PIN and PCN, when applicable. This process does not apply to establishments engaged only in the manufacture, preparation, propagation, compounding, or processing of licensed biologic devices. CBER will send invoices for payment of the establishment registration fee to such establishments.

IX. Small Business Fee Reductions and Fee Waivers

To qualify for reduced fees for small businesses or a small business fee waiver, please see the requirements for qualification provided in Section V. How To Qualify as a Small Business for Purposes of Medical Device Fees. The applicant should submit a Small Business Certification Request and the supporting materials showing you qualify as a small business at least 60 days before you send your submission to FDA. FDA will review your information and determine whether you qualify as a small business eligible for the reduced fee and/or fee waiver. If you make a submission before FDA finds that you qualify as a small business, you must pay the standard (full) fee for that submission.

If you need assistance, please contact the Division of Industry and Consumer Education at 800–638–2041 or 301–796–7100 or email at *DICE@fda.hhs.gov.*

A. Premarket Approval Fee Reduction or Waiver

A small business applicant may request to pay a reduced rate for premarket approval fees. An applicant may also request a fee waiver for their first premarket application or premarket report (see 21 U.S.C. 379j(d)).

B. Premarket Notification Submission Fee Reduction

A small business applicant may request to pay a reduced rate for a premarket notification submission.

C. Annual Establishment Registration Fee

There is no small business waiver for the annual establishment registration fee; all establishments pay the same fee.

X. Refunds

To qualify for consideration for a refund, a person shall submit to FDA a written request for a refund not later than 180 days after such fee is due. FDA has discretion to refund a fee or a portion of the fee. A determination by FDA concerning a refund shall not be reviewable. For more information on qualifying and submitting a refund, see 21 U.S.C. 379j(a)(2)(D).

Dated: July 21, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–15919 Filed 7–27–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–2895]

Outsourcing Facility Fee Rates for Fiscal Year 2024

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fiscal year (FY) 2024 rates for the establishment and reinspection fees related to entities that compound human drugs and elect to register as outsourcing facilities under the Federal Food, Drug, and Cosmetic Act (FD&C Act). The FD&C Act authorizes FDA to assess and collect an annual establishment fee from outsourcing facilities, as well as a reinspection fee for each reinspection of an outsourcing facility. This document establishes the FY 2024 rates for the small business establishment fee ($6,196), the non-small business establishment fee ($20,036), and the reinspection fee ($18,588) for outsourcing facilities; provides information on how the fees for FY 2024 were determined; and describes the payment procedures outsourcing facilities should follow.

DATES: These fee rates are effective October 1, 2023, and will remain in effect through September 30, 2024.

ADDRESSES: Office of Financial Management, Food and Drug Administration, 4041 Powder Mill Rd., Rm. 61075, Beltsville, MD 20705–4304.

FOR FURTHER INFORMATION CONTACT: For more information on human drug compounding and outsourcing facility fees, visit FDA's website at: *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/human-drug-compounding.*

For questions relating to this notice: Olufunmilayo Ariyo, Office of Financial Management, Food and Drug Administration, 4041 Powder Mill Rd., Beltsville, MD 20705–4304, 240–402–4989; or the User Fee Support Staff at *OO-OFBAP-OFM-UFFS-Government@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under section 503B of the FD&C Act (21 U.S.C. 353b), a human drug compounder can register with FDA as an ''outsourcing facility.'' Outsourcing facilities, as defined in section 503B(d)(4), are facilities that meet all the conditions described in section 503B(a), including registering with FDA as an outsourcing facility and paying an annual establishment fee. If the conditions of section 503B are met, a drug compounded by or under the direct supervision of a licensed pharmacist in an outsourcing facility is exempt from three sections of the FD&C Act: (1) section 502(f)(1) (21 U.S.C. 352(f)(1)), concerning the labeling of drugs with adequate directions for use; (2) section 505 (21 U.S.C. 355), concerning the approval of human drug products under new drug applications or abbreviated new drug applications; and (3) section 582 (21 U.S.C. 360eee–1), concerning drug supply chain security requirements. Drugs compounded in outsourcing facilities are not exempt from the requirements of section 501(a)(2)(B) of the FD&C Act (21 U.S.C. 351(a)(2)(B)), concerning current good manufacturing practice requirements for drugs.

Section 744K of the FD&C Act (21 U.S.C. 379j–62) authorizes FDA to assess and collect the following fees associated with outsourcing facilities: (1) an annual establishment fee from each outsourcing facility and (2) a reinspection fee from each outsourcing facility subject to a reinspection (see section 744K(a)(1) of the FD&C Act). Under statutorily defined conditions, a qualified applicant may pay a reduced

small business establishment fee (see section 744K(c)(4) of the FD&C Act).

FDA announced in the **Federal Register** of November 24, 2014 (79 FR 69856), the availability of a final guidance for industry entitled ''Fees for Human Drug Compounding Outsourcing Facilities Under Sections 503B and 744K of the FD&C Act.'' The guidance provides additional information on the annual fees for outsourcing facilities and adjustments required by law, reinspection fees, how to submit payment, the effect of failure to pay fees, and how to qualify as a small business to obtain a reduction of the annual establishment fee. This guidance can be accessed on FDA's website at: *https://www.fda.gov/media/136683/download.*

II. Fees for FY 2024

A. Methodology for Calculating FY 2024 Adjustment Factors

1. Inflation Adjustment Factor

Section 744K(c)(2) of the FD&C Act specifies the annual inflation adjustment for outsourcing facility fees. The inflation adjustment has two components: one based on FDA's payroll costs and one based on FDA's non-payroll costs for the first 3 of the 4 previous fiscal years. The payroll component of the annual inflation adjustment is calculated by taking the average change in FDA's per full-time equivalent (FTE) personnel compensation and benefits (PC&B) in the first 3 of the 4 previous fiscal years (see section 744K(c)(2)(A)(ii) of the FD&C Act). FDA's total annual spending on PC&B is divided by the total number of FTEs per fiscal year to determine the average PC&B per FTE.

Table 1 summarizes the actual cost and FTE data for the specified fiscal years and provides the percent change from the previous fiscal year and the average percent change over the first 3 of the 4 fiscal years preceding FY 2024. The 3-year average is 3.9280 percent.

TABLE 1—FDA PC&BS EACH YEAR AND PERCENT CHANGE

	FY 2020	FY 2021	FY 2022	3-Year average
Total PC&B	$2,875,592,000	$3,039,513,000	$3,165,477,000	.....
Total FTE	$17,535	$18,501	$18,474	.....
PC&B per FTE	$163,992	$164,289	$171,348	.....
Percent Change From Previous Year	7.3063%	0.1811%	4.2967%	3.9280%

Section 744K(c)(2)(A)(ii) of the FD&C Act specifies that this 3.9280 percent should be multiplied by the proportion of PC&B to total costs of an average FDA FTE for the same 3 fiscal years.

TABLE 2—FDA PC&BS AS A PERCENT OF FDA TOTAL COSTS OF AN AVERAGE FTE

	FY 2020	FY 2021	FY 2022	3-Year average
Total PC&B	$2,875,592,000	$3,039,513,000	$3,165,477,000	.....
Total Costs	$6,039,320,747	$6,105,480,000	$6,251,981,000	.....
PC&B Percent	47.6145%	49.7834%	50.6316%	49.3432%

The payroll adjustment is 3.9280 percent multiplied by 49.3432 percent, or 1.9382 percent.

Section 744K(c)(2)(A)(iii) of the FD&C Act specifies that the portion of the inflation adjustment for non-payroll costs for FY 2024 is equal to the average annual percent change in the Consumer Price Index (CPI) for urban consumers (U.S. City Average; Not Seasonally Adjusted; All items; Annual Index) for the first 3 years of the preceding 4 years of available data, multiplied by the proportion of all non-PC&B costs to total costs of an average FDA FTE for the same period.

Table 2 provides the summary data for the percent change in the specified CPI for U.S. cities. These data are published by the Bureau of Labor Statistics and can be found on its website: *https://data.bls.gov/cgi-bin/surveymost?cu.* The data can be viewed by checking the box marked ''U.S. city average, All items—CUUR0000SA0'' and then selecting ''Retrieve Data.''

TABLE 3—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN U.S. CITY AVERAGE CPI

	FY 2020	FY 2021	FY 2022	3-Year average
Annual CPI	258.81	270.97	292.66	.....
Annual Percent Change	1.2337%	4.6980%	8.0027%	4.6448%

Section 744K(c)(2)(A)(iii) of the FD&C Act specifies that this 4.6448 percent should be multiplied by the proportion of all non-PC&B costs to total costs of an average FTE for the same 3 fiscal years. The proportion of all non-PC&B costs to total costs of an average FDA FTE for FYs 2019 to 2021 is 50.6568 percent (100 percent minus 49.3432 percent equals 50.6568 percent). Therefore, the non-pay adjustment is 4.6448 percent times 50.6568 percent, or 2.3529 percent.

The PC&B component (1.9382 percent) is added to the non-PC&B component (2.3529 percent), for a total inflation adjustment of 4.2911 percent (rounded). Section 744K(c)(2)(A)(i) of the FD&C Act specifies that one is added to that figure, making the inflation adjustment 1.042911.

Section 744K(c)(2)(B) of the FD&C Act provides for this inflation adjustment to be compounded after FY 2015. This factor for FY 2024 (4.2911 percent) is compounded by adding one to it, and then multiplying it by one plus the inflation adjustment factor for FY 2023 (18.8227 percent), as published in the

Federal Register on July 28, 2022 (87 FR 45335). The result of this multiplication of the inflation factors for the 8 years since FY 2015 (1.042922 × 1.239215) becomes the inflation adjustment for FY 2024. For FY 2024, the inflation adjustment is 12.39215 percent (rounded). We then add one, making the FY 2024 inflation adjustment factor 1.1239215.

2. Small Business Adjustment Factor

Section 744K(c)(3) of the FD&C Act specifies that in addition to the inflation adjustment factor, the establishment fee for non-small businesses is to be further adjusted for a small business adjustment factor. Section 744K(c)(3)(B) of the FD&C Act provides that the small business adjustment factor is the adjustment to the establishment fee for non-small businesses that is necessary to achieve total fees equaling the amount that FDA would have collected if no entity qualified for the small business exception in section 744K(c)(4) of the FD&C Act. Additionally, section 744K(c)(5)(A) states that in establishing the small business adjustment factor for a fiscal year, FDA shall provide for the crediting of fees from the previous year to the next year if FDA overestimated the amount of the small business adjustment factor for such previous fiscal year.

Therefore, to calculate the small business adjustment to the establishment fee for non-small businesses for FY 2024, FDA must estimate: (1) the number of outsourcing facilities that will pay the reduced fee for small businesses for FY 2024 and (2) the total fee revenue it would have collected if no entity had qualified for the small business exception (*i.e.,* if each entity that registers as an outsourcing facility for FY 2024 were to pay the inflation-adjusted fee amount of $18,588).

With respect to (1), FDA estimates that 10 entities will qualify for small business exceptions and will pay the reduced fee for FY 2024. With respect to (2), to estimate the total number of entities that will register as outsourcing facilities for FY 2024, FDA used data submitted by outsourcing facilities through the voluntary registration process, which began in December 2013. Accordingly, FDA estimates that 79 outsourcing facilities, including 10 small businesses, will be registered with FDA in FY 2024.

If the projected 79 outsourcing facilities paid the full inflation-adjusted fee of $18,588, this would result in total revenue of $1,468,452 in FY 2024 ($18,588 × 79). However, 10 of the entities that are expected to register as outsourcing facilities for FY 2024 are projected to qualify for the small business exception and to pay one-third of the full fee ($6,196 × 10), totaling $61,960 instead of paying the full fee ($18,588 × 10), which would total $185,880. This would leave a potential shortfall of $123,920 ($185,880 minus $61,960).

Additionally, section 744K(c)(5)(A) of the FD&C Act states that in establishing the small business adjustment factor for a fiscal year, FDA shall provide for the crediting of fees from the previous year to the next year if FDA overestimated the amount of the small business adjustment factor for such previous fiscal year. FDA has determined that it is appropriate to credit excess fees collected from the last completed fiscal year, due to the inability to conclusively determine the amount of excess fees from the fiscal year that is in progress at the time this calculation is made. This crediting is done by comparing the small business adjustment factor for the last completed fiscal year, FY 2022 ($2,056), to what would have been the small business adjustment factor for FY 2022 ($1,731) if FDA had estimated perfectly.

The calculation for what the small business adjustment would have been if FDA had estimated perfectly begins by determining the total target collections (15,000 × [inflation adjustment factor] × [number of registrants]). For the most recent complete fiscal year, FY 2022, this was $1,485,120 ($17,472 × 85). The actual FY 2022 revenue from the 85 total registrants (*i.e.,* 74 registrants paying FY 2022 non-small business establishment fee and 11 small business registrants) paying establishment fees is $1,356,992. $1,356,992 is calculated as follows: (FY 2022 Non-Small Business Establishment Fee adjusted for inflation only) × (total number of registrants in FY 2022 paying Non-Small Business Establishment Fee) + (FY 2022 Small Business Establishment Fee) × (total number of small business registrants in FY 2022 paying Small Business Establishment Fee). $17,472 × 74 + $5,824 × 11 = $1,356,992. This left a shortfall of $128,128 from the estimated total target collection amount ($1,485,120 minus $1,356,992). This amount ($128,128) divided by the total number of registrants in FY 2022 paying Standard Establishment Fee (74) equals $1,731.

The difference between the small business adjustment factor used in FY 2022 and the small business adjustment factor that would have been used had FDA estimated perfectly is $325 ($2,056 minus $1,731). The $325 (rounded to the nearest dollar) is then multiplied by the number of actual registrants who paid the standard fee for FY 2022 (74), which provides us a total excess collection of $24,050 in FY 2022.

Therefore, to calculate the small business adjustment factor for FY 2024, FDA subtracts $24,050 from the projected shortfall of $123,920 for FY 2024 to arrive at the numerator for the small business adjustment amount, which equals $99,870. This number divided by 69 (the number of expected non-small businesses for FY 2024) is the small business adjustment amount for FY 2024, which is $1,447 (rounded to the nearest dollar).

B. FY 2024 Rates for Small Business Establishment Fee, Non-Small Business Establishment Fee, and Reinspection Fee

1. Establishment Fee for Qualified Small Businesses [1]

The amount of the establishment fee for a qualified small business is equal to $15,000 multiplied by the inflation adjustment factor for that fiscal year, divided by 3 (see section 744K(c)(4)(A) and (c)(1)(A) of the FD&C Act). The inflation adjustment factor for FY 2024 is 1.239215. See section II.A.1 of this document for the methodology used to calculate the FY 2024 inflation adjustment factor. Therefore, the establishment fee for a qualified small business for FY 2024 is one third of $18,588, which equals $6,196 (rounded to the nearest dollar).

2. Establishment Fee for Non-Small Businesses

Under section 744K(c) of the FD&C Act, the amount of the establishment fee for a non-small business is equal to $15,000 multiplied by the inflation adjustment factor for that fiscal year, plus the small business adjustment factor for that fiscal year, and plus or minus an adjustment factor to account for over or under collections due to the small business adjustment factor in the prior year. The inflation adjustment factor for FY 2024 is 1.239215. The small business adjustment amount for FY 2024 is $1,447. See section II.A.2 of this document for the methodology used

[1] To qualify for a small business reduction of the FY 2024 establishment fee, entities had to submit their exception requests by April 30, 2023. See section 744K(c)(4)(B) of the FD&C Act. The time for requesting a small business exception for FY 2024 has now passed. An entity that wishes to request a small business exception for FY 2025 should consult section 744K(c)(4) of the FD& C Act and section III.D of FDA's guidance for industry entitled ''Fees for Human Drug Compounding Outsourcing Facilities Under Sections 503B and 744K of the FD&C Act,'' which can be accessed on FDA's website at *https://www.fda.gov/media/136683/download.*

to calculate the small business adjustment factor for FY 2024. Therefore, the establishment fee for a non-small business for FY 2024 is $15,000 multiplied by 1.239215 plus $1,447, which equals $20,036 (rounded to the nearest dollar).

3. Reinspection Fee

Section 744K(c)(1)(B) of the FD&C Act provides that the amount of the FY 2024 reinspection fee is equal to $15,000, multiplied by the inflation adjustment factor for that fiscal year. The inflation adjustment factor for FY 2024 is 1.239215. Therefore, the reinspection fee for FY 2024 is $15,000 multiplied by 1.239215, which equals $18,588 (rounded to the nearest dollar). There is no reduction in this fee for small businesses.

C. Summary of FY 2024 Fee Rates

TABLE 4—OUTSOURCING FACILITY FEES

Qualified Small Business Establishment Fee	$6,196.00
Non-Small Business Establishment Fee	20,036.00
Reinspection Fee	18,588.00

III. Fee Payment Options and Procedures

A. Establishment Fee

Once an entity submits registration information and FDA has determined that the information is complete, the entity will incur the annual establishment fee. FDA will send an invoice to the entity, via email to the email address indicated in the registration file. The invoice will contain information regarding the obligation incurred, the amount owed, and payment procedures. A facility will not be registered as an outsourcing facility until it has paid the annual establishment fee under section 744K of the FD&C Act. Accordingly, it is important that facilities seeking to operate as outsourcing facilities pay all fees immediately upon receiving an invoice. If an entity does not pay the full invoiced amount within 15 calendar days after FDA issues the invoice, FDA will consider the submission of registration information to have been withdrawn and adjust the invoice to reflect that no fee is due.

Outsourcing facilities that registered in FY 2023 and wish to maintain their status as an outsourcing facility in FY 2024 must register during the annual registration period that lasts from October 1, 2023, to December 31, 2023. Failure to register and complete payment by December 31, 2023, will result in a loss of status as an outsourcing facility on January 1, 2024. Entities should submit their registration information no later than December 10, 2023, to allow enough time for review of the registration information, invoicing, and payment of fees before the end of the registration period.

B. Reinspection Fee

FDA will issue invoices for each reinspection after the conclusion of the reinspection, via email to the email address indicated in the registration file or via regular mail if email is not an option. Payments must be made within 30 days of the invoice date.

C. Fee Payment Procedures

1. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay.* (*Note:* only full payments are accepted. No partial payments can be made online.) Once you search for your invoice, click ''Pay Now'' to be redirected to *Pay.gov.* Electronic payment options are based on the balance due. Payment by credit card is available for balances less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

2. If a check, bank draft, or postal money order is submitted, make it payable to the order of the Food and Drug Administration and include the user fee ID number to ensure that the payment is applied to the correct fee(s). Payments can be mailed to: Food and Drug Administration, P.O. Box 979107, St. Louis, MO 63197–9000. If a check, bank draft, or money order is to be sent by a courier that requests a street address, the courier should deliver your payment to: U.S. Bank, Attention: Government Lockbox 979107, 1005 Convention Plaza, St. Louis, MO 63101. (*Note:* This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery, contact the U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery.) Please make sure that the FDA post office box number (P.O. Box 979107) is written on the check, bank draft, or postal money order.

3. For payments made by wire transfer, the invoice number must be included. Without the invoice number the payment may not be applied. Regarding reinspection fees, if the payment amount is not applied, the invoice amount will be referred to collections. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required that the outsourcing facility add that amount to the payment to ensure that the invoice is paid in full. Use the following account information when sending a wire transfer: U.S. Dept of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33. If needed, FDA's tax identification number is 53–0196965.

Dated: July 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–2850]

Prescription Drug User Fee Rates for Fiscal Year 2024

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the rates for prescription drug user fees for fiscal year (FY) 2024. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Prescription Drug User Fee Amendments of 2022 (PDUFA VII), authorizes FDA to collect application fees for certain applications for the review of human drug and biological products and prescription drug program fees for certain approved products. This notice establishes the fee rates for FY 2024.

DATES: These fees apply to the period from October 1, 2023, through September 30, 2024.

FOR FURTHER INFORMATION CONTACT: Olufunmilayo Ariyo, Office of Financial Management, Food and Drug Administration, 4041 Powder Mill Rd., 6th Floor, Beltsville, MD 20705, 240–402–4989; and the User Fee Support Staff at *OO-OFBAP-OFM-UFSS-Government@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Sections 735 and 736 of the FD&C Act (21 U.S.C. 379g and 379h, respectively)

establish two different kinds of user fees. Fees are assessed as follows: (1) application fees are assessed on certain types of applications for the review of human drug and biological products and (2) prescription drug program fees are assessed on certain approved products (section 736(a) of the FD&C Act). The statute also includes conditions under which such fees may be waived or reduced (section 736(d) of the FD&C Act), or under which fee exceptions, refunds, or exemptions apply (sections 736(a)(1)(C) through (H), 736(a)(2)(B) through (C), and 736(k) of the FD&C Act).

For FY 2023 through FY 2027, the base revenue amounts for the total revenues from all PDUFA fees are established by PDUFA VII. The base revenue amount for FY 2024 is $1,256,844,387. The FY 2024 base revenue amount is adjusted for inflation, strategic hiring and retention, and for the resource capacity needs for the process for the review of human drug applications (the capacity planning adjustment (CPA)). This amount is further adjusted to include the additional dollar amount as specified in the statute (see section 736(b)(1)(F) of the FD&C Act) to provide for additional full-time equivalent (FTE) positions to support PDUFA VII initiatives. If applicable, an operating reserve adjustment is added to provide sufficient operating reserves of carryover user fees. The amount from the preceding adjustments is then adjusted to provide for additional direct costs to fund PDUFA VII initiatives. Fee amounts are to be established each year so that revenues from application fees provide 20 percent of the total revenue, and prescription drug program fees provide 80 percent of the total revenue (see section 736(b)(2) of the FD&C Act).

This document provides fee rates for FY 2024 for an application requiring covered clinical data [1] ($4,048,695), for an application not requiring covered clinical data ($2,024,348), and for the prescription drug program fee ($416,429). These fees are effective on October 1, 2023, and will remain in effect through September 30, 2024. For applications that are submitted on or after October 1, 2023, the new fee schedule must be used.

II. Fee Revenue Amount for FY 2024

The base revenue amount for FY 2024 is $1,256,844,387 (see section 736(b)(1)(A) and (b)(3) of the FD&C Act). This amount is prior to any adjustments made for inflation, the strategic hiring and retention adjustment, CPA, additional dollar amount, operating reserve adjustment (if applicable), and additional direct costs (see section 736(b)(1) of the FD&C Act).

A. FY 2024 Statutory Fee Revenue Adjustments for Inflation

PDUFA VII specifies that the $1,256,844,387 is to be adjusted for inflation increases for FY 2024 using two separate adjustments: one for personnel compensation and benefits (PC&B) and one for non-PC&B costs (see section 736(c)(1) of the FD&C Act).

The component of the inflation adjustment for payroll costs is the average annual percent change in the cost of all PC&B paid per FTE positions at FDA for the first 3 of the preceding 4 fiscal years, multiplied by the proportion of PC&B costs to total FDA costs of the process for the review of human drug applications for the first 3 of the preceding 4 fiscal years (see section 736(c)(1)(A) and (B)(i) of the FD&C Act).

Table 1 summarizes the actual cost and FTE data for the specified fiscal years, provides the percent changes from the previous fiscal years, and provides the average percent changes over the first 3 of the 4 fiscal years preceding FY 2024. The 3-year average is 3.9280 percent.

TABLE 1—FDA PERSONNEL COMPENSATION AND BENEFITS (PC&B) EACH YEAR AND PERCENT CHANGES

	FY 2020	FY 2021	FY 2022	3-Year average
Total PC&B	$2,875,592,000	$3,039,513,000	$3,165,477,000	
Total FTE	$17,535	$18,501	$18,474	
PC&B per FTE	$163,992	$164,289	$171,348	
Percent Change from Previous Year	7.3063%	0.1811%	4.2967%	3.9280%

The statute specifies that this 3.9280 percent be multiplied by the proportion of PC&B costs to the total FDA costs of the process for the review of human drug applications. Table 2 shows the PC&B and the total obligations for the process for the review of human drug applications for the first 3 of the preceding 4 fiscal years.

TABLE 2—PC&B AS A PERCENT OF TOTAL COST OF THE PROCESS FOR THE REVIEW OF HUMAN DRUG APPLICATIONS

	FY 2020	FY 2021	FY 2022	3-Year average
Total PC&B	$891,395,106	$959,387,333	$931,302,114	
Total Costs	$1,471,144,928	$1,499,064,056	$1,480,601,875	
PC&B Percent	60.5919%	63.9991%	62.9002%	62.4971%

The payroll adjustment is 3.9280 percent from table 1 multiplied by 62.4971 percent resulting in 2.4549 percent.

The statute specifies that the portion of the inflation adjustment for non-payroll costs is the average annual percent change that occurred in the Consumer Price Index for urban consumers (Washington-Arlington-Alexandria, DC-VA-MD-WV; Not Seasonally Adjusted; All items; Annual Index) for the first 3 years of the preceding 4 years of available data multiplied by the proportion of all costs other than personnel compensation and benefits costs to total costs of the process for the review of human drug applications (as defined in section 735(6)) for the first 3 years of the preceding 4 fiscal years (see section 736(c)(1)(A) and (B)(ii)). Table 3 provides the summary data for the percent changes in the specified CPI for

[1] As used herein, ''covered clinical data'' is ''clinical data (other than bioavailability or bioequivalence studies) with respect to safety or effectiveness [that] are required for approval'' (see section 736(a)(1)(A) of the FD&C Act).

the Washington-Arlington-Alexandria area.[2]

TABLE 3—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN CPI FOR WASHINGTON-ARLINGTON-ALEXANDRIA AREA

	FY 2020	FY 2021	FY 2022	3-Year average
Annual CPI	267.16	277.73	296.12	
Annual Percent Change	0.8989%	3.9568%	6.6212%	3.8256%

The statute specifies that this 3.8256 percent be multiplied by the proportion of all costs other than PC&B to total costs of the process for the review of human drug applications obligated. Because 62.4971 percent was obligated for PC&B (as shown in table 2), 37.5029 percent is the portion of costs other than PC&B (100 percent minus 62.4971 percent equals 37.5029 percent). The non-payroll adjustment is 3.8256 percent times 37.5029 percent, or 1.4347 percent.

Next, we add the payroll adjustment (2.4549 percent) to the non-payroll adjustment (1.4347 percent), for a total inflation adjustment of 3.8896 percent (rounded) for FY 2024.

We then multiply the base revenue amount for FY 2024 ($1,256,844,387) by 3.8896 percent, which produces an inflation adjustment amount of $48,886,219. Adding this amount to the base revenue amount yields an inflation-adjusted base revenue amount of $1,305,730,606.

B. FY 2024 Strategic Hiring and Retention Adjustment

For each fiscal year, after the annual base revenue established in section II is adjusted for inflation in accordance with section II.A above, the statute directs FDA to further increase the fee revenue and fees to support strategic hiring and retention. For FY 2024, this amount is $4,000,000 (see section 736(c)(2)(A) of the FD&C Act).

C. FY 2024 Statutory Fee Revenue Adjustments for Capacity Planning

The statute specifies that after the base revenue amount for FY 2024 of $1,256,844,387 has been adjusted as described in sections II.A and II.B above, this amount shall be further adjusted to reflect changes in the resource capacity needs for the process of human drug application reviews (see section 736(c)(3) of the FD&C Act). Following a process required in statute, FDA established a new CPA methodology and first applied it in the setting of FY 2021 fees. The establishment of this methodology is described in the **Federal Register** of August 3, 2020 (85 FR 46651). This methodology includes a continuous, iterative improvement approach, under which the Agency intends to refine its data and estimates for the core review activities to improve their accuracy over time.

In FY 2023, updates were made to refine the time reporting categories included within the CPA to reflect program changes in the current authorization period. As such, the time reporting data and baseline capacity were revised to match the refinements. For FY 2024 fees, additional updates were made to account for additional activities that are also directly related to the direct review of applications and supplements as provided for in the statute. The updates include additional formal meeting types and the direct review of postmarketing commitments (PMC) and requirements (PMR) (see tables 4 and 7), the direct review of risk evaluation and mitigation strategies, and the direct review of annual reports for approved prescription drug products. The Center for Biologics Evaluation and Research (CBER) CPA was also updated to reflect the PDUFA VII revision of the definition of ''human drug application'' and ''prescription drug product'' to include allergenic products licensed on or after October 1, 2022. These additions necessitated an additional re-baselining of capacity.

The CPA methodology includes four steps:

1. *Forecast workload volumes:* predictive models estimate the volume of workload for the upcoming FY.

2. *Forecast the resource needs:* forecast algorithms are generated utilizing time reporting data. These algorithms estimate the required demand in FTEs[3] for direct review-related effort. This is then compared to current available resources for the direct review-related workload.

3. *Assess the resource forecast in the context of additional internal factors:* program leadership examines operational, financial, and resourcing data to assess whether FDA will be able to utilize additional funds during the FY, and the funds are required to support additional review capacity. FTE amounts are adjusted, if needed.

4. *Convert the FTE need to dollars:* utilizing FDA's fully loaded FTE cost model, the final feasible FTEs are converted to an equivalent dollar amount.

To determine the FY 2024 CPA, FDA calculated a CPA for the Center for Drug Evaluation and Research (CDER) and CBER individually. The final Center-level results were then combined to determine the total FY 2024 PDUFA CPA. The following section outlines the major components of each Center's FY 2024 PDUFA CPA.

Table 4 summarizes the forecasted workload volumes for CDER in FY 2024 based on predictive models, as well as historical actuals from FY 2022 for comparison.

TABLE 4—CDER ACTUAL FY 2022 WORKLOAD VOLUMES AND PREDICTED FY 2024 WORKLOAD VOLUMES

Workload category	FY 2022 actuals	FY 2024 predictions
Efficacy Supplements	236	203
Labeling Supplements	902	714
Manufacturing Supplements	2,084	2,174
NDA/BLA[1] Original	128	1,136
PDUFA Industry Meetings (including WROs[2])	3,647	3,504

[2] The data are published by the Bureau of Labor Statistics and can be found on its website at: *https://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUURS35ASA0,CUUSS35ASA0.*

[3] Full-time equivalents refer to a paid staff year, rather than a count of individual employees.

TABLE 4—CDER ACTUAL FY 2022 WORKLOAD VOLUMES AND PREDICTED FY 2024 WORKLOAD VOLUMES—Continued

Workload category	FY 2022 actuals	FY 2024 predictions
Active Commercial INDs [3]	9,535	10,632
Annual Reports [4]	3,394	3,504
PMR/PMC-Related Documents [4]	1,567	1,631
Active REMS Programs [4 5]	21	20

[1] New drug applications (NDA)/biological license applications (BLA).
[2] Written responses only (WROs).
[3] For purpose of the CPA, this is defined as an active commercial investigational new drug (IND) for which a document has been received in the past 18 months.
[4] Represents activities related to the review of materials submitted to the application file after approval.
[5] Represents the percentage of active risk evaluation and management strategy (REMS) programs proportional to Center and User Fee by total number of qualifying products with the exclusion of the Opioid Shared System.

Utilizing the resource forecast algorithms, the forecasted workload volumes for FY 2024 were then converted into estimated FTE needs for CDER's PDUFA direct review-related work. The resulting expected FY 2024 FTE need for CDER was compared to current resource capacity for direct review related work to determine the FY 2024 resource delta, as summarized in table 5. Hiring and re-baselining of current resource capacity resulted in an increase of both the resource capacity and resource forecast relative to prior years.

TABLE 5—CDER FY24 PDUFA RESOURCE DELTA

Center	Current resource capacity	FY 2024 resource forecast	Predicted FY 2024 FTE delta
CDER	1,931	2,001	70

The projected 70 FTE delta was then assessed by FDA in the context of additional operational and internal factors to ensure that a fee adjustment is only made for resources that can be utilized in the fiscal year and for which funds are required to support additional review capacity. After accounting for funded vacancies that are intended to address direct review workload that is within scope of the workload accounted for by the capacity planning adjustment, CDER's delta was adjusted to 38 FTE. The FY 2024 PDUFA CPA for CDER is therefore $12,778,222, as summarized in table 6.

TABLE 6—CDER FY 2024 PDUFA CPA

Center	Additional FTEs for FY 2024	Cost for each additional FTE	CDER FY 2024 PDUFA CPA
CDER	38	$336,269	$12,778,222

To calculate the FY 2024 PDUFA CPA for CBER, FDA followed the approach outlined above. Table 7 summarizes the forecasted workload volumes for CBER in FY 2024 as well as the corresponding historical actuals from FY 2022 for comparison.

TABLE 7—CBER ACTUAL FY 2022 WORKLOAD VOLUMES AND PREDICTED FY 2024 WORKLOAD VOLUMES

Workload category	FY 2022 actuals	FY 2024 predictions
Efficacy Supplements	22	23
Labeling Supplements	52	45
Manufacturing Supplements	684	692
NDA/BLA [1] Original	13	11
PDUFA Industry Meetings (including WROs [2])	635	715
Active Commercial INDs [3]	1,694	1,974
Annual Reports [4]	292	304
PMR/PMC-Related Documents [4]	140	151
Active REMS Programs [4 5]	2	2

[1] New drug applications (NDA)/biological license applications (BLA).
[2] Written responses only (WROs).
[3] For purpose of the CPA, this is defined as an active commercial investigational new drug (IND) for which a document has been received in the past 18 months.
[4] Represents activities related to the review of materials submitted to the application file after approval.
[5] Represents the percentage of active REMS programs proportional to Center and User Fee by total number of qualifying products with the exclusion of the Opioid Shared System.

The forecasted CBER PDUFA workload for FY 2024 was then converted into expected FTE resources and compared to current resource capacity for PDUFA direct review work, as summarized in table 8. Hiring and re-baselining of current resource capacity resulted in an increase of both the resource capacity and resource forecast relative to prior years.

TABLE 8—CBER FY 2024 PDUFA RESOURCE DELTA

Center	Current resource capacity	FY 2024 resource forecast	Predicted FY 2024 FTE delta
CBER	408	452	44

The projected 44 FTE delta for CBER was also assessed in the context of other operational and financial factors that may impact the need and/or feasibility of obtaining the additional resources. After considering subject matter expert input on industry trends and workload, reviewing the historical accuracy of workload forecasts, accounting for historical net FTE gains within CBER and the hiring necessary to meet the hiring commitments set forth for FY 2024 in the PDUFA VII commitment letter, and subtracting previously funded PDUFA vacancies aligned with CPA-covered activities, CBER determined that an adjustment of 34 additional FTEs for FY 2024 is needed. The FY 2024 CPA for CBER is therefore $11,157,847, as summarized in table 9.

TABLE 9—CBER FY 2024 PDUFA CPA

Center	Additional FTEs for FY 2024	Cost for each additional FTE	CBER FY 2024 CPA
CBER	34	$328,172	$11,157,847

The CDER and CBER CPA amounts were then added together to determine the PDUFA CPA for FY 2024 of $23,936,069, as outlined in table 10. FDA will track the utilization of the CPA funds to ensure they are supporting the organizational components engaged in PDUFA direct review work to enhance resources and expand staff capacity and capability. Should FDA be unable to utilize any amounts of the CPA funds during the fiscal year, it will not spend those funds and the unspent funds will be transferred to the carryover balance at the end of the fiscal year.

TABLE 10—FY 2024 PDUFA CPA

Center	FY 2024 PDUFA CPA
CDER	$12,778,222
CBER	11,157,847
Total	23,936,069

D. FY 2024 Statutory Fee Revenue Adjustments for Additional Dollar Amounts

PDUFA VII provides an additional dollar amount for each of the 5 fiscal years covered by PDUFA VII for additional FTE to support enhancements outlined in the PDUFA VII commitment letter. The additional dollar amount for FY 2024 as outlined in statute is $25,097,671 (see section 736(b)(1)(F) of the FD&C Act). This amount will be added to the total FY 2024 PDUFA VII revenue amount.

TABLE 11—BASE REVENUE AMOUNT AND SECTION 736(c)(1) THROUGH (3) ADJUSTMENT AMOUNTS

Fee	Amount
Statutory Fee Revenue Base Amount (section 736(b)(3) of the FD&C Act)	$1,256,844,387
Statutory Fee Revenue Adjustments for Inflation (section 736(c)(1) of the FD&C Act)	48,886,219
Strategic Hiring and Retention Adjustment (section 736(c)(2)(A) of the FD&C Act)	4,000,000
Statutory Fee Revenue Adjustments for Capacity Planning (section 736(c)(3) of the FD&C Act)	23,936,069
Statutory Fee Revenue Adjustments for Additional Dollar Amounts (section 736(b)(1)(F) of the FD&C Act)	25,097,671
Cumulative Revenue Amount after Adjustments in sections 736(c)(1), (2), (3), and (4) of the FD&C Act	1,358,764,346

E. FY 2024 Statutory Fee Revenue Adjustments for Operating Reserve

PDUFA VII provides for an operating reserve adjustment that may result in an increase or decrease in fee revenue and fees for a given FY (see section 736(c)(4) of the FD&C Act). For FY 2024, FDA is required to further increase fee revenue and fees if an adjustment is necessary to provide for at least 9 weeks of operating reserves of carryover user fees (see section 736(c)(4)(A)(i) of the FD&C Act). If FDA has carryover balances of user fees in excess of 14 weeks of operating reserves, FDA is required to decrease fee

revenue and fees to provide for not more than 14 weeks of operating reserves of carryover user fees (see section 736(c)(4)(B) of the FD&C Act).

To determine the dollar amounts for the 9-week and 14-week operating reserve thresholds, the adjustments (inflation, strategic hiring and retention, capacity planning, and additional dollar amount) discussed in sections II.A, II.B, II.C, and II.D are applied to the FY 2024 base revenue (see section 736(c)(4)(A) of the FD&C Act), resulting in $1,358,764,346. This amount is then divided by 52 to generate the 1-week operating amount of $26,130,084. The 1-week operating amount is then multiplied by 9 and 14. This results in a 9-week threshold amount of $235,170,752 and a 14-week threshold amount of $365,821,170.

To determine the FY 2023 end-of-year operating reserves of carryover user fees, the Agency assessed the operating reserve of carryover fees at the end of June 2023 and forecast collections and obligations in the fourth quarter of FY 2023 combined. This provides an estimated end-of-year FY 2023 operating reserve of carryover user fees of $321,648,510, which equates to 12.3 weeks of operations.[4]

Because the estimated FY 2023 end-of-year operating reserves of carryover user fees are within the 9-week and 14-week thresholds, FDA will not increase or reduce the FY 2024 fees or fee revenue under the statutory provision for operating reserve adjustments.

TABLE 12—BASE REVENUE AMOUNT AND SECTION 736(c)(1) THROUGH (4) ADJUSTMENT AMOUNTS

Fee	Amount
Statutory Fee Revenue Base Amount (section 736(b)(3) of the FD&C Act)	$1,256,844,387
Statutory Fee Revenue Adjustments for Inflation (section 736(c)(1) of the FD&C Act)	48,886,219
Strategic Hiring and Retention Adjustment (section 736(c)(2)(A) of the FD&C Act)	4,000,000
Statutory Fee Revenue Adjustments for Capacity Planning (section 736(c)(3) of the FD&C Act)	23,936,069
Statutory Fee Revenue Adjustments for Additional Dollar Amounts (section 736(b)(1)(F) of the FD&C Act)	25,097,671
Operating Reserve Adjustment (section 736(c)(4) of the FD&C Act)	.....
Cumulative Revenue after Adjustments in sections 736(c)(1), (2), (3), and (4) of the FD&C Act	1,358,764,346

F. FY 2024 Statutory Fee Revenue Adjustments for Additional Direct Cost

PDUFA VII specifies that an additional direct cost of $63,339,404 is to be added to the total FY 2024 PDUFA revenue amount (see section 736(c)(5) of the FD&C Act). With respect to target revenue for FY 2024, adding the additional direct cost amount of $63,339,404 to the inflation, strategic hiring and retention, CPA, additional dollar amount, and operating reserve adjustment of $1,358,764,346 results in the total revenue amount of $1,422,104,000 (rounded to the nearest thousand dollars).

TABLE 13—TOTAL ESTIMATED ADJUSTED REVENUE AMOUNT

Statutory Fee Revenue Base Amount (section 736(b)(3) of the FD&C Act)	$1,256,844,387
Statutory Fee Revenue Adjustments for Inflation (section 736(c)(1) of the FD&C Act)	48,886,219
Strategic Hiring and Retention Adjustment (section 736(c)(2)(A) of the FD&C Act)	4,000,000
Statutory Fee Revenue Adjustments for Capacity Planning (section 736(c)(3) of the FD&C Act)	23,936,069
Statutory Fee Revenue Adjustments for Additional Dollar Amounts (section 736(b)(1)(F) of the FD&C Act)	25,097,671
Operating Reserve Adjustment (section 736(c)(4) of the FD&C Act)	.....
Additional Direct Cost (section 736(c)(5) of the FD&C Act)	63,339,404
Cumulative Revenue Amount after Adjustments in sections 736(c)(1), (2), (3), and (4) of the FD&C Act	1,422,104,000

III. Application Fee Calculations

A. Application Fee Revenues and Application Fees

Application fees will be set to generate 20 percent of the total revenue amount, amounting to $284,420,800 in FY 2024.

B. Estimate of the Number of Fee-Paying Applications and Setting the Application Fees

Historically, FDA has estimated the total number of fee-paying full application equivalents (FAEs) it expects to receive during the next fiscal year by averaging the number of fee-paying FAEs received in the three most recently completed fiscal years. For FY 2024 fee setting, the 3 relevant fiscal years are FYs 2020,[5] 2021, and 2022. Prior year FAE totals are updated annually to reflect refunds and waivers processed after the close of the fiscal year.

In estimating the number of fee-paying FAEs, an application requiring covered clinical data[6] counts as one FAE. An application not requiring covered clinical data counts as one-half of an FAE. An application that is withdrawn before filing, or refused for filing, counts as one-fourth of an FAE if the applicant initially paid a full application fee, or one-eighth of an FAE if the applicant initially paid one-half of the full application fee amount.

As table 14 shows, the average number of fee-paying FAEs received annually in FY 2020 through FY 2022 is 70.25. FDA will set fees for FY 2024 based on this estimate as the number of full application equivalents that will be subject to fees.

[4] For purposes of the operating reserve adjustment under PDUFA VII, the operating reserve of carryover user fees includes only user fee funds that are available for obligation. FDA excludes from the operating reserve of carryover user fee funds that were collected prior to 2010 and that are held by FDA, but which are considered unavailable for obligation due to lack of an appropriation ($78,850,995).

[5] FY 2020 data was omitted in FY 2022 methodology as FDA took into account the global COVID–19 pandemic situation at the time. However, after reviewing the data trend, FY 2020 data is included in this year's methodology given the higher FAE count for FY 2021. See table 14.

[6] As defined in section 736(a)(1)(A)(i) of the FD&C Act.

TABLE 14—FEE-PAYING FAES

	FY 2020	FY 2021	FY 2022	3-Year average
Fee-Paying FAEs	65.25	90.50	55.00	70.25

Note: Prior year FAE totals are updated annually to reflect refunds and waivers processed after the close of the fiscal year.

The FY 2024 application fee is estimated by dividing the average number of full applications that paid fees from FY 2020 through FY 2022, 70.25, into the fee revenue amount to be derived from application fees in FY 2024, $284,420,800. The result is a fee of $4,048,695 per full application requiring clinical data, and $2,024,348 per application not requiring clinical data.

IV. Fee Calculation for Prescription Drug Fees

PDUFA VII assesses prescription drug program fees for certain prescription drug products. Program fees will be set to generate 80 percent of the total target revenue amounting to $1,137,683,200 in FY 2024.

An applicant will not be assessed more than five program fees for a FY for prescription drug products identified in a single approved NDA or BLA (see section 736(a)(2)(C) of the FD&C Act). Applicants are assessed a program fee for a fiscal year for user fee eligible prescription drug products identified in a human drug application approved as of October 1 of such fiscal year. Additionally, applicants are assessed a program fee for a product that is not a prescription drug product on October 1 because it is included in the discontinued section of the Orange Book or the CDER/CBER Billable Biologics List on that date, if the product becomes a fee-eligible prescription drug product during the fiscal year.

FDA estimates 2,928 program fees will be invoiced in FY 2024 before factoring in waivers, refunds, exceptions, and exemptions. FDA approximates that there will be 55 waivers and refunds granted. In addition, FDA approximates that another 41 program fees will be exempted in FY 2024 based on the orphan drug exemption in section 736(k) of the FD&C Act.

PDUFA VII changed the definition of the same product exception for program fees. FDA determined that 102 products may be eligible for the pharmaceutical equivalence same product exception. An additional exception for program fees for skin-test diagnostic products is included in the PDUFA VII. FDA has determined that there are nine skin-test diagnostic application products that may be eligible for the exception for skin diagnostic tests. FDA estimates 2,730 program fees in FY 2024, after allowing for an estimated 198 waivers and reductions, including the orphan drug exemptions, excepted and exempted fee-liable products. The FY 2024 prescription drug program fee rate is calculated by dividing the adjusted total revenue from program fees ($1,137,683,200) by the estimated 2,730 program fees, resulting in a FY 2024 program fee of $416,734 (rounded to the nearest dollar).

V. Fee Schedule for FY 2024

The fee rates for FY 2024 are displayed in table 15.

TABLE 15—FEE SCHEDULE FOR FY 2024

Fee category	Fee rates for FY 2024
Application:	
Requiring clinical data	$4,048,695
Not requiring clinical data	2,024,348
Program	416,734

VI. Fee Payment Options and Procedures

A. Application Fees

The appropriate application fee established in the new fee schedule must be paid for any application subject to fees under PDUFA VII that is submitted on or after October 1, 2023. Payment must be made in U.S. currency by electronic check, check, bank draft, wire transfer, or U.S. postal money order payable to the order of the Food and Drug Administration. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express).

FDA has partnered with the U.S. Department of the Treasury to use *Pay.gov,* a web-based payment application, for online electronic payment. The *Pay.gov* feature is available on the FDA website after completing the Prescription Drug User Fee Cover Sheet and generating the user fee ID number. Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay* (Note: only full payments are accepted. No partial payments can be made online). Once an invoice is located, ''Pay Now'' should be selected to be redirected to *Pay.gov*. Electronic payment options are based on the balance due. Payment by credit card is available for balances that are less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

If a check, bank draft, or postal money order is submitted, make it payable to the order of the Food and Drug Administration and include the user fee ID number to ensure that the payment is applied to the correct fee(s). Payments can be mailed to: Food and Drug Administration, P.O. Box 979107, St. Louis, MO 63197–9000. If a check, bank draft, or money order is to be sent by a courier that requests a street address, the courier should deliver your payment to: U.S. Bank, Attention: Government Lockbox 979107, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery, contact the U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery.) Please make sure that the FDA post office box number (P.O. Box 979107) is written on the check, bank draft, or postal money order.

For payments made by wire transfer, include the unique user fee ID number to ensure that the payment is applied to the correct fee(s). Without the unique user fee ID number, the payment may not be applied, which could result in FDA not filing an application and other penalties. Note: the originating financial institution may charge a wire transfer fee, especially for international wire transfers. Applicable wire transfer fees must be included with payment to ensure fees are paid in full. Questions about wire transfer fees should be addressed to the financial institution. The account information for wire transfers is as follows: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No.: 75060099, Routing No.: 021030004, SWIFT: FRNYUS33. If needed, FDA's tax identification number is 53–0196965.

B. Prescription Drug Program Fees

FDA will issue invoices and payment instructions for FY 2024 program fees under the new fee schedule in August 2023. Under section 736(a)(2)(A)(i) of the FD&C Act, prescription drug program fees are due on October 2, 2023.

FDA will issue invoices in December 2024 for products that qualify for FY 2024 program fee assessments after the October 2023 billing.

C. Fee Waivers and Refunds

To qualify for consideration for a waiver or reduction under section 736(d) of the FD&C Act, an exemption under section 736(k) of the FD&C Act, or the return of an application or program fee paid under section 736 of the FD&C Act, including if the fee is claimed to have been paid in error, a person must submit to FDA a written request justifying such waiver, reduction, exemption or return not later than 180 days after such fee is due (section 736(i) of the FD&C Act). A request submitted under this paragraph must include any legal authorities under which the request is made.

Dated: July 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–15911 Filed 7–27–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–0466]

Clinical Considerations for Studies of Devices Intended To Treat Opioid Use Disorder; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled ''Clinical Considerations for Studies of Devices Intended to Treat Opioid Use Disorder.'' Design of clinical studies for devices intended to treat opioid use disorder (OUD) is challenging. This guidance provides recommendations for the design of pivotal clinical studies for devices intended to treat opioid use disorder (''OUD device studies'') and used to support marketing submissions. These recommendations are applicable to the design and development of clinical studies to provide a reasonable assurance of safety and effectiveness for a device intended to treat OUD. This draft guidance is not final nor is it for implementation at this time.

DATES: Submit either electronic or written comments on the draft guidance by October 26, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2023–D–0466 for ''Clinical Considerations for Studies of Devices Intended to Treat Opioid Use Disorder.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

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

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Clinical Considerations for Studies of Devices Intended to Treat Opioid Use Disorder'' to the Office of Policy, Guidance and Policy Development, Center for Devices

and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Megha Reddy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2568, Silver Spring, MD 20993–0002, 240–402–2980.

SUPPLEMENTARY INFORMATION:

I. Background

The opioid overdose crisis is a serious and complex challenge facing the United States. The Agency has already taken significant steps to decrease unnecessary exposure to opioids, prevent new cases of opioid use disorder (OUD) and support the treatment of people with OUD. The Center for Devices and Radiological Health (CDRH) is committed to helping to end this national crisis. This guidance provides recommendations for the design of pivotal clinical studies for devices intended to treat OUD (hereafter ''OUD device studies'') and used to support marketing submissions. These recommendations are applicable to the design and development of clinical studies to provide a reasonable assurance of safety and effectiveness for a device intended to treat OUD. OUD device studies designed using the recommendations set out in this guidance may advance the treatment of OUD by providing scientific evidence that aids FDA in determining whether there is a reasonable assurance that a device intended to treat OUD is safe and effective. These recommendations may change as more information becomes available, and the research community gains experience with different designs in relation to OUD device studies.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all CDRH guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products*. This guidance document is also available at *https://www.regulations.gov* or *https://www.fda.gov/regulatory-information/search-fda-guidance-documents*. Persons unable to download an electronic copy of ''Clinical Considerations for Studies of Devices Intended to Treat Opioid Use Disorder'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number GUI00019017 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

While this guidance contains no new collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in the following FDA guidance have been approved by OMB as listed in the following table:

Guidance	Topic	OMB control No.
''Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff''.	Q-submissions ..	0910–0756

Dated: July 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–15968 Filed 7–27–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–2897]

Food Safety Modernization Act Third-Party Certification Program User Fee Rate for Fiscal Year 2024

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the fiscal year (FY) 2024 annual fee rate for recognized accreditation bodies and accredited certification bodies, and the initial and renewal fee rate for accreditation bodies applying to be recognized in the third-party certification program that is authorized by the Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the FDA Food Safety Modernization Act (FSMA). We are also announcing the fee rate for certification bodies that are applying to be directly accredited by FDA.

DATES: This fee is effective on October 1, 2023, and will remain in effect through September 30, 2024.

FOR FURTHER INFORMATION CONTACT: Olufunmilayo (Funmi) Ariyo, Food and Drug Administration, 404 Powder Mill Rd., Beltsville, MD 20705–4304, 240–402–4989; or the FSMA Fee Staff, Office of Food Policy and Response, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, *FSMAFeeStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 307 of FSMA (Pub. L. 111–353), Accreditation of Third-Party Auditors, amended the FD&C Act to create a new provision, section 808, under the same name. Section 808 of the FD&C Act (21 U.S.C. 384d) directs FDA to establish a program for accreditation of third-party certification bodies [1] conducting food safety audits and issuing food and facility certifications to eligible foreign entities (including registered foreign food facilities) that meet our applicable requirements. Under this provision, we established a system for FDA to recognize accreditation bodies to accredit certification bodies, except for limited circumstances in which we may directly

[1] For the reasons explained in the third-party certification final rule (80 FR 74570 at 74578–74579, November 27, 2015), and for consistency with the implementing regulations for the third-party certification program in 21 CFR parts 1, 11, and 16, this notice uses the term ''third-party certification body'' rather than the term ''third-party auditor'' used in section 808(a)(3) of the FD&C Act.

accredit certification bodies to participate in the third-party certification program.

Section 808(c)(8) of the FD&C Act directs FDA to establish a reimbursement (user fee) program by which we assess fees and require reimbursement for the work FDA performs to establish and administer the third-party certification program under section 808 of the FD&C Act. The user fee program for the third-party certification program was established by a final rule entitled ''Amendments to Accreditation of Third-Party Certification Bodies To Conduct Food Safety Audits and To Issue Certifications To Provide for the User Fee Program'' (81 FR 90186, December 14, 2016).

The FSMA FY 2024 third-party certification program user fee rate announced in this notice is effective on October 1, 2023 and will remain in effect through September 30, 2024.

II. Estimating the Average Cost of a Supported Direct FDA Work Hour for FY 2024

FDA must estimate its costs for each activity in order to establish fee rates for FY 2024. In each year, the costs of salary (or personnel compensation) and benefits for FDA employees account for between 50 and 60 percent of the funds available to, and used by, FDA. Almost all the remaining funds (operating funds) available to FDA are used to support FDA employees for paying rent, travel, utility, information technology, and other operating costs.

A. Estimating the Full Cost per Direct Work Hour in FY 2024

Full-time Equivalent (FTE) reflects the total number of regular straight-time hours—not including overtime or holiday hours—worked by employees, divided by the number of compensable hours applicable to each fiscal year. Annual leave, sick leave, compensatory time off, and other approved leave categories are considered ''hours worked'' for purposes of defining FTE employment.

In general, the starting point for estimating the full cost per direct work hour is to estimate the cost of an FTE or paid staff year. Calculating an Agency-wide total cost per FTE requires three primary cost elements: payroll, non-payroll, and rent.

We have used an average of past year cost elements to predict the FY 2024 cost. The FY 2024 FDA-wide average cost for payroll (salaries and benefits) is $192,848; non-payroll (including equipment, supplies, information technology, general and administrative overhead) is $99,316; and rent (including cost allocation analysis and adjustments for other rent and rent-related costs) is $23,239 per paid staff year, excluding travel costs.

Summing the average cost of an FTE for payroll, non-payroll, and rent, brings the FY 2024 average fully supported cost to $315,403 [2] per FTE, excluding travel costs. FDA will use this base unit fee in determining the hourly fee rate for third-party certification user fees for FY 2024 prior to including travel costs as applicable for the activity.

To calculate an hourly rate, FDA must divide the FY 2024 average fully supported cost of $315,403 per FTE by the average number of supported direct FDA work hours in FY 2022 (the last FY for which data are available). See table 1.

TABLE 1—SUPPORTED DIRECT FDA WORK HOURS IN A PAID STAFF YEAR IN FY 2022

Total number of hours in a paid staff year	2,080
Less:	
11 paid holidays	−88
20 days of annual leave	−160
10 days of sick leave	−80
12.5 days of training	−100
22 days of general administration	−176
26.5 days of travel	−212
2 hours of meetings per week	−104
Net Supported Direct FDA Work Hours Available for Assignments	1,160

Dividing the average fully supported FTE cost in FY 2024 ($315,403) by the total number of supported direct work hours available for assignment in FY 2022 (1,160) results in an average fully supported cost of $272 (rounded to the nearest dollar), excluding travel costs, per supported direct work hour in FY 2024.

B. Adjusting FY 2022 Travel Costs for Inflation To Estimate FY 2024 Travel Costs

To adjust the hourly rate for FY 2024, FDA must estimate the cost of inflation in each year for FY 2023 and FY 2024. FDA uses the method prescribed for estimating inflationary costs under the Prescription Drug User Fee Act (PDUFA) provisions of the FD&C Act (section 736(c)(1) (21 U.S.C. 379h(c)(1))), the statutory method for inflation adjustment in the FD&C Act that FDA has used consistently. FDA previously determined the FY 2023 inflation rate to be 1.6404 percent; this rate was published in the FY 2023 PDUFA user fee rates notice in the **Federal Register** (October 7, 2022, 87 FR 61063). Utilizing the method set forth in section 736(c)(1) of the FD&C Act, FDA has calculated an inflation rate of 1.6404 percent for FY 2023 and 3.8896 percent for FY 2024. FDA intends to use this inflation rate to make inflation adjustments for FY 2024; the derivation of this rate will be published in the **Federal Register** in the FY 2024 notice for the PDUFA user fee rates. The compounded inflation rate for FYs 2023 and 2024, therefore, is 1.055938 (or 5.5938 percent) (calculated as 1 plus 1.6404 percent times 1 plus 3.8896 percent).

The average fully supported cost per supported direct FDA work hour, excluding travel costs, of $272 already takes into account inflation as the calculation above is based on FY 2024 predicted costs. FDA will use this base unit fee in determining the hourly fee rate for third-party certification program fees for FY 2024 prior to including travel costs as applicable for the activity. For the purpose of estimating the fee, we are using the travel cost rate for foreign travel because we anticipate that the vast majority of onsite assessments made by FDA under this program will require foreign travel. In FY 2022, the Office of Regulatory Affairs spent a total of $802,057 on 175 foreign inspection trips related to FDA's Center

[2] Total includes rounding.

for Food Safety and Applied Nutrition and Center for Veterinary Medicine field activities programs, which averaged a total of $4,583 per foreign inspection trip. These trips averaged 3 weeks (or 120 paid hours) per trip. Dividing $4,583 per trip by 120 hours per trip results in an additional cost of $38 (rounded to the nearest dollar) per paid hour spent for foreign inspection travel costs in FY 2022. To adjust $38 for inflationary increases in FY 2023 and FY 2024, FDA must multiply it by the same inflation factor mentioned previously in this document (1.055938 or 5.5938 percent), which results in an estimated cost of $40 per paid hour in addition to $272 for a total of $312 per paid hour ($272 plus $40) for each direct hour of work requiring foreign inspection travel. FDA will use this rate in charging fees in FY 2024 when travel is required for the third-party certification program.

TABLE 2—FSMA FEE SCHEDULE FOR FY 2024

Fee category	Fee rates for FY 2024
Hourly rate without travel	$272
Hourly rate if travel is required	312

III. Fees for Accreditation Bodies and Certification Bodies in the Third-Party Certification Program Under Section 808(c)(8) of the FD&C Act

The third-party certification program assesses application fees and annual fees. In FY 2024, the only fees that could be collected by FDA under section 808(c)(8) of the FD&C Act are the initial application fee for accreditation bodies seeking recognition, the annual fee for recognized accreditation bodies, the annual fee for certification bodies accredited by a recognized accreditation body, the initial application fee for a certification body seeking direct accreditation from FDA, and the renewal application fee for recognized accreditation bodies. Table 3 provides an overview of the fees for FY 2024.

TABLE 3—FSMA THIRD-PARTY CERTIFICATION PROGRAM USER FEE SCHEDULE FOR FY 2024

Fee category	Fee rates for FY 2024
Initial Application Fee for Accreditation Body Seeking Recognition	$45,440
Annual Fee for Recognized Accreditation Body	2,131
Annual Fee for Accredited Certification Body	2,664
Initial Application Fee for a Certification Body Seeking Direct Accreditation from FDA	45,440
Renewal Application Fee for Recognized Accreditation Body	27,888

A. Application Fee for Accreditation Bodies Applying for Recognition in the Third-Party Certification Program Under Section 808(c)(8) of the FD&C Act

Section 1.705(a)(1) (21 CFR 1.705(a)(1)) establishes an application fee for accreditation bodies applying for initial recognition that represents the estimated average cost of the work FDA performs in reviewing and evaluating initial applications for recognition of accreditation bodies.

The fee is based on the fully supported FTE hourly rates and estimates of the number of hours it would take FDA to perform relevant activities. These estimates represent FDA's current thinking, and as the program evolves, FDA will continue to reconsider the estimated hours. Based on data we have acquired since starting the program, we estimate that it would take, on average, 80 person-hours to review an accreditation body's submitted application, 48 person-hours for an onsite performance evaluation of the applicant (including travel and other steps necessary for a fully supported FTE to complete an onsite assessment), and 32 person-hours to prepare a written report documenting the onsite assessment.

FDA employees review applications and prepare reports from their worksites, so we use the fully supported FTE hourly rate excluding travel, $272 per hour, to calculate the portion of the user fee attributable to those activities: $272/hour × (80 hours (application review) + 32 hours (written report)) = $30,464. FDA employees will likely travel to foreign countries for the onsite performance evaluations because most accreditation bodies are anticipated to be located in foreign countries. For this portion of the fee, we use the fully supported FTE hourly rate for work requiring travel, $312 per hour, to calculate the portion of the user fee attributable to those activities: $312/hour × 48 hours (*i.e.,* two fully supported FTEs × ((2 travel days × 8 hours) + (1 day onsite × 8 hours))) = $14,976. The estimated average cost of the work FDA performs in total for reviewing an initial application for recognition for an accreditation body based on these figures would be $30,464 + $14,976 = $45,440. Therefore, the application fee for accreditation bodies applying for recognition in FY 2024 will be $45,440.

B. Annual Fee for Accreditation Bodies Participating in the Third-Party Certification Program Under Section 808(c)(8) of the FD&C Act

To calculate the annual fee for each recognized accreditation body, FDA takes the estimated average cost of work FDA performs to monitor performance of a single recognized accreditation body and annualizes that over the average term of recognition. At this time, we assume an average term of recognition of 5 years. We also assume that FDA will monitor 10 percent of recognized accreditation bodies onsite. As the program proceeds, we will adjust the term of recognition as appropriate. We estimate that for one performance evaluation of a recognized accreditation body, it would take, on average (taking into account that not all recognized accreditation bodies would be monitored onsite), 22 hours for FDA to conduct records review, 8 hours to prepare a report detailing the records review and onsite performance evaluation, and 8 hours of onsite performance evaluation. Using the fully supported FTE hourly rates in table 2, the estimated average cost of the work FDA performs to monitor performance of a single recognized accreditation

body would be $8,160 ($272/hour × (22 hours (records review) + 8 hours (written report))) plus $2,496 ($312/hour × 8 hours (onsite evaluation)), which is $10,656. Annualizing this amount over 5 years would lead to an annual fee for recognized accreditation bodies of $2,131 for FY 2024.

C. Annual Fee for Certification Bodies Accredited by a Recognized Accreditation Body in the Third-Party Certification Program Under Section 808(c)(8) of the FD&C Act

To calculate the annual fee for a certification body accredited by a recognized accreditation body, FDA takes the estimated average cost of work FDA performs to monitor performance of a single certification body accredited by a recognized accreditation body and annualizes that over the average term of accreditation. At this time, we assume an average term of accreditation of 4 years. This fee is based on the fully supported FTE hourly rates and estimates of the number of hours it would take FDA to perform relevant activities. We estimate that FDA would conduct, on average, the same activities, for the same amount of time to monitor certification bodies accredited by a recognized accreditation body as we would to monitor an accreditation body recognized by FDA. Using the fully supported FTE hourly rates in table 2, the estimated average cost of the work FDA performs to monitor performance of a single accredited certification body would be $8,160 ($272/hour × (22 hours (records review) + 8 hours (written report))) plus $2,496 ($312/hour × 8 hours (onsite evaluation)), which is $10,656. Annualizing this amount over 4 years would lead to an annual fee for accredited certification bodies of $2,664 for FY 2024.

D. Initial Application Fee for Certification Bodies Seeking Direct Accreditation From FDA in the Third-Party Certification Program Under Section 808(c)(8) of the FD&C Act

Section 1.705(a)(3) establishes an application fee for certification bodies applying for direct accreditation from FDA that represents the estimated average cost of the work FDA performs in reviewing and evaluating initial applications for direct accreditation of certification bodies.

The fee is based on the fully supported FTE hourly rates and estimates of the number of hours it would take FDA to perform relevant activities. These estimates represent FDA's current thinking, and as the program evolves, FDA will reconsider the estimated hours. We estimate that it would take, on average, 80 person-hours to review a certification body's submitted application, 48 person-hours for an onsite performance evaluation of the applicant (including travel and other steps necessary for a fully supported FTE to complete an onsite assessment), and 32 person-hours to prepare a written report documenting the onsite assessment.

FDA employees are likely to review applications and prepare reports from their worksites, so we use the fully supported FTE hourly rate excluding travel, $272 per hour, to calculate the portion of the user fee attributable to those activities: $272/hour × (80 hours (application review) + 32 hours (written report)) = $30,464. FDA employees will likely travel to foreign countries for the onsite performance evaluations because most certification bodies are anticipated to be located in foreign countries. For this portion of the fee, we use the fully supported FTE hourly rate for work requiring travel, $312 per hour, to calculate the portion of the user fee attributable to those activities: $312/hour × 48 hours (*i.e.,* two fully supported FTEs × ((2 travel days × 8 hours) + (1 day onsite × 8 hours))) = $14,976. The estimated average cost of the work FDA performs in total for reviewing an initial application for direct accreditation of a certification body based on these figures would be $30,464 + $14,976 = $45,440. Therefore, the application fee for certification bodies applying for direct accreditation from FDA in FY 2024 will be $45,440.

E. Renewal Application Fee for Accreditation Bodies Participating in the Third-Party Certification Program Under Section 808(c)(8) of the FD&C Act

Section 1.705(a)(2) establishes a renewal application fee for recognized accreditation bodies that represents the estimated average cost of the work FDA performs in reviewing and evaluating renewal applications for recognition of accreditation bodies.

The fee is based on the fully supported FTE hourly rates and estimates of the number of hours it would take FDA to perform relevant activities. These estimates represent FDA's current thinking, and as the program evolves, FDA will reconsider the estimated hours. We estimate that it would take, on average, 43 person-hours to review an accreditation body's submitted renewal application, 24 person-hours for an onsite performance evaluation of the applicant (including travel and other steps necessary for a fully supported FTE to complete an onsite assessment), and 32 person-hours to prepare a written report documenting the onsite assessment.

FDA employees are likely to review renewal applications and prepare reports from their worksites, so we use the fully supported FTE hourly rate excluding travel, $272 per hour, to calculate the portion of the user fee attributable to those activities: $272/hour × (43 hours (application review) + 32 hours (written report)) = $20,400. FDA employees will likely travel to foreign countries for the onsite performance evaluations because most certification bodies are anticipated to be located in foreign countries. For this portion of the fee, we use the fully supported FTE hourly rate for work requiring travel, $312 per hour, to calculate the portion of the user fee attributable to those activities: $312/hour × 24 hours (*i.e.,* fully supported FTE × ((2 travel days × 8 hours) + (1 day onsite × 8 hours))) = $7,488. The estimated average cost of the work FDA performs in total for reviewing a renewal application for recognition of an accreditation body based on these figures would be $20,400 + $7,488 = $27,888. Therefore, the renewal application fee for recognized accreditation bodies in FY 2024 will be $27,888.

IV. Estimated Fees for Accreditation Bodies and Certification Bodies in Other Fee Categories for FY 2024

Section 1.705(a) also establishes application fees for certification bodies applying for renewal of direct accreditation. Section 1.705(b) also establishes annual fees for certification bodies directly accredited by FDA.

Although we will not be collecting these other fees in FY 2024, for transparency and planning purposes, we have provided an estimate of what these fees would be for FY 2024 based on the fully supported FTE hourly rates for FY 2024 and estimates of the number of hours it would take FDA to perform relevant activities as outlined in the Final Regulatory Impact Analysis for the Third-Party Certification Regulation. Table 4 provides an overview of the estimated fees for other fee categories.

TABLE 4—ESTIMATED FEE RATES FOR OTHER FEE CATEGORIES UNDER THE FSMA THIRD-PARTY CERTIFICATION PROGRAM

Fee category	Estimated fee rates for FY 2024
Renewal application fee for directly accredited certification body	$27,888
Annual fee for certification body directly accredited by FDA	21,184

V. How must the fee be paid?

Accreditation bodies seeking initial recognition must submit the application fee with the application. For recognized accreditation bodies and accredited certification bodies, an invoice will be sent annually. Payment must be made within 30 days of the receipt invoice date. The payment must be made in U.S. currency from a U.S. bank by one of the following methods: wire transfer, electronically, check, bank draft, or U.S. postal money order made payable to the Food and Drug Administration. The preferred payment method is online using an electronic check (Automated Clearing House (ACH), also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay*. (Note: only full payments are accepted. No partial payments can be made online.) Once you have found your invoice, select ''Pay Now'' to be redirected to *Pay.gov*. Electronic payment options are based on the balance due. Payment by credit card is available only for balances less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards. When paying by check, bank draft, or U.S. postal money order, please include the invoice number. Also write the FDA post office box number (P.O. Box 979108) on the enclosed check, bank draft, or money order. Mail the payment, including the invoice number on the check stub, to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000.

When paying by wire transfer, it is required that the invoice number is included; without the invoice number the payment may not be applied. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required to add that amount to the payment to ensure that the invoice is paid in full. For international wire transfers, please inquire with the financial institutions prior to submitting the payment. Use the following account information when sending a wire transfer: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Account Name: Food and Drug Administration, Account No.: 75060099, Routing No.: 021030004, Swift No.: FRNYUS33.

To send a check by a courier such as Federal Express, the courier must deliver the check to: U.S. Bank, Attn: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (Note: this address is for courier delivery only. If you have any questions concerning courier delivery, contact U.S. Bank at 314–418–4013. This phone number is only for questions about courier delivery.) The tax identification number of FDA is 53–0196965. (Note: invoice copies do not need to be submitted to FDA with the payments.)

VI. What are the consequences of not paying this fee?

The consequences of not paying these fees are outlined in 21 CFR 1.725. If FDA does not receive an application fee with an application for recognition, the application will be considered incomplete, and FDA will not review the application. If a recognized accreditation body fails to submit its annual user fee within 30 days of the due date, we will suspend its recognition. If the recognized accreditation body fails to submit its annual user fee within 90 days of the due date, we will revoke its recognition. If an accredited certification body fails to pay its annual fee within 30 days of the due date, we will suspend its accreditation. If the accredited certification body fails to pay its annual fee within 90 days of the due date, we will withdraw its accreditation.

Dated: July 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–15921 Filed 7–27–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–2898]

Food Safety Modernization Act Voluntary Qualified Importer Program User Fee Rate for Fiscal Year 2024

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fiscal year (FY) 2024 annual fee rate for importers approved to participate in the Voluntary Qualified Importer Program (VQIP) that is authorized by the Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the FDA Food Safety Modernization Act (FSMA). This fee is effective on August 1, 2023 and will remain in effect through September 30, 2024.

FOR FURTHER INFORMATION CONTACT: Olufunmilayo Ariyo, FSMA Fee Staff, Office of Food Policy and Response, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 240–402–4989, *FSMAFeeStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 302 of FSMA, VQIP, amended the FD&C Act to create a new provision, section 806, under the same name. Section 806 of the FD&C Act (21 U.S.C. 384b) directs FDA to establish a program to provide for the expedited review and importation of food offered for importation by importers who have voluntarily agreed to participate in such program, and a process, consistent with section 808 of the FD&C Act (21 U.S.C. 384d), for the issuance of a facility certification to accompany a food offered for importation by importers participating in VQIP.

Section 743 of the FD&C Act (21 U.S.C. 379j–31) authorizes FDA to assess and collect fees from each importer participating in VQIP to cover FDA's costs of administering the program. Each fiscal year, fees are to be established based on an estimate of 100 percent of the costs for the year. The fee

rates must be published in a **Federal Register** notice not later than 60 days before the start of each fiscal year (section 743(b)(1) of the FD&C Act). After FDA approves a VQIP application, the user fee must be paid before October 1, the start of the VQIP fiscal year, to begin receiving benefits for that VQIP fiscal year.

The FY 2024 VQIP user fee will support benefits from October 1, 2023, through September 30, 2024.

II. Estimating the Average Cost of a Supported Direct FDA Work Hour for FY 2024

FDA is required to estimate 100 percent of its costs for each activity in order to establish fee rates for FY 2024. In each year, the costs of salary (or personnel compensation) and benefits for FDA employees account for between 50 and 60 percent of the funds available to, and used by, FDA. Almost all of the remaining funds (operating funds) available to FDA are used to support FDA employees for paying rent, travel, utility, information technology (IT), and other operating costs.

A. Estimating the Full Cost per Direct Work Hour in FY 2024

Full-time Equivalent (FTE) reflects the total number of regular straight-time hours—not including overtime or holiday hours—worked by employees, divided by the number of compensable hours applicable to each fiscal year. Annual leave, sick leave, compensatory time off, and other approved leave categories are considered ''hours worked'' for purposes of defining FTE employment.

In general, the starting point for estimating the full cost per direct work hour is to estimate the cost of an FTE or paid staff year. Calculating an Agency-wide total cost per FTE requires three primary cost elements: payroll, non-payroll, and rent.

We have used an average of past year cost elements to predict the FY 2024 cost. The FY 2024 FDA-wide average cost for payroll (salaries and benefits) is $192,848; non-payroll—including equipment, supplies, IT, general and administrative overhead—is $99,316 and rent, including cost allocation analysis and adjustments for other rent and rent-related costs, is $23,239 per paid staff year, excluding travel costs.

Summing the average cost of an FTE for payroll, non-payroll, and rent, brings the FY 2024 average fully supported cost to $315,403 [1] per FTE, excluding travel costs. FDA will use this base unit fee in determining the hourly fee rate for VQIP fees for FY 2024 prior to including domestic or foreign travel costs as applicable for the activity.

To calculate an hourly rate, FDA must divide the FY 2024 average fully supported cost of $315,403 per FTE by the average number of supported direct FDA work hours in FY 2022—the last FY for which data are available. See table 1.

TABLE 1—SUPPORTED DIRECT FDA WORK HOURS IN A PAID STAFF YEAR IN FY 2022

Total number of hours in a paid staff year	2,080
Less:	
11 paid holidays	−88
20 days of annual leave	−160
10 days of sick leave	−80
12.5 days of training	−100
22 days of general administration	−176
26.5 days of travel	−212
2 hours of meetings per week	−104
Net Supported Direct FDA Work Hours Available for Assignments	1,160

Dividing the average fully supported FTE cost in FY 2024 ($315,403) by the total number of supported direct work hours available for assignment in FY 2022 (1,160) results in an average fully supported cost of $272 (rounded to the nearest dollar), excluding inspection travel costs, per supported direct work hour in FY 2024.

B. Adjusting FY 2022 Travel Costs for Inflation To Estimate FY 2024 Travel Costs

To adjust the hourly rate for FY 2024, FDA must estimate the cost of inflation in each year for FYs 2023 and 2024. FDA uses the method prescribed for estimating inflationary costs under the Prescription Drug User Fee Act (PDUFA) provisions of the FD&C Act (section 736(c)(1) (21 U.S.C. 379h(c)(1)), the statutory method for inflation adjustment in the FD&C Act that FDA has used consistently. FDA previously determined the FY 2023 inflation rate to be 1.6404 percent; this rate was published in the FY 2023 PDUFA user fee rates notice in the **Federal Register** (October 7, 2022, 87 FR 61063). Utilizing the method set forth in section 736(c)(1) of the FD&C Act, FDA has calculated an inflation rate of 1.6404 percent for FY 2023 and 3.8896 percent for FY 2024, and FDA intends to use these inflation rates to make inflation adjustments for FY 2024; the derivation of this rate will be published in the **Federal Register** in the FY 2024 notice for the PDUFA user fee rates. The compounded inflation rate for FYs 2023 and 2024, therefore, is 1.055938 (or 5.5938 percent) (calculated as 1 plus 1.6404 percent times 1 plus 3.8896 percent).

The average fully supported cost per supported direct FDA work hour, excluding travel costs, of $272 already takes into account inflation as the calculation above is based on FY 2024 predicted costs. FDA will use this base unit fee in determining the hourly fee rate for VQIP fees for FY 2024 prior to including domestic or foreign travel costs as applicable for the activity.

In FY 2022, FDA's Office of Regulatory Affairs (ORA) spent a total of $6,566,835 for domestic regulatory inspection travel costs and General Services Administration Vehicle costs related to FDA's Center for Food Safety and Applied Nutrition (CFSAN) and Center for Veterinary Medicine (CVM) field activities programs. The total ORA domestic travel costs spent is then divided by the 7,930 CFSAN and CVM domestic inspections, which averages a total of $828 per inspection. These inspections average 46.29 hours per inspection. Dividing $828 per inspection by 46.29 hours per inspection results in a total and an additional cost of $18 (rounded to the nearest dollar) per hour spent for domestic inspection travel costs in FY 2022. To adjust for the $18 per hour additional domestic cost inflation increases for FY 2023 and FY 2024, FDA must multiply the FY 2023 PDUFA

[1] Total includes rounding.

inflation rate adjustor (1.016404) by the FY 2024 PDUFA inflation rate adjustor (1.038896) times the $18 additional domestic cost, which results in an estimated cost of $19 (rounded to the nearest dollar) per paid hour in addition to $272 for a total of $291 per paid hour ($272 plus $19) for each direct hour of work requiring domestic inspection travel. FDA will use these rates in charging fees in FY 2024 when domestic travel is required.

In FY 2022, ORA spent a total of $802,057 on 175 foreign inspection trips related to FDA's CFSAN and CVM field activities programs, which averaged a total of $4,583 per foreign inspection trip. These trips averaged 3 weeks (or 120 paid hours) per trip. Dividing $4,583 per trip by 120 hours per trip results in a total and an additional cost of $38 (rounded to the nearest dollar) per paid hour spent for foreign inspection travel costs in FY 2022. To adjust $38 for inflationary increases in FY 2023 and FY 2024, FDA must multiply it by the same inflation factors mentioned previously in this document (1.016404 and 1.038896), which results in an estimated cost of $40 (rounded to the nearest dollar) for each direct hour of work requiring foreign inspection travel. FDA will use these rates in charging fees in FY 2024 when foreign travel is required.

TABLE 2—FSMA FEE SCHEDULE FOR FY 2024

Fee category	Fee rates for FY 2024
Hourly rate without travel	$272
Hourly rate if domestic travel is required	291
Hourly rate if foreign travel is required	312

III. Fees for Importers Approved To Participate in the Voluntary Qualified Importer Program Under Section 743 of the FD&C Act

FDA assesses fees for VQIP annually. Table 3 provides an overview of the fees for FY 2024.

TABLE 3—FSMA VQIP USER FEE SCHEDULE FOR FY 2024

Fee category	Fee rates for FY 2024
VQIP User Fee	$14,975

Section 743 of the FD&C Act requires that each importer participating in VQIP pay a fee to cover FDA's costs of administering the program. This fee represents the estimated average cost of the work FDA performs in reviewing and evaluating a VQIP importer. At this time, FDA is not offering an adjusted fee for small businesses. As required by section 743(b)(2)(B)(iii) of the FD&C Act, FDA previously published a set of guidelines in consideration of the burden of the VQIP fee on small businesses and provided for a period of public comment on the guidelines (80 FR 32136, June 5, 2015). While we did receive some comments in response, they did not address the questions posed, *i.e.,* how a small business fee reduction should be structured, what percentage of fee reduction would be appropriate, or what alternative structures FDA might consider to indirectly reduce fees for small businesses by charging different fee amounts to different VQIP participants. We plan on monitoring costs and collecting data to determine if, in future fiscal years, we will provide for a small business fee reduction. Consistent with section 743(b)(2)(B)(iii) of the FD&C Act, we will adjust the fee schedule for small businesses only through notice and comment rulemaking.

The fee is based on the fully supported FTE hourly rates and estimates of the number of hours it would take FDA to perform relevant activities. These estimates represent FDA's current thinking, and as the program evolves, FDA will reconsider the estimated hours. We estimate that it would take, on average, 39 person-hours to review a new VQIP application (including communication provided through the VQIP Importer's Help Desk), 28 person-hours to review a returning VQIP application (including communication provided through the VQIP Importer's Help Desk), 16 person-hours for an onsite performance evaluation of a domestic VQIP importer (including travel and other steps necessary for a fully supported FTE to complete and document an onsite assessment), and 34 person-hours for an onsite performance evaluation of a foreign VQIP importer (including travel and other steps necessary for a fully supported FTE to complete and document an onsite assessment). Additional costs include maintenance and support costs of information technology of administering benefits of the program. These costs are estimated to be $4,359 per VQIP importer.

Based on updated data, FDA anticipates that there may be up to six returning VQIP applicants and up to two new applicants this fiscal year. FDA employees are likely to review new VQIP applications from their worksites, so we use the fully supported FTE hourly rate excluding travel, $272/hour, to calculate the portion of the user fee attributable to those activities: $272/hour × (39 hours) = $10,608. FDA employees are likely to review returning VQIP applications from their worksites, so we use the fully supported FTE hourly rate excluding travel, $272/hour, to calculate the portion of the user fee attributable to those activities: $272/hour × (28 hours) = $7,616.

FDA employees will conduct a VQIP inspection to verify the eligibility criteria and full implementation of the food safety and food defense systems established in the Quality Assurance Program. A VQIP importer may be located inside or outside of the United States. However, this fiscal year, all VQIP importers will be located inside the United States. Four VQIP applicants may have an associated VQIP inspection.

FDA employees are likely to prepare for and report on the performance evaluation of a domestic VQIP importer at an FTE's worksite, so we use the fully supported FTE hourly rate excluding travel, $272/hour, to calculate the portion of the user fee attributable to those activities: $272/hour × (8 hours) = $2,176. For the portion of the fee covering onsite evaluation of a domestic VQIP importer, we use the fully supported FTE hourly rate for work requiring domestic travel, $291/hour, to calculate the portion of the user fee attributable to those activities: $291/hour × 8 hours (*i.e.,* one fully supported FTE × (1 day onsite × 8 hours)) = $2,328. Therefore, the total cost of conducting the domestic performance evaluation of a VQIP importer is determined to be $2,176 + $2,328 = $4,504.

Coordination of the onsite performance evaluation of a foreign VQIP importer is estimated to take place at an FTE's worksite, so we use the fully supported FTE hourly rate excluding travel, $272/hour, to calculate the portion of the user fee attributable to those activities: $272/hour × (10 hours) = $2,720. For the portion of the fee covering onsite evaluation of a foreign VQIP importer, we use the fully supported FTE hourly rate for work requiring foreign travel, $312/hour, to calculate the portion of the user fee attributable to those activities: $312/hour × 24 hours (*i.e.,* one fully supported FTE × ((2 travel days × 8 hours) + (1 day onsite × 8 hours))) = $7,488. Therefore, the total cost of conducting the foreign performance evaluation of a VQIP importer is determined to be $2,720 + $7,488 = $10,208.

Therefore, the estimated average cost of the work FDA performs in total for approving an application for a VQIP

importer in FY 2024 based on these figures would be $4,359 + ($10,608 × ¼) + ($7,616 × ¾) + ($4,504 × ½) = $14,975.

IV. How must the fee be paid?

An invoice will be sent to VQIP importers approved to participate in the program. Payment must be made prior to October 1, 2023, to be eligible for VQIP participation for the benefit year beginning October 1, 2023. FDA will not refund the VQIP user fee for any reason.

The payment must be made in U.S. currency from a U.S. bank by one of the following methods: wire transfer, electronically, check, bank draft, or U.S. postal money order made payable to the Food and Drug Administration. The preferred payment method is online using an electronic check (Automated Clearing House (ACH), also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay.* (*Note:* only full payments are accepted. No partial payments can be made online.) Once you have found your invoice, select ''Pay Now'' to be redirected to *Pay.gov.* Electronic payment options are based on the balance due. Payment by credit card is available only for balances less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

When paying by check, bank draft, or U.S. postal money order, please include the invoice number in the check stub. Also write the FDA post office box number (P.O. Box 979108) on the enclosed check, bank draft, or money order. Mail the payment including the invoice number on the check stub to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000.

When paying by wire transfer, it is required that the invoice number is included; without the invoice number the payment may not be applied. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required to add that amount to the payment to ensure that the invoice is paid in full. For international wire transfers, please inquire with the financial institutions prior to submitting the payment. Use the following account information when sending a wire transfer: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Account Name: Food and Drug Administration, Account No.: 75060099, Routing No.: 021030004, Swift No.: FRNYUS33.

To send a check by a courier such as Federal Express, the courier must deliver the check to: U.S. Bank, Attn: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (*Note:* This address is for courier delivery only. If you have any questions concerning courier delivery, contact U.S. Bank at 314–418–4013. This phone number is only for questions about courier delivery.)

The tax identification number of FDA is 53–0196965. (*Note:* Invoice copies do not need to be submitted to FDA with the payments.)

V. What are the consequences of not paying this fee?

The consequences of not paying these fees are outlined in Section J of ''FDA's Voluntary Qualified Importer Program; Guidance for Industry'' document (available at *https://www.fda.gov/media/92196/download*). If the user fee is not paid before October 1, a VQIP importer will not be eligible to participate in VQIP. For the first year a VQIP application is approved, if the user fee is not paid before October 1, 2023, you are not eligible to participate in VQIP. If you subsequently pay the user fee, FDA will begin your benefits after we receive the full payment. The user fee may not be paid after December 31, 2023. For a subsequent year, if you do not pay the user fee before October 1, FDA will send a Notice of Intent to Revoke your participation in VQIP. If you do not pay the user fee within 30 days of the date of the Notice of Intent to Revoke, we will revoke your participation in VQIP.

Dated: July 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–15920 Filed 7–27–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 30-Day Information Collection: Indian Health Service Medical Staff Credentials Application

AGENCY: Indian Health Service, HHS.

ACTION: Notice and request for comments; request for revision to a collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Indian Health Service (IHS) invites the general public to comment on the information collection titled, ''Indian Health Service Medical Staff Credentials Application,'' OMB Control Number 0917–0009, which expires August 31, 2023.

DATES:

Comment Due Date: August 28, 2023. Your comments regarding this information collection are best assured of having full effect if received within 30 days of the date of this publication.

Direct Your Comments to OMB: Send your comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS.

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Evonne Bennett, Information Collection Clearance Officer by email at: *Evonne.Bennett@ihs.gov* or telephone at 240–472–1996.

SUPPLEMENTARY INFORMATION: This previously approved information collection project was last published in the **Federal Register** on May 11, 2023 (88 FR 30317), and allowed 60 days for public comment. There was one public comment received in response to the notice. This notice announces our intent to submit this collection, which expires August 31, 2023, to OMB for approval of an extension with revisions, and to solicit comments on specific aspects for the proposed information collection.

A copy of the supporting statement is available at *www.regulations.gov* (see Docket ID IHS–2023–0001).

Comment: Commenter requested the IHS review the medical staff credentials application and revise or remove any invasive or stigmatizing language around mental health.

Response to Comment: The IHS does not believe there are any stigmatizing language around mental health in the application. Should specific stigmatizing language be presented to IHS, IHS will review the language and then determine whether remedial action needs to be taken.

Information Collection Title: ''Indian Health Service Medical Staff Credentials Application, 0917–0009.''

Type of Information Collection Request: Revision of an approved information collection, and retitled to, ''Indian Health Service Medical Staff Credentials and Privileges Records, 0917–0009.''

Form Numbers: 0917–0009.

Need and Use of Information Collection: This collection of

information is used to evaluate IHS medical and health care professionals to include: licensed practitioners (LP) applying for medical staff membership, credentialing and privileges at IHS health care facilities. Practitioner credentialing and privileging in the IHS has been identified as a priority area for quality improvement to support patient safety, demonstrate quality of care, and improve practitioner satisfaction.

Indian Health Service policy specifically requires all LP (*i.e.,* Federal employees, contractors, and/or volunteers) who intend to provide health care services at IHS facilities to be credentialed and privileged prior to providing such care. When a practitioner applies to provide health care services at an IHS clinic or hospital, that application contains two parts. The first is for membership in the medical staff. Criteria for such membership may include type of licensure, education, training, and experience. The second part is for privileges, which define the scope of clinical care that a practitioner can administer and matches the practitioner's current clinical competency. There are certain criteria that practitioners must meet in order to exercise particular privileges in the facilities. These criteria may overlap with criteria for membership on the medical staff, but those for privileges are more specific and must be facility specific to meet the facility's requirements.

The IHS operates health care facilities that provide health care services to American Indian and Alaska Native patients. To provide these services, the IHS employs (direct-hire and direct-contract) several categories of fully licensed, registered, or certified individuals permitted by law to independently provide patient care services within the scope of the individual's license, registration, or certification, and in accordance with individually granted clinical privileges when the individual is a credentialed member of the IHS medical staff. Licensed Practitioners who are eligible may become medical staff members, depending on the local health care facility's capabilities and medical staff bylaws.

All LP who provide care at IHS facilities must maintain full, active, unrestricted, and current licensure and credentials, and be proficient in their granted privileges in accordance with the facility's medical staff bylaws, accreditation standards, privilege criteria, agency and local policies, and applicable law and guidelines.

National health care standards developed by the Centers for Medicare and Medicaid Services, the Joint Commission, and other accrediting organizations require health care facilities to review, evaluate, and prime-source verify credentials of medical staff applicants prior to granting medical staff privileges. Medical credentials specifically include the primary source verified and documented evidence of competence, character, judgment, education, and training. In order to meet these standards, IHS health care facilities require all medical staff applicants to provide verifiable information concerning their education, training, licensure, work experience, health status, and current professional conduct and competence and any adverse disciplinary actions taken against them. This information is collected through the agency's current commercial off the shelf credentialing software to make the following application packets electronically available via the internet. The Application packets are: (1) Pre-Application; (2) Initial Application for Membership & Privileges; (3) Reappointment Application for Membership and Privileges; and (4) Credentialing by Proxy (CBP) Intake Form. The first three application packets include an IHS Conditions of Application and Release and Health Attestation Statement for the LP to sign; Item 4, the CBP Intake Form, only includes an IHS Conditions of Application and Release.

Privileges vary across all IHS Areas and clinics, as services and procedures provided and equipment utilized varies across facilities and can change often. Privilege forms are required to be current and modified to reflect only services and procedures provided by that specific facility in order to be in compliance with accreditation standards. The electronic credentialing system allows tailoring the privileging needs to site specifications.

Information collected in the application packets are prime-source verified by IHS staff using standard IHS forms (Affiliation, Peer Reference, Insurance, and Education) with the original source of the credential. The credentials review includes, but is not limited to, verifying information from: the state medical boards, the Drug Enforcement Administration, Excluded Parties List System/System for Awards Management, National Practitioner Data Bank, Office of Inspector General, colleges or universities, residency programs, peer references, insurance companies, etc.

Once the LP application packet is approved, agency policy requires licensure, registration, and certification requirements and clinical competency be continuously verified on an ongoing basis until the time of the next reappointment. At the time of reappointment the health care practitioner will go through a similar reappointment process to renew their membership and privilege status. This review evaluates the current competence of the health care providers and verifies whether they are maintaining the licensure or certification requirements of their specialty.

The medical staff credentials and privileges records are stored in two ways: records stored in file folders are stored at the IHS facilities or the Federal Record Center, and computer-based or electronic records are located at the IHS Albuquerque Data Center in Albuquerque, New Mexico.

The IHS is continuing to standardize, transform, and optimize the medical staff credentialing and privileging process into a centrally automated, standardized, electronic/digital, measurable, portable, accessible, and efficient business process to improve the effectiveness of application and re-application to medical staff, movement of practitioners within the IHS system, and recruitment/retention of high-quality LP.

Affected Public: Individuals and households.

Type of Respondents: Individuals.

The table below provides: Types of data collection instruments, Estimated Number of Respondents, Number of Annual Responses per Respondent, Average Burden per Response, and Total Annual Burden Hours.

Data collection instrument(s)	Estimated number of respondents	Responses per respondent	Average burden hour per response *	Total annual burden (current) **
Pre-Application Package to Medical Staff	500	1	.50 (30 min)	250
Initial Application Package to Medical Staff and/or Privileges	878	1	1 (60 min)	878
Reappointment Application Package to Medical Staff and/or Privileges	2,212	1	0.50 (30 min)	1,106

Data collection instrument(s)	Estimated number of respondents	Responses per respondent	Average burden hour per response *	Total annual burden (current) **
Credentialing by Proxy Intake Form	250	1	.25 (15 min)	63
Affiliation Verification	4,225	1	.25 (15 min)	1,056
Education Verification	3,289	1	.25 (15 min)	822
Malpractice Verification	2,535	1	.25 (15 min)	634
Peer Reference Verification	6,180	1	.25 (15 min)	1,545
Total	20,069			6,354

For ease of understanding:
* Average Burden Hour per Response are provided in actual minutes.
** Total Annual Burden (Current) are provided in hours.

Annual number of respondents and average burden hour were factored based on total IHS providers credentialed and privileged Calendar Year 2022, accreditation requirements with estimates of verification per applicant, and respondent estimate time of completion in the paragraphs above.

There are no capital costs, operating costs, and/or maintenance costs to respondents.

Requests for Comments: Your written comments and/or suggestions are invited on one or more of the following points:

(a) Whether the information collection activity is necessary to carry out an agency function;

(b) Whether the agency processes the information collected in a useful and timely fashion;

(c) The accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information);

(d) Whether the methodology and assumptions used to determine the estimates are logical;

(e) Ways to enhance the quality, utility, and clarity of the information being collected; and

(f) Ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

P. Benjamin Smith,

Deputy Director, Indian Health Service.

[FR Doc. 2023–16011 Filed 7–27–23; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel; RFA–OD–23–005: NIH Research Evaluation and Commercialization Hubs (REACH) Awards (U01) 2.

Date: August 8, 2023.

Time: 9:00 a.m. to 11:30 a.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: Megan L. Goodall, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–8334 *megan.goodall@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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: July 24, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–15992 Filed 7–27–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Special Emphasis Panel; NCI Review of Applications to Research Projects in Physical Sciences Oncology.

Date: September 29, 2023.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W640, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Saejeong J. Kim, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W640, Rockville, Maryland 20850, 240–276–7684, *saejeong.kim@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–3: NCI Clinical and Translational Cancer Research.

Date: October 12, 2023.

Time: 9:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W248, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Shree Ram Singh, Ph.D., Scientific Review Officer, Special Review

Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W248, Rockville, Maryland 20850, 240–672–6175, *singhshr@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–4: NCI Clinical and Translational Cancer Research.

Date: October 17–18, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W264, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Ombretta Salvucci, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W264, Rockville, Maryland 20850, 240–276–7286, *salvucco@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–9: NCI Clinical and Translational Cancer Research.

Date: October 26, 2023.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W104, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: David G. Ransom, Ph.D., Chief, Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W104, Rockville, Maryland 20850, 240–276–6351, *david.ransom@nih.gov.*

(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: July 24, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–15995 Filed 7–27–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Complementary and Integrative Health.

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.

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 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/.*

Name of Committee: National Advisory Council for Complementary and Integrative Health.

Date: September 8, 2023.

Closed: 9:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 31C/6th Floor, 9000 Rockville Pike, Bethesda, MD 20882 (Hybrid Meeting).

Open: 11:00 p.m. to 4:00 p.m.

Agenda: Reports and Updates about Recent and Ongoing NCCIH Led or Involved Activities by NCCIH staff and its Director.

Place: National Institutes of Health, 31C/6th Floor, 9000 Rockville Pike, Bethesda, MD 20892 (Hybrid Meeting).

Contact Person: Martina Schmidt, Ph.D., Director, Division of Extramural Activities, National Center for Complementary & Integrative Health, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 594–3456, *schmidma@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, email address, telephone number and when applicable, the business or professional affiliation of the interested person. Comments may be limited to up to 750 words. Any member of the public may submit written comments no later than August 25th, 2023 (14 days before the council meeting).

Information is also available on the Institute's/Center's home page: *https://www.nccih.nih.gov/news/events/advisory-council-85th-meeting,* where a more detailed agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: July 25, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–16052 Filed 7–27–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; 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 Center for Advancing Translational Sciences Special Emphasis Panel; NCATS CTSA Small Grant Program Review Meeting.

Date: September 15, 2023.

Time: 10:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Center for Advancing Translational Sciences, 6701 Democracy Boulevard, Room 1037, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nakia C. Brown, Ph.D., Scientific Review Officer, Office of Grants Management and Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1037, Bethesda, MD 20892, 301–827–4905, *brownnac@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: July 24, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–15994 Filed 7–27–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Fellowships in Kidney, Urology, and Hematology NIDDK DDK–G.

Date: October 12, 2023.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Guo Xiaodu, Ph.D., M.D., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Boulevard, Room 7023, Bethesda, MD 20892–2542, (301) 594–4719, *guox@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 24, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–15991 Filed 7–27–23; 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 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: Center for Scientific Review Special Emphasis Panel; Special Topics in Small Business: Microbial Diagnostics, Detection and Decontamination.

Date: August 10, 2023.

Time: 3:00 p.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: Marcus Ferrone, PHARMD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–2371, *marcus.ferrone@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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: July 24, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–15993 Filed 7–27–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; 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 Center for Advancing Translational Sciences Special Emphasis Panel; The CTSA Training Review Meeting.

Date: October 12, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Center for Advancing Translational Sciences, 6701 Democracy Boulevard, Room 1037, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alumit Ishai, Ph.D., Scientific Review Officer, Office of Grants Management and Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Suite 1037, Bethesda, MD 20892, 301–827–5819, *alumit.ishai@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: July 24, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–15996 Filed 7–27–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

COBRA Fees to be Adjusted for Inflation in Fiscal Year 2024 CBP Dec. 23–08

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

ACTION: General notice.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP) is adjusting certain customs user fees and corresponding limitations established by the Consolidated Omnibus Budget Reconciliation Act (COBRA) for Fiscal Year 2024 in accordance with the Fixing America's Surface Transportation Act (FAST Act) as implemented by the CBP regulations.

DATES: The adjusted amounts of customs COBRA user fees and their corresponding limitations set forth in this notice for Fiscal Year 2024 are required as of October 1, 2023.

FOR FURTHER INFORMATION CONTACT: Tina Ghiladi, Senior Advisor, International Travel & Trade, Office of Finance, 202–344–3722, *UserFeeNotices@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Adjustments of COBRA User Fees and Corresponding Limitations for Inflation

On December 4, 2015, the Fixing America's Surface Transportation Act (FAST Act, Pub. L. 114–94) was signed into law. Section 32201 of the FAST Act amended section 13031 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (19 U.S.C. 58c) by requiring the Secretary of the Treasury (Secretary) to adjust certain customs COBRA user fees and corresponding limitations to reflect certain increases in inflation.

Sections 24.22 and 24.23 of title 19 of the Code of Federal Regulations (19 CFR 24.22 and 24.23) describe the procedures that implement the requirements of the FAST Act. Specifically, paragraph (k) in section 24.22 (19 CFR 24.22(k)) sets forth the methodology to determine the change in inflation as well as the factor by which the fees and limitations will be adjusted, if necessary. The fees and limitations subject to adjustment, which are set forth in Appendix A and Appendix B of part 24, include the commercial vessel arrival fees, commercial truck arrival fees, railroad car arrival fees, private vessel arrival fees, private aircraft arrival fees, commercial aircraft and vessel passenger arrival fees, dutiable mail fees, customs broker permit user fees, barges and other bulk carriers arrival fees, and merchandise processing fees, as well as the corresponding limitations.

B. Determination of Whether an Adjustment Is Necessary for Fiscal Year 2024

In accordance with 19 CFR 24.22, CBP must determine annually whether the fees and limitations must be adjusted to reflect inflation. For Fiscal Year 2024, CBP is making this determination by comparing the average of the Consumer Price Index—All Urban Consumers, U.S. All items, 1982—1984 (CPI–U) for the current year (June 2022–May 2023) with the average of the CPI-U for the comparison year (June 2021–May 2022) to determine the change in inflation, if any. If there is an increase in the CPI-U of greater than one (1) percent, CBP must adjust the customs COBRA user fees and corresponding limitations using the methodology set forth in 19 CFR 24.22(k). Following the steps provided in paragraph (k)(2) of section 24.22, CBP has determined that the increase in the CPI-U between the most recent June to May twelve-month period (June 2022–May 2023) and the comparison year (June 2021–May 2022) is 6.79 [1] percent. As the increase in the CPI-U is greater than one (1) percent, the customs COBRA user fees and corresponding limitations must be adjusted for Fiscal Year 2024.

C. Determination of the Adjusted Fees and Limitations

Using the methodology set forth in section 24.22(k)(2) of the CBP regulations (19 CFR 24.22(k)), CBP has determined that the factor by which the base fees and limitations will be adjusted is 26.670 percent (base fees and limitations can be found in Appendices A and B to part 24 of title 19). In reaching this determination, CBP calculated the values for each variable found in paragraph (k) of 19 CFR 24.22 as follows:

- The arithmetic average of the CPI-U for June 2022–May 2023, referred to as (A) in the CBP regulations, is 298.952;
- The arithmetic average of the CPI-U for Fiscal Year 2014, referred to as (B), is 236.009;
- The arithmetic average of the CPI-U for the comparison year (June 2021–May 2022), referred to as (C), is 279.974;
- The difference between the arithmetic averages of the CPI-U of the comparison year (June 2021–May 2022) and the current year (June 2022—May 2023), referred to as (D), is 18.978;
- This difference rounded to the nearest whole number, referred to as (E), is 19;
- The percentage change in the arithmetic averages of the CPI-U of the comparison year (June 2021–May 2022) and the current year (June 2022–May 2023), referred to as (F), is 6.79 percent;
- The difference in the arithmetic average of the CPI-U between the current year (June 2022–May 2023) and the base year (Fiscal Year 2014), referred to as (G), is 62.943; and
- Lastly, the percentage change in the CPI-U from the base year (Fiscal Year 2014) to the current year (June 2022–May 2023), referred to as (H), is 26.670 percent.

D. Announcement of New Fees and Limitations

The adjusted amounts of customs COBRA user fees and their corresponding limitations for Fiscal Year 2024 as adjusted by 26.670 percent set forth below are required as of October 1, 2023. Table 1 provides the fees and limitations found in 19 CFR 24.22 as adjusted for Fiscal Year 2024, and Table 2 provides the fees and limitations found in 19 CFR 24.23 as adjusted for Fiscal Year 2024.

TABLE 1—CUSTOMS COBRA USER FEES AND LIMITATIONS FOUND IN 19 CFR 24.22 AS ADJUSTED FOR FISCAL YEAR 2024

19 U.S.C. 58c	19 CFR 24.22	Customs COBRA user fee/limitation	New fee/limitation adjusted in accordance with the FAST Act
(a)(1)	(b)(1)(i)	Fee: Commercial Vessel Arrival Fee	$553.55
(b)(5)(A)	(b)(1)(ii)	Limitation: Calendar Year Maximum for Commercial Vessel Arrival Fees.	7,543.20
(a)(8)	(b)(2)(i)	Fee: Barges and Other Bulk Carriers Arrival Fee	139.34
(b)(6)	(b)(2)(ii)	Limitation: Calendar Year Maximum for Barges and Other Bulk Carriers Arrival Fees.	1,900.05
(a)(2)	(c)(1)	Fee: Commercial Truck Arrival Fee [2] [3]	6.95
(b)(2)	(c)(2) and (3)	Limitation: Commercial Truck Calendar Year Prepayment Fee [4].	126.67
(a)(3)	(d)(1)	Fee: Railroad Car Arrival Fee	10.45

[1] The figures provided in this notice may be rounded for publication purposes only. The calculations for the adjusted fees and limitations were made using unrounded figures, unless otherwise noted.

TABLE 1—CUSTOMS COBRA USER FEES AND LIMITATIONS FOUND IN 19 CFR 24.22 AS ADJUSTED FOR FISCAL YEAR 2024—Continued

19 U.S.C. 58c	19 CFR 24.22	Customs COBRA user fee/limitation	New fee/limitation adjusted in accordance with the FAST Act
(b)(3)	(d)(2) and (3)	Limitation: Railroad Car Calendar Year Prepayment Fee	126.67
(a)(4)	(e)(1) and (2)	Fee and Limitation: Private Vessel or Private Aircraft First Arrival/Calendar Year Prepayment Fee.	34.83
(a)(6)	(f)	Fee: Dutiable Mail Fee	6.97
(a)(5)(A)	(g)(1)(i)	Fee: Commercial Vessel or Commercial Aircraft Passenger Arrival Fee.	6.97
(a)(5)(B)	(g)(1)(ii)	Fee: Commercial Vessel Passenger Arrival Fee (from one of the territories and possessions of the United States).	2.44
(a)(7)	(h)	Fee: Customs Broker Permit User Fee	174.80

TABLE 2—CUSTOMS COBRA USER FEES AND LIMITATIONS FOUND IN 19 CFR 24.23 AS ADJUSTED FOR FISCAL YEAR 2024

19 U.S.C. 58c	19 CFR 24.23	Customs COBRA user fee/limitation	New fee/limitation adjusted in accordance with the FAST Act
(b)(9)(A)(ii)	(b)(1)(i)(A)	Fee: Express Consignment Carrier/Centralized Hub Facility Fee, Per Individual Waybill/Bill of Lading Fee.	$1.27
(b)(9)(B)(i)	(b)(4)(ii) [5]	Limitation: Minimum Express Consignment Carrier/Centralized Hub Facility Fee [6].	0.44
(b)(9)(B)(i)	(b)(4)(ii) [7]	Limitation: Maximum Express Consignment Carrier/Centralized Hub Facility Fee.	1.27
(a)(9)(B)(i); (b)(8)(A)(i)	(b)(1)(i)(B) [8]	Limitation: Minimum Merchandise Processing Fee [9]	31.67
(a)(9)(B)(i); (b)(8)(A)(i)	(b)(1)(i)(B) [10]	Limitation: Maximum Merchandise Processing Fee [11] [12]	614.35
(b)(8)(A)(ii)	(b)(1)(ii)	Fee: Surcharge for Manual Entry or Release	3.80
(a)(10)(C)(i)	(b)(2)(i)	Fee: Informal Entry or Release; Automated and Not Prepared by CBP Personnel.	2.53
(a)(10)(C)(ii)	(b)(2)(ii)	Fee: Informal Entry or Release; Manual and Not Prepared by CBP Personnel.	7.60
(a)(10)(C)(iii)	(b)(2)(iii)	Fee: Informal Entry or Release; Manual; Prepared by CBP Personnel.	11.40
(b)(9)(A)(ii)	(b)(4)	Fee: Express Consignment Carrier/Centralized Hub Facility Fee, Per Individual Waybill/Bill of Lading Fee.	1.27

Tables 1 and 2, setting forth the adjusted fees and limitations for Fiscal Year 2024, will also be maintained for the public's convenience on the CBP website at *www.cbp.gov.*

Troy A. Miller, Senior Official Performing the Duties of the Commissioner, having reviewed and approved this document, has delegated the authority to electronically sign this document to the Director (or Acting Director, if applicable) of the Regulations and Disclosure Law

[2] The Commercial Truck Arrival Fee is the CBP fee only; it does not include the United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) Agricultural and Quarantine Inspection (AQI) User Fee (currently $7.29) that is collected by CBP on behalf of USDA to make a total Single Crossing Fee of $14.24. *See* 7 CFR 354.3(c) and 19 CFR 24.22(c)(1). Once eighteen Single Crossing Fees have been paid and used for a vehicle identification number (VIN)/vehicle in a Decal and Transponder Online Procurement System (DTOPS) account within a calendar year, the payment required for the nineteenth (and subsequent) single-crossing is only the AQI fee (currently $7.29) and no longer includes CBP's $6.95 Commercial Truck Arrival fee (for the remainder of that calendar year).

[3] The Commercial Truck Arrival fee is adjusted down from $6.97 to the nearest lower nickel. *See* 82 FR 50523 (November 1, 2017).

[4] The Commercial Truck Calendar Year Prepayment Fee is the CBP fee only; it does not include the AQI Commercial Truck with Transponder Fee (currently $291.60) that is collected by CBP on behalf of APHIS to make the total Commercial Vehicle Transponder Annual User Fee of $418.27.

[5] Appendix B of part 24 inadvertently included a reference to paragraph (b)(1)(i)(B)(2) of section 24.23. However, the reference should have been to paragraph (b)(4)(ii). CBP intends to publish a future document in the **Federal Register** to make several technical corrections to part 24 of title 19 of the CFR, including corrections to Appendix B of part 24. The technical corrections will also address the inadvertent errors specified in footnotes 7, 8, and 10 below.

[6] Although the minimum limitation is published, the fee charged is the fee required by 19 U.S.C. 58c(b)(9)(A)(ii).

[7] Appendix B of part 24 inadvertently included a reference to paragraph (b)(1)(i)(B)(2) of section 24.23. However, the reference should have been to paragraph (b)(4)(ii).

[8] Appendix B of part 24 inadvertently included a reference to paragraph (b)(1)(i)(B)(1) of section 24.23. However, the reference should have been to paragraph (b)(1)(i)(B).

[9] Only the limitation is increasing; the *ad valorem* rate of 0.3464 percent remains the same. *See* 82 FR 50523 (November 1, 2017).

[10] Appendix B of part 24 inadvertently included a reference to paragraph (b)(1)(i)(B)(1) of section 24.23. However, the reference should have been to paragraph (b)(1)(i)(B).

[11] Only the limitation is increasing; the *ad valorem* rate of 0.3464 percent remains the same. *See* 82 FR 50523 (November 1, 2017).

[12] For monthly pipeline entries, see *https://www.cbp.gov/trade/entry-summary/pipeline-monthly-entry-processing/pipeline-line-qa.*

Division of CBP, for purposes of publication in the **Federal Register**.

Robert F. Altneu,

Director, Regulations & Disclosure Law Division, Regulations & Rulings, Office of Trade, U.S. Customs and Border Protection.

[FR Doc. 2023–16197 Filed 7–26–23; 4:15 pm]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2023–0008; OMB No. 1660–0134]

Agency Information Collection Activities: Submission for OMB Review, Comment Request; Preparedness Activity Registration and Feedback

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 30-Day notice of renewal and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission seeks comments concerning FEMA's Individual and Community Preparedness Division's (ICPD) efforts to enable individuals, organizations, or other groups to register with FEMA and to take part in FEMA's preparedness mission by connecting with individuals, organizations, and communities with research and tools to build and sustain capabilities to prepare for any disaster or emergency.

DATES: Comments must be submitted on or before August 28, 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: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address: *FEMA-Information-Collections-Management@fema.dhs.gov* or Andrew Burrows, Preparedness Behavior Change Branch Chief, Individual and Community Preparedness Division, National Preparedness Directorate, FEMA, DHS, 400 C St. SW, Washington, DC 20024, at 202–716–0527 or *andrew.burrows@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: As part of 6 U.S.C. 313–314, and section 611 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (codified at 42 U.S.C. 5196), the mission of the Federal Emergency Management Agency (FEMA) is to reduce the loss of life and property and protect the Nation from all hazards by leading and supporting the Nation in a risk-based, comprehensive emergency management system of preparedness, protection, response, recovery, and mitigation. FEMA's Individual and Community Preparedness Division (ICPD) supports the FEMA Mission by connecting individuals, organizations, and communities with research and tools to build and sustain capabilities to prepare for any disaster or emergency. The Division conducts research to better understand effective preparedness actions and ways to motivate the public to take those actions. ICPD develops and shares preparedness resources and coordinates comprehensive disaster preparedness initiatives that empower communities to prepare for, protect against, respond to, and recover from a disaster. This mission is achieved through close coordination with the FEMA Regions and working relationships with Federal, state, local, and Tribal agencies. This includes working with nongovernmental partners from all sectors both nationally and through neighborhood-based community groups.

This collection will allow ICPD to gather the following information from the public via web form(s):

- *Feedback:* General feedback on the effectiveness of national FEMA preparedness programs and initiatives and website user experience
- *Activity Details:* Information regarding the type, size and location of preparedness activities hosted by members of the public and community organizers
- *POC Information:* For registration within the site and follow-on communication, if needed
- *Future Engagement Requests:* Allow for the public to enroll in the ICPD newsletter or other public communications
- *Publication Ordering:* Submitting requests to the FEMA publication warehouse to have materials shipped directly to members of the public

This proposed information collection previously published in the **Federal Register** on March 31, 2023, at 88 FR 19316 with a 60-day public comment period. One public comment was received regarding the benefit of collecting this information to the public. ICPD uses data regularly in order to develop efficient and effective preparedness programming for individuals and communities across the nation. Data collection, including asking the public for their opinions on ICPD educational materials, helps ICPD make informed decisions about program development and program revision cycles. The collection mentioned in this information collection request contains multiple methods for the public to freely share their perspectives and opinions on ICPD programming online.

The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Preparedness Activity Registration and Feedback.

Type of Information Collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0134.

FEMA Forms: FEMA Form FF–008–FY–23–101 (formerly 008–0–8), Preparedness Activity Web Collection; FEMA Form FF–008–FY–23–102 (formerly 519–0–11), Preparedness Activity Feedback Form.

Abstract: To fulfill its mission for FEMA, the Individual and Community Preparedness Division (ICPD) collects information from individuals and organizations by the Preparedness Activity Registration Form and the Preparedness Activity Feedback Form located within a public website. This collection facilitates FEMA's ability to assess its progress for multiple programs. As new programs or initiatives are created, ICPD will leverage the pre- approved questions in the question bank provided for this collection. ICPD uses this information to inform the continuous improvement of the programs and the Division's outreach. Further, the information allows the Division to analyze seasonal trends in preparedness across the variety of programs. Raw data is not shared outside of the database; only results of the data assessment is shared. The data is used for internal reports as well as public-facing talking points.

Affected Public: Individuals and Households.

Estimated Number of Respondents: 86,115.

Estimated Number of Responses: 86,115.

Estimated Total Annual Burden Hours: 7,174.

Estimated Total Annual Respondent Cost: $217,229.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $13,151.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above.

Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the Agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2023–16003 Filed 7–27–23; 8:45 am]

BILLING CODE 9111–27–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2023–0012]

Notice of President's National Infrastructure Advisory Council Meeting

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: Notice of *Federal Advisory Committee Act* (FACA) meeting; request for comments.

SUMMARY: CISA is publishing this notice to announce the following President's National Infrastructure Advisory Council (NIAC) meeting.

DATES:

Meeting Registration: Registration is required to attend the meeting and must be received no later than 5:00 p.m. Eastern Time (ET) on August 23, 2023. For more information on how to participate, please contact *NIAC@cisa.dhs.gov.*

Speaker Registration: Registration to speak during the meeting's public comment period must be received no later than 5:00 p.m. ET on August 23, 2023.

Written Comments: Written comments must be received no later than 5:00 p.m. ET on August 23, 2023.

Meeting Date: The NIAC will meet on Monday, August 28, 2023, from 2:30 p.m. to 3:00 p.m. ET. The meeting may close early if the council has completed its business.

ADDRESSES: The meeting will be held virtually and will be open to the public. Requests to participate will be accepted and processed in the order in which they are received. For access to the meeting, information on services for individuals with disabilities, or to request special assistance, please email *NIAC@cisa.dhs.gov* by 5:00 p.m. ET on August 23, 2023. The NIAC is committed to ensuring all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact Celinda Moening at *NIAC@cisa.dhs.gov* as soon as possible.

Comments: The council will consider public comments on issues as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated materials for potential discussions during the meeting will be available for review at *https://www.cisa.gov/niac* by August 22, 2023. Comments should be submitted by 5:00 p.m. ET on August 23, 2023 and must be identified by Docket Number CISA–2023–0012. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Please follow the instructions for submitting written comments.
- *Email: NIAC@cisa.dhs.gov.* Include the Docket Number CISA–2023–0012 in the subject line of the email.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the Docket Number for this action. Comments received will be posted without alteration to *www.regulations.gov,* including any personal information provided. You may wish to read the Privacy & Security Notice which is available via a link on the homepage of *www.regulations.gov.*

Docket: For access to the docket and comments received by the National Infrastructure Advisory Council, please go to *www.regulations.gov* and enter docket number CISA–2023–0012.

A public comment period will take place from 2:40 p.m. to 2:50 p.m. Speakers who wish to participate in the public comment period must email *NIAC@cisa.dhs.gov* to register. Speakers should limit their comments to 3 minutes and will speak in order of registration. Please note that the public comment period may end before the time indicated, depending on the number of speakers who register to participate.

FOR FURTHER INFORMATION CONTACT: Celinda Moening, 571–532–4119, *NIAC@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION: The NIAC is established under Section 10 of E.O. 13231 issued on October 16, 2001, continued and amended under the authority of E.O. 14048, dated September 30, 2021. Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. ch. 10 (Pub. L. 117–286). The NIAC provides the President, through the Secretary of Homeland Security, advice on the security and resilience of the Nation's critical infrastructure sectors.

Agenda: The National Infrastructure Advisory Council will meet virtually in an open session on Monday, August 28, 2023, from 2:30 p.m. to 3:00 p.m. ET with a focus on deliberation and vote on the Water Security Report. The meeting will include (1) remarks from the administration and CISA leadership related to water security (2) a period for public comment and (3) deliberation and vote on NIAC Report to the President on *Preparing United States Critical Infrastructure for Today's Evolving Water Crises.*

Dated: July 24, 2023.

Celinda E. Moening,

Alternate Designated Federal Officer, National Infrastructure Advisory Council, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2023–16076 Filed 7–27–23; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[OMB Control Number 1653–0049]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Suspicious/Criminal Activity Tip Reporting

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995 the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance. This information collection was previously published in the **Federal Register** on November 1, 2021, allowing for a 60-day comment period. ICE received four comments. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until August 28, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of the 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: For specific question related to collection activities, please contact Jody C. Fasenmyer (802–662–8115), *jody.c.fasenmyer@ice.dhs.gov,* U.S. Immigration and Customs Enforcement.

SUPPLEMENTARY INFORMATION:

Comments

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of Information Collection: Revision of a Currently Approved Collection.

(2) Title of the Form/Collection: Suspicious/Criminal Activity Tip Reporting.

(3) Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection: 73–061, U.S. Immigration and Customs Enforcement.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individual or Households. The Department of Homeland Security (DHS) tip reporting capability will facilitate the collection of information from the public and law enforcement partners regarding allegations of crimes enforced by DHS.

(5) An estimate of the total number of responses and the amount of time estimated for an average respondent to respond: ICE estimates a total of 194,381 responses at .11 minutes (.183 hours) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 35,637 annual burden hours.

Dated: July 24, 2023.

Scott Elmore,

ICE PRA Clearance Officer.

[FR Doc. 2023–15984 Filed 7–27–23; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6357–N–02]

Notice of HUD-Held Multifamily and Healthcare Loan Sale (MHLS 2023–2)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, U.S. Department of Housing and Urban Development (HUD).

ACTION: Notice of sale of one (1) multifamily and nine (9) healthcare mortgage loans.

SUMMARY: This notice announces HUD's intention to sell one unsubsidized multifamily and nine unsubsidized healthcare mortgage loans, without Federal Housing Administration (FHA) insurance, in a competitive, sealed bid sale on or about August 30, 2023 (MHLS 2023–2 or Loan Sale). This notice also describes generally the bidding process for the sale and certain persons who are ineligible to bid.

DATES: A Bidder's Information Package (BIP) will be made available on or about August 2, 2023. Bids for the loans must be submitted on the bid date, which is currently scheduled for August 30, 2023, between certain specified hours. HUD anticipates that an award or awards will be made on or before September 6, 2023. Closing is expected to take place on September 20, 2023.

ADDRESSES: To become a qualified bidder and receive the BIP, prospective bidders must complete, execute, and submit a Confidentiality Agreement and a Qualification Statement acceptable to HUD. Both documents will be available on the Mission Capital Advisors bidding system website: *market.missioncap.com.* This website contains information and links for sale registration and electronically completing and submitting the documents.

Questions about bidder qualification process may be sent to: Transaction Specialist at 1–844–709–0763 or email *HUDSales@FalconAssetSales.com.*

FOR FURTHER INFORMATION CONTACT: John Lucey, Director, Asset Sales, U.S. Department of Housing and Urban Development at *john.w.lucey@hud.gov* or telephone (202) 708–2625.

SUPPLEMENTARY INFORMATION: HUD announces its intention to sell, in MHLS 2023–2, ten (10) unsubsidized mortgage loans (Mortgage Loans), consisting of nine (9) first lien healthcare notes secured by skilled nursing and assisted living facilities located in various locations within Alabama, Iowa, Maine, Nebraska, New Jersey, Ohio, and Pennsylvania, and one (1) first lien multifamily note secured by a multifamily property located in Kentucky. The Healthcare Mortgage Loans are non-performing mortgage loans. The multifamily loan is a performing mortgage loan. The listing of the Mortgage Loans is included in the BIP. The Mortgage Loans will be sold without FHA insurance and with HUD servicing released. HUD will offer qualified bidders an opportunity to bid competitively on the Mortgage Loans.

The Mortgage Loans will be stratified for bidding purposes into mortgage loan pools as appropriate. Each pool will contain Mortgage Loans that generally have similar performance, property

type, geographic location, lien position and other characteristics. Loans may be offered in pools of more than one loan and, or in single loan pools. Qualified bidders may bid on one or more pools.

Bidder eligibility criteria is set forth in the Qualification Statement. As detailed in the Qualification Statement, certain entities/individuals may be precluded from bidding depending on their prior involvement with the loan(s).

The Bidding Process

The BIP describes in detail the procedure for bidding in MHLS 2023–2. The BIP also includes a standardized non-negotiable loan sale agreement (Loan Sale Agreement).

As part of its bid, each bidder must submit a minimum deposit of the greater of One Hundred Thousand Dollars ($100,000) or ten percent (10%) of the aggregate bid prices for all of such bidder's bids. In the event the bidder's aggregate bid is less than One Hundred Thousand Dollars ($100,000), the minimum deposit shall be not less than fifty percent (50%) of the bidder's aggregate bid. HUD will evaluate the bids submitted and determine the successful bid(s) in its sole and absolute discretion. If a bidder is successful, the bidder's deposit will be non-refundable and will be applied toward the purchase price, with any amount beyond the purchase price being returned to the bidder. Deposits will be returned to unsuccessful bidders after notification to successful bidders. Closings are expected to take place on September 20, 2023.

The Loan Sale Agreement, which is included in the BIP, contains additional terms and details. To ensure a competitive auction, the terms of the bidding process and the Loan Sale Agreement are not subject to negotiation.

Due Diligence Review

The BIP describes the due diligence process for reviewing loan files in MHLS 2023–2. Qualified bidders will be able to access loan information remotely via a high-speed internet connection. Further information on performing due diligence review of the Mortgage Loans is provided in the BIP.

Mortgage Loan Sale Policy

HUD reserves the right to add Mortgage Loans to or delete Mortgage Loans from MHLS 2023–2 at any time prior to the award date. HUD also reserves the right to reject any and all bids, in whole or in part, without prejudice to HUD's right to include the Mortgage Loans in a later sale. The Mortgage Loans will not be withdrawn after the award date except as is specifically provided for in the Loan Sale Agreement.

This is a sale of unsubsidized mortgage loans, pursuant to Section 204(a) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1997, (12 U.S.C. 1715z–11a(a)).

Mortgage Loan Sale Procedure

HUD selected a competitive auction as the method to sell the Mortgage Loans. This method of sale optimizes HUD's return on the sale of these Mortgage Loans, affords the greatest opportunity for all qualified bidders to bid on the Mortgage Loans, and provides the most efficient vehicle for HUD to dispose of the Mortgage Loans.

Bidder Eligibility

In order to bid in the sale, a prospective bidder must complete, execute, and submit both a Confidentiality Agreement and a Qualification Statement acceptable to HUD. The following individuals and entities are among those INELIGIBLE to bid on the Mortgage Loans being sold in MHLS 2023–2:

1. A mortgagor or healthcare operator, including its principals, affiliates, family members, and assigns, with respect to one or more of the Mortgage Loans being offered in the Loan Sale, or an Active Shareholder (as such term is defined in the Qualification Statement);

2. With respect to any other HUD multifamily and/or healthcare mortgage loan not offered in the Loan Sale, any mortgagor or healthcare operator, including any Related Party (as such term is defined in the Qualification Statement) of either, that has failed to file financial statements or is otherwise in default under such mortgage loan or is in violation or noncompliance of any regulatory or business agreements with HUD and that fails to cure such default or violation by no later than August 1, 2023;

3. Any individual or entity that is debarred, suspended, or excluded from doing business with HUD pursuant to Title 2 of the Code of Federal Regulations, Part 2424;

4. Any contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, principal or affiliate of any of the foregoing) who performed services for, or on behalf of, HUD in connection with MHLS 2023–2;

5. Any employee of HUD, a member of such employee's family, or an entity owned or controlled by any such employee or member of such an employee's family;

6. Any individual or entity that uses the services, directly or indirectly, of any person or entity ineligible under provisions (3) through (5) above to assist in preparing its bid on any Mortgage Loan;

7. An FHA-approved mortgagee, including any principals, affiliates, or assigns thereof, that has received FHA insurance benefits for one or more of the Mortgage Loans being offered in the Loan Sale;

8. An FHA-approved mortgagee and/or loan servicer, including any principals, affiliates, or assigns thereof, that originated one or more of the Mortgage Loans being offered in the Loan Sale if the Mortgage Loan defaulted within two years of origination and resulted in the payment of an FHA insurance claim;

9. Any affiliate, principal or employee of any person or entity that, within the two-year period prior to August 1, 2023, serviced any Mortgage Loan or performed other services for or on behalf of HUD in regard to any Mortgage Loan;

10. Any contractor or subcontractor working for or on behalf of HUD that had access to information concerning any Mortgage Loan or provided services to any person or entity which, within the two-year period prior to August 1, 2023, had access to information with respect to any Mortgage Loan; and/or

11. Any employee, officer, director or any other person that provides or will provide services to the prospective bidder with respect to the Mortgage Loans during any warranty period established for the Loan Sale, that serviced the Mortgage Loans or performed other services for or on behalf of HUD or within the two-year period prior to August 1, 2023, provided services to any person or entity which serviced, performed services or otherwise had access to information with respect to any Mortgage Loan for or on behalf of HUD.

Other entities/individuals not described herein may also be restricted from bidding on the Mortgage Loans, as fully detailed in the Qualification Statement.

The Qualification Statement provides further details pertaining to eligibility requirements. Prospective bidders should carefully review the Qualification Statement to determine whether they are eligible to submit bids on the Mortgage Loans in MHLS 2023–2.

Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding MHLS 2023–2, including, but not limited to, the identity of any successful bidder and its bid price or bid percentage for the Mortgage Loans, upon the closing of the sale of the Mortgage Loans. Even if HUD elects not to publicly disclose any information relating to MHLS 2023–2, HUD may be required to disclose information relating to MHLS 2023–2 pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

Scope of Notice

This notice applies to MHLS 2023–2 and does not establish HUD's policy for the sale of other mortgage loans.

Julia R. Gordon,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2023–15969 Filed 7–27–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2023–0147; FXIA16710900000–234–FF09A30000]

Foreign Endangered Species; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is issued that allows such activities. The ESA also requires that we invite public comment before issuing permits for any activity otherwise prohibited by the ESA with respect to any endangered species.

DATES: We must receive comments by August 28, 2023.

ADDRESSES:

Obtaining Documents: The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *https://www.regulations.gov* in Docket No. FWS–HQ–IA–2023–0147.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: https://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2023–0147.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2023–0147; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Timothy MacDonald, by phone at 703–358–2185 or via email at *DMAFR@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:

I. Public Comment Procedures

A. How do I comment on submitted applications?

We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments at *https://www.regulations.gov* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at *https://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, 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.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(c) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA prohibits certain activities with listed species unless Federal authorization is issued that allows such activities. Permits issued under section 10(a)(1)(A) of the ESA allow otherwise prohibited activities for scientific purposes or to enhance the propagation or survival of the affected species. Service regulations regarding prohibited activities with endangered species, captive-bred wildlife registrations, and permits for any activity otherwise prohibited by the ESA with respect to any endangered species are available in title 50 of the Code of Federal Regulations in part 17.

III. Permit Applications

We invite comments on the following applications.

Applicant: Fresno Chaffee Zoo Corporation, Fresno, CA; Permit No. PER3130634

The applicant requests a permit to import one live female captive-born Sumatran orangutan (*Pongo abelii*) from the Toronto Zoo, Toronto, Ontario, Canada for the purpose of enhancing the

propagation or survival of the species. This notification is for a single import.

Applicant: Toledo Zoological Gardens, Toledo, OH; Permit No. PER0047082

The applicant requests authorization to export up to 4,000 captive-bred Kihansi spray toads (*Nectophrynoides asperginis*) for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Smithsonian Institution, National Museum of Natural History, Washington, DC; Permit No. PER3560967

The applicant requests the renewal of their permit to export and re-import non-living museum/herbarium specimens of endangered and threatened species previously legally accessioned into the permittee's collection for scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

IV. Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *https://www.regulations.gov* for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to *regulations.gov* and search for ''12345A''.

V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations.

Timothy MacDonald,

Government Information Specialist, Branch of Permits, Division of Management Authority.

[FR Doc. 2023–16057 Filed 7–27–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036252; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: High Desert Museum, Bend, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the High Desert Museum 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 the area of the Columbia and upper Snake Rivers.

DATES: Repatriation of the cultural items in this notice may occur on or after August 28, 2023.

ADDRESSES: Michelle Seiler, High Desert Museum, 59800 South Hwy 97, Bend, OR 97702, telephone (541) 382–4754 Ext. 376, email *michelle@highdesertmuseum.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 High Desert Museum. 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 High Desert Museum.

Description

Fifty cultural items were removed from the area of the Columbia and upper Snake Rivers. In July of 1966, Charles and Edith McGill purchased these cultural items from Bill Reierson, owner of Kurio Kabin in Cashmere, WA. At the time of purchase, the store identified these items as being from the Columbia and Snake River areas. Kurio Kabin, a rock shop, was located in an area in Washington with an active group that regularly looted sites and graves in the area of the Columbia and upper Snake Rivers. Charles and Edith McGill donated these items to the High Desert Museum on August 13, 1992. The 50 unassociated funerary objects are 34 shell beads; seven Olivella shells; eight pieces of Dentalium; and one string of hemp on which are one piece of copper, 14 small white beads, and one black bead.

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 High Desert Museum has determined that:

- The 50 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 Confederated Tribes and Bands of the Yakama Nation; Confederated Tribes of the Colville Reservation; Confederated Tribes of the Umatilla Indian Reservation; Confederated Tribes of the Warm Springs Reservation of Oregon; and the Nez Perce Tribe.

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 August 28, 2023. If competing requests for repatriation are received, High Desert Museum 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. High Desert Museum is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: July 19, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–16064 Filed 7–27–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036250; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Utah Field House of Natural History State Park Museum, Vernal, UT

AGENCY: Utah State Parks.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Utah Field House of Natural History State Park Museum (UFHNHM) 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 Uintah County, UT.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after August 28, 2023.

ADDRESSES: John Foster, Museum Curator, Utah Field House of Natural History State Park Museum, 496 East Main Street, Vernal, UT 84078, telephone (435) 789–3799, email *johnfoster@utah.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 UFHNHM. 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 UFHNHM.

Description

Human remains representing, at minimum, one individual were removed from private land in Uintah, County, UT. The mummified remains belong to a child approximately 5–6 years old and of unknown sex. Overall, preservation is excellent; the hands and right arm are the only absent elements. This individual displayed several characteristics associated with probable Native American ancestry. Native American craniofacial morphology includes wide infraorbital breadth, a medium sized narrow nasal aperture with a dull nasal sill, and an overall round skull morphology. Shoveling is present in the permanent upper right I1, which is a dental variation that is strongly associated with Native American or Asian ancestry; >90% of individuals with this trait are of Asian or Native American ancestry. In addition to the skeletal and dental indicators of Native American ancestry, much of the clothing found on and with the human remains (buckskin leggings and moccasins) is consistent with Native American culture. The seven associated funerary objects are one coarse textured fabric shirt with patch, one lot consisting of fragments of a dark blue cotton shirt with small flower designs, one pair of buckskin leggings, one pair of leather moccasins, one animal hide with hair still attached, one gunpowder horn, and one muzzle loading rifle with an octagon shaped barrel.

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: a final judgment of the Indian Claims Commission or the United States Court of Claims.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, the UFHNHM has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The seven 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 Ute Indian Tribe of the Uintah & Ouray Reservation, Utah.

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 August 28, 2023. If competing requests for disposition are received, the Utah Field House of Natural History State Park Museum 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. The Utah Field House of Natural History State Park Museum 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 10.9 and 10.11.

Dated: July 19, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–16062 Filed 7–27–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036248; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Central Washington University, Ellensburg, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Central Washington University 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 Klickitat County, WA.

DATES: Repatriation of the human remains in this notice may occur on or after August 28, 2023.

ADDRESSES: Lourdes Henebry-DeLeon, Department of Anthropology and

Museum Studies, Central Washington University, 400 University Way, Ellensburg, WA 98926–7544, telephone (509) 963–2671, email *Lourdes.Henebry-DeLeon@cwu.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 Central Washington 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 Central Washington University.

Description

All the human remains listed below were removed from Klickitat County, WA, sometime between 1890 and 1940, by private collectors. In 1999, unknown individuals donated the human remains to Central Washington University, where they were assigned accession number 1999.0.1.9 and catalog number 26.

Human remains representing, at minimum, six individuals were removed from the Spedis site in the Spedis Valley. No associated funerary objects are present.

Human remains representing, at minimum, three individuals were removed from Grand Dalles. No associated funerary objects are present.

Human remains representing, at minimum, two individuals were removed from the town of Klickitat. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the Fountain Bar Site (45–KL–18) near Rock Creek. No associated funerary objects are present.

Human remains representing, at minimum, two individuals were removed from the town of Satus. No associated funerary objects are present.

Human remains representing, at minimum, 15 individuals were removed from the Satus Creek area near the town of Satus. 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: archeological, biological, geographical, historical, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, Central Washington University has determined that:

- The human remains described in this notice represent the physical remains of 29 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 Confederated Tribes and Bands of the Yakama Nation.

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 August 28, 2023. If competing requests for repatriation are received, Central Washington University 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. Central Washington University 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 10.9, 10.10, and 10.14.

Dated: July 19, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–16061 Filed 7–27–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036251; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: High Desert Museum, Bend, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the High Desert Museum 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 the area of the Columbia and upper Snake Rivers.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after August 28, 2023.

ADDRESSES: Michelle Seiler, High Desert Museum, 59800 South Hwy 97, Bend, OR 97702, telephone (541) 382–4754 Ext. 376, email *michelle@highdesertmuseum.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 High Desert Museum. 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 High Desert Museum.

Description

Human remains representing, at minimum, two individuals were removed from the area of the Columbia and upper Snake Rivers. In July of 1966, Charles and Edith McGill purchased these human remains and cultural items from Bill Reierson, owner of Kurio Kabin in Cashmere, WA. At the time of purchase, the store identified these items as being from the Columbia and Snake River areas. Kurio Kabin, a rock shop, was located in an area of Washington with an active group that regularly looted sites and graves in the area of the Columbia and upper Snake Rivers. Charles and Edith McGill donated the human remains and associated funerary objects listed in this

notice to the High Desert Museum on August 13, 1992. The 58 associated funerary objects are 38 pieces of rolled copper trade stock; five pieces of copper trade stock; one stone bead; one twisted wire (with one clear glass bead and one green glass bead); four pieces of rolled copper on braided hemp; one rolled copper strung on hemp; four pieces of rolled copper with hemp fragments; three pieces of rolled copper; and one necklace (made of rolled copper with square piece of copper on monofilament with dentalium and rolled copper).

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 historical.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the High Desert Museum has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- The 58 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 Colville Reservation; Confederated Tribes of the Umatilla Indian Reservation; Confederated Tribes of the Warm Springs Reservation of Oregon; 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, 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 August 28, 2023. If competing requests for repatriation are received, High Desert Museum 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. High Desert Museum 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: July 19, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–16063 Filed 7–27–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036254; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Land Management, Anchorage, AK

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, Bureau of Land Management (BLM Alaska) 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 the Northwest Arctic Borough, AK.

DATES: Repatriation of the human remains in this notice may occur on or after August 28, 2023.

ADDRESSES: Robert E. King, Bureau of Land Management, 222 W 7th Avenue, #13, Anchorage, AK 99513, telephone (907) 271–5510, email *r2king@blm.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 BLM Alaska. 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 BLM Alaska.

Description

Human remains representing, at minimum, 13 individuals were removed from the Northwest Arctic Borough, AK. The human remains of 11 individuals were removed from or near Cape Krusenstern and the human remains of two individuals were removed from the Choris Peninsula. These human remains were removed by an unknown party or parties, probably in the 1950s or 1960s, and they likely were acquired in the mid-20th century during expeditions to Alaska sponsored by Brown University, in Providence, RI. Of the 13 individuals listed in this notice, incomplete museum records indicate that at least seven, and maybe 10, were found during archeological excavations, while three were likely surface finds. Ultimately, these human remains were placed in the collections of the Haffenreffer Museum of Anthropology at Brown University. The human remains are over 150 years old. 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: archeological and oral traditional.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, BLM Alaska has determined that:

- The human remains described in this notice represent the physical remains of 13 individuals of Native American ancestry.
- 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 Native Village of Kotzebue.

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 August 28, 2023. If competing requests for repatriation are received, BLM Alaska 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. BLM Alaska 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 10.9, 10.10, and 10.14.

Dated: July 19, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–16066 Filed 7–27–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036255; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Land Management, Anchorage, AK

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, Bureau of Land Management (BLM Alaska) 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 four areas northeast of Seldovia, AK, on or near the southern shore of Kachemak Bay, located off the southwestern part of the lower Kenai Peninsula, AK.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after August 28, 2023.

ADDRESSES: Robert E. King, Bureau of Land Management, 222 W 7th Avenue, #13, Anchorage, AK 99513, telephone (907) 271–5510, email *r2king@blm.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 BLM Alaska. 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 BLM Alaska.

Description

In 1931, human remains representing, at minimum, four individuals were removed from three areas within about 25 miles northeast of Seldovia, AK, on or near the southern shore of Kachemak Bay, which is located off the southwestern part of the lower Kenai Peninsula, AK. These human remains, estimated to be over 200 years old, were removed by Frederica de Laguna, who was associated with the University of Pennsylvania Museum of Archaeology and Anthropology in Philadelphia, PA. The human remains were brought back to this museum, where they are currently housed. One partial set of human remains [PM# 31–20–585] was removed from what was called Rocky Island (otherwise known as Sixty-foot Rock), located north of Cohen Island in Kachemak Bay, about 12 miles northeast of Seldovia, AK. Two partial sets of human remains [PM# 31–20–2323; PM# 31–20–2321] were collected on Yukon Island in Kachemak Bay, about 10 miles northeast of Seldovia, AK. A fourth partial set of human remains [PM# 31–20–312.1] were collected on Aurora Spit, located on the north shore of the southwestern part of the lower Kenai Peninsula, about 25 miles northeast of Seldovia, AK. The one associated funerary object is a bone point [PM# 31–20–356] that was found near the partial set of human remains collected on Aurora Spit.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological and oral traditional.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, BLM Alaska has determined that:

- The human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- The one object described in this notice is 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 described in this notice and the Seldovia Village 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 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 August 28, 2023. If competing requests for repatriation are received, BLM Alaska 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. BLM Alaska 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 10.9, § 10.10, and § 10.14.

Dated: July 19, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–16067 Filed 7–27–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036253; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Robert S. Peabody Institute of Archaeology, Andover, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Robert S. Peabody Institute of Archaeology has completed an inventory of associated funerary objects and has determined that there is a cultural affiliation between the associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The associated funerary objects were removed from Essex County, MA.

DATES: Repatriation of the associated funerary objects in this notice may occur on or after August 28, 2023.

ADDRESSES: Ryan Wheeler, Robert S. Peabody Institute of Archaeology, Phillips Academy, 180 Main Street, Andover, MA 01810, telephone (978) 749–4493, email *rwheeler@andover.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 the Robert S. Peabody Institute of Archaeology. 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 Robert S. Peabody Institute of Archaeology.

Description

In 1890, Dr. F. Humphrey removed human remains and associated funerary objects from an unknown site in Ipswich, Essex County, MA. Subsequently, he transferred them to the Robert S. Peabody Institute of Archaeology. In 1963, the Robert S. Peabody Institute of Archaeology transferred the human remains associated with the funerary objects to the Harvard Peabody Museum of Archaeology & Ethnology (see 87 FR 69317–69326, November 18, 2022). The 32 associated funerary objects are one stone adze; two stone axes; two chipped stone objects; one bone fish hook; two stone gouges; three grooved stones; five ground stone objects; five hammer stones; two modified stones; two stone pestles; five stone plummets; one roundstone; and one soapstone fragment.

At unknown date, Thomas Clegg removed human remains and associated funerary objects from the Merrimac Valley near Lawrence, Essex County, MA. Subsequently, he transferred them to the Robert S. Peabody Institute of Archaeology. In 1963, the Robert S. Peabody Institute of Archaeology transferred the human remains associated with the funerary objects to the Harvard Peabody Museum of Archaeology & Ethnology (see 87 FR 69317–69326, November 18, 2022). The 17 associated funerary objects are one broken gouge; one fragment of a ground stone object; one lot consisting of ceramic sherds; six lots consisting of chipped objects and object fragments; one lot consisting of points and point fragments; one lot consisting of stone bifaces; one lot consisting of stone drills; one lot consisting of stone points and fragments; one perforated stone; one perforated stone or pendant; one soapstone fragment; and one stone knife.

Cultural Affiliation

The associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological, biological, geographical, historical, linguistic, oral traditional, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Robert S. Peabody Institute of Archaeology has determined that:

- The 49 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 associated funerary objects described in this notice and the Mashpee Wampanoag Tribe and the Wampanoag Tribe of Gay Head (Aquinnah).

Requests for Repatriation

Written requests for repatriation of the 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 Assonet Band of the Wampanoag Nation, 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 associated funerary objects in this notice to a requestor may occur on or after August 28, 2023. If competing requests for repatriation are received, the Robert S. Peabody Institute of Archaeology must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the associated funerary objects are considered a single request and not competing requests. The Robert S. Peabody Institute of Archaeology 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: July 19, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–16065 Filed 7–27–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036256; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: William S. Webb Museum of Anthropology, University of Kentucky, Lexington, KY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the William S. Webb Museum of Anthropology, University of Kentucky (WSWM) 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: Bourbon, Boone, Bracken, Fayette, Greenup, Harrison, Jessamine, Mercer, Mason, and Union counties, KY.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after August 28, 2023.

ADDRESSES: Celise Fricker, William S. Webb Museum of Anthropology, University of Kentucky, 1020 Export Street, Lexington, KY 40504, telephone (859) 257–5124, email *celise.fricker@uky.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 the WSWM. 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 WSWM.

Description

Human remains representing, at minimum, 69 individuals were removed from site 15BB12 (Buckner) in Bourbon, KY. The site was excavated in 1939 by the University of Kentucky Museum of Anthropology under contract to the Works Progress Administration (WPA). A Fort Ancient determination for these human remains is based on the presence of wall-trench houses, and diagnostic limestone/shell-tempered ceramics and projectile points. The 124 associated funerary objects are one semi-circular grooved lithic, two shell gorgets, 12 bird bone beads, 80 marginella shell beads, six shell disc beads, one limestone hammerstone, five projectile points, one incised triangular shell pendant, one imitation tooth cannel coal pendant, four limestone discoidals, five cylindrical shell beads, one bone needle, two bone awls, one perforated shell disc, one bone antler point, and one ceramic disc.

Human remains representing, at minimum, 12 individuals were removed from site 15BB13 (Larkin) in Bourbon, KY. The site was originally surveyed in 1936 and then excavated by Kentucky Heritage Council staff in 1986. A Fort Ancient determination for these human remains is based on the presence of ceramic vessel shapes (salt pans, colanders, globular jars) and 'weeping eye' shell mask gorgets characteristic of Late Fort Ancient culture in the Central Bluegrass region. The 70 associated funerary objects are two flakes, one shell bead, five perforated animal teeth, one abrader, six shells, one copper tube bead, one triangular point, one cannel coal, 43 faunal remains, one charcoal, five projectile points, one lithic drill, one cannel coal pendant, and one botanical remain.

Human remains representing, at minimum, four individuals were removed from site 15BB15 (Layson) in Bourbon, KY. The site was originally surveyed and excavated in 1947 by University of Kentucky Museum of Anthropology staff. A Fort Ancient determination for these human remains is based on the presence of shell/limestone tempered ceramics characteristic of Fort Ancient occupations in the Central Bluegrass region. No associated funerary objects are present.

Human remains representing, at minimum, eight individuals were removed from site 15BB45 (New Field) in Bourbon, KY. The site was surveyed and surface-collected in 1977 by Hockensmith and Turnbow, in 1978 by Wayne Estes, and in 1991 by Estes, O'Malley, Harlin, Tune, and Pollack. In 1992, the site was excavated by the University of Kentucky Program for Cultural Resource Assessment. A Fort Ancient determination for these human remains is based on the presence of shell/limestone tempered ceramics characteristic of Fort Ancient occupations in eastern Kentucky and on C14 dates. No associated funerary objects are present.

Human remains representing, at minimum, two individuals were removed from site 15BB59 (Paris Quarry) in Bourbon, KY. These human remains were recovered from a quarry after a bulldozer exposed them, and they were subsequently donated to the WSWM by a private collector. A Fort Ancient determination for these human remains is based on the light wear to the teeth and their physical proximity to recorded Fort Ancient sites. No associated funerary objects are present.

Human remains representing, at minimum, 55 individuals were removed from site 15BE06 (Petersburg) in Boone, KY. The site was initially excavated by the University of Kentucky Program for Cultural Resource Assessment in 1990 and, subsequently, human remains belonging to one individual were recovered during floatation analyses. The site was excavated as a salvage project in 2004 by the Kentucky Archaeological Survey and volunteers, when the basement for a new house was constructed on the boundary of the earlier and later villages, though not near previously identified cemeteries. A Fort Ancient determination for these human remains is based on the presence of shell-tempered ceramics and contact-period burial associations. The 542 associated funerary objects are five bone drifts, nine bone tools, two drilled faunal incisor pendants, one ceramic gorget, 333 shell beads, one faunal mandible, one discoidal, three celts, 45 copper/brass beads with cordage, one abrading stone, two large bifaces, one shell disc, one wolf maxilla, one stone bead, two ceramic vessels, 10 triangular points, one bi-pointed copper awl, one biface-drill, nine bifaces, 10 lithic projectile points, two antler projectile points, 24 lithic tools, two deer skulls, one bone fish hook, one copper cross, 12 copper tubes with cordage, four raven bones, one bird beak with copper staining, 21 shell valves, one vasiform pipe, one effigy head pipe, two cores, nine bone tube beads, 17 copper clips, two marginella shell beads, one piece of horn coral, one drilled shell hoe, and one drilled bear canine.

Human remains representing, at minimum, 35 individuals were removed from site 15BE08 (McCabe Mound) in Boone, KY. The site was excavated in 1939 by the University of Kentucky Museum of Anthropology under contract to the WPA. A Fort Ancient determination for these human remains is based on the presence of diagnostic limestone/shell-tempered ceramics and projectile points, and on C14 dates of 830 +/− 90 BP. The 38 associated funerary objects are three bivalve shells, 23 ceramic sherds, two limestone bars, one fragment of a platform pipe, two celts, three projectile points, one claw, one bone drift, one chert drill, and one cut antler.

Human remains representing, at minimum, one individual were removed from site 15BE22 (Cleek Village) in Boone, KY. The site was excavated in 1939 by the University of Kentucky Museum of Anthropology under contract to the WPA. A Fort Ancient determination for these human remains is based on the presence of diagnostic limestone/shell-tempered ceramics and projectile points, and on C14 dates of 830 +/ − 90 BP. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from site 15BK02 (Snag Creek/Sharp/Bradford) in Bracken, KY. The site was excavated in 1984 by members of the William S. Webb Archaeological Society and University of Kentucky students. A Fort Ancient determination for these human remains is based on the presence of diagnostic Fox Farm and Madisonville ceramics and triangular projectile points, and on C14 dates suggesting an occupation between 1400 and 1500 CE. No associated funerary objects are present.

Human remains representing, at minimum, 20 individuals were removed from site 15BK04 (Augusta) in Bracken, KY. These human remains were donated to WSWM by Louie Edwards after he excavated several stone box burials while digging a basement at his house. A Fort Ancient determination for these human remains is based on the presence of stone box burials, weeping-eye shell gorgets, and shell-tempered sherds from a known Fort Ancient village site, and on C14 dates ranging from 1290 to 1640 CE. No associated funerary objects are present.

Human remains representing, at minimum, two individuals were removed from site 15FA13 (University of Kentucky Stoll Field) in Fayette, KY. This site was excavated in 1936 by the University of Kentucky Museum of Anthropology, when a new track was cut at Stoll Field, on the University of Kentucky campus in Lexington. A Fort Ancient determination for these human remains is based on the light tooth wear and their regional location. No associated funerary objects are present.

Human remains representing, at minimum, two individuals were removed from site 15FA22 (Water Pump Station) in Fayette, KY. This site was inadvertently discovered during construction of Lexington Water Company's Kentucky River Pumping Station. In response, the police requested an excavation by the University of Kentucky Department of Anthropology. A Fort Ancient determination for these human remains is based on associated shell-tempered sherds (Madisonville horizon) and burial form. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from site 15GP00 (Unnamed) in Greenup, KY. The human remains were donated to the University of Kentucky Museum of Anthropology by a private collector. A Fort Ancient determination for these human remains is based on the light tooth wear, the cranial modification, and their regional location. No associated funerary objects are present.

Human remains representing, at minimum, 341 individuals were removed from site 15GP22 (Hardin Village) in Greenup, KY. The site was excavated in 1939 by the University of Kentucky Museum of Anthropology under contract to the WPA. A Fort Ancient determination for these human remains is based on the presence of diagnostic shell/limestone-tempered ceramics, projectile points, wall-trench houses, and shell gorgets. The 1,998 associated funerary objects are five celts, three hematite pebbles, six hammerstones, five lithic knives, two cannel coal objects, one hematite object, one stone ring, five lithic drills, one sub-rectangular bar, two grinding stones, one whet stone, two lithic hoes, four pipes, 17 scrapers, 90 projectile points, two bone spatulas, one antler flaker, three antler projectile points, two worked antler points, one bone projectile point, one dog tooth, one bone flaker, one bone fish hook, one bone pin, one bone pendant, 15 bone drifts, 30 bone tubes, eight worked faunal bones, 18 bone awls, six bone scrapers, 46 bored faunal teeth, 110 bone beads, eight potsherds, 12 complete ceramic pots, 11 copper tubes, 13 copper sheet fragments, two copper pendants, seven copper coils, one copper band, 159 copper beads, two copper bracelets, 856 shell beads, 136 shell disc beads, 79 shell pendants, 276 marginella beads, one conch, nine shells, nine shell gorgets, three conch gorgets, 16 drilled shells, one shell mask, four worked shells, and one shell spoon.

Human remains representing, at minimum, five individuals were removed from site 15HR21/15HR22 (Florence) in Harrison, KY. This site was first surveyed in 1987 by UK archeologists and human remains were surface-collected. The site was then excavated between 1989 and 1990 by the Kentucky Archaeology Survey and Kentucky Heritage Council. A Fort Ancient determination for these human remains is based on diagnostic ceramic types, triangular projectile points, and C14 dates. No associated funerary objects are present.

Human remains representing, at minimum, two individuals were removed from site 15JS95 (Unnamed) in Jessamine, KY. The site was excavated by the Office of State Archaeology and the University of Kentucky Museum of Anthropology staff in 1987. A Fort Ancient determination for these human remains is based on the light tooth wear, the cranial modification, and the proximity of the burial to other Fort Ancient sites. No associated funerary objects are present.

Human remains representing, at minimum, two individuals were removed from site 15ME62 (Dry Branch Creek) in Mercer, KY. This site was first surveyed in 1995 and 1996 during planning for a bridge replacement. Excavation followed in 1998, as part of a Phase III mitigation project undertaken by Wilbur Smith Associates. A Fort Ancient determination for these human remains is based on diagnostic ceramic types, triangular projectile points, and C14 dates. No associated funerary objects are present.

Human remains representing, at minimum, 10 individuals were removed from site 15MS01 (Fox Farm/Fox Field) in Mason, KY. This site was first surveyed, surface collected and excavated by E.S. Maxwell and William S. Webb between 1920 and 1930, and all materials were donated to the University of Kentucky Museum of Anthropology. In 1969, an excavation by Maysville Community College students took place. The excavated materials from that excavation were initially donated to the Kentucky Gateway Museum Center; in 2009, they were donated to the WSWM. Additional donations to the WSWM were made by private collectors in 1960, 1991, and 2018. A Fort Ancient determination for these human remains is based on diagnostic ceramic types, triangular projectile points, and marine shell gorgets. The two associated funerary objects are one engraved rattlesnake motif shell gorget, and one large copper tube bead.

Human remains representing, at minimum, one individual were removed from site 15MS47 (Unnamed) in Mason, KY. This mound site was disturbed by construction activity in 1979. Ancestral remains were removed by the construction crew and recovered by WSWM personnel during an investigation of the site. A Fort Ancient determination for these human remains is based on burial form and their proximity to other Fort Ancient sites. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from site 15UN30 (Unnamed) in Union, KY. This site was excavated by the University of Kentucky Museum of Anthropology in 1969. A Fort Ancient determination for these human remains is based on diagnostic shell-tempered ceramics and projectile points. No associated funerary objects are present.

Human remains representing, at minimum, six individuals were removed from site 15UN37 (Unnamed) in Union, KY. These human remains were donated to WSWM by a private collector. A Fort Ancient determination for these human remains is based on the proximity of site to other Fort Ancient sites in Union County. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from site 15UN39 (Unnamed) in Union, KY. This site was excavated by the University of Kentucky Museum of Anthropology in 1969. A Fort Ancient determination for these human remains is based on diagnostic shell-tempered ceramics and projectile points. No associated funerary objects are present.

Human remains representing, at minimum, two individuals were removed from site 15UN42 (Unnamed) in Union, KY. This site was excavated by the University of Kentucky Museum of Anthropology in 1969. A Fort Ancient determination for these human remains is based on diagnostic shell-tempered ceramics and projectile points. 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: anthropological, archeological, folkloric, geographical, historical, linguistic, and oral traditional.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the WSWM has determined that:

- The human remains described in this notice represent the physical remains of 583 individuals of Native American ancestry.
- The 2,774 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 Absentee-Shawnee Tribe of Indians of Oklahoma; Eastern Shawnee Tribe of Oklahoma; and the Shawnee 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 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 August 28, 2023. If competing requests for repatriation are received, the WSWM 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 WSWM 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.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–16068 Filed 7–27–23; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–23–035]

Sunshine Act Meetings

Agency Holding the Meeting: United States International Trade Commission.

TIME AND DATE: August 3, 2023 at 11 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–709 (Fifth Review)(Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe (SSLP) from Germany). The Commission currently is scheduled to complete and file its determinations and views of the Commission on August 11, 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. Earlier notification of this meeting was not possible.

By order of the Commission.

Issued: July 26, 2023.

Sharon Bellamy,

Acting Supervisory Hearings and Information Officer.

[FR Doc. 2023–16169 Filed 7–26–23; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

217th Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Teleconference Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 217th open meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans (also known as the ERISA Advisory Council) will be held via teleconference on August 29, 2023.

The meeting will begin at 10:00 a.m. (ET) and end at approximately 6:30 p.m. (ET), with a break for lunch. The purpose of the open meeting is for the ERISA Advisory Council to hear testimony from invited witnesses on the following topics: (1) Long-Term Disability Benefits and Mental Health

Disparity, and (2) Recordkeeping in the Electronic Age. Descriptions of these topics are available on the ERISA Advisory Council's web page at *https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council.* The ERISA Advisory Council will also discuss and finalize views on section 2509.95–1 of title 29, Code of Federal Regulations (relating to the fiduciary standards under the Employee Retirement Income Security Act of 1974 when selecting an annuity provider for a defined benefit pension plan).

Instructions for public teleconference access will be available on the ERISA Advisory Council's web page at *https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council* approximately one week prior to the meeting.

Organizations or members of the public wishing to submit a written statement on any of the matters before the ERISA Advisory Council may do so on or before Tuesday, August 22, 2023, to Christine Donahue, Executive Secretary, ERISA Advisory Council. Statements should be transmitted electronically as an email attachment in text or pdf format to *donahue.christine@dol.gov.* Statements transmitted electronically that are included in the body of the email will not be accepted. Relevant statements received on or before Tuesday, August 22, 2023, will be included in the record of the meeting and made available through the EBSA Public Disclosure Room. No deletions, modifications, or redactions will be made to the statements received as they are public records. *Warning:* Do not include any personally identifiable or confidential business information that you do not want publicly disclosed.

Individuals or representatives of organizations interested in addressing the ERISA Advisory Council at the public meeting on the 2023 Council study topics: (1) Long-Term Disability Benefits and Mental Health Disparity, and (2) Recordkeeping in the Electronic Age must submit a written request to the Executive Secretary on or before Tuesday, August 22, 2023, via email to *donahue.christine@dol.gov.* Requests to address the ERISA Advisory Council on the 2023 Council study topics must include: (1) the name, title, organization, address, email address, and telephone number of the individual who would appear; (2) if applicable, the name of the organization(s) whose views would be represented; and (3) a concise summary of the statement that would be presented. Any oral presentation to the Council will be limited to ten minutes, but as indicated above, extended written statements may be submitted for the record on or before August 22, 2023.

Individuals who need special accommodations should contact the Executive Secretary on or before Tuesday, August 22, 2023, via email to *donahue.christine@dol.gov* or by telephoning (202) 693–8641.

For more information about the meeting, contact the Executive Secretary at the address or telephone number above.

Signed at Washington, DC, this 24th day of July, 2023.

Lisa M. Gomez,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2023–16034 Filed 7–27–23; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Vacancy Posting: Member of the Administrative Review Board

Summary of Duties: The incumbents exercise completely independent judgment in considering and deciding appeals and other matters which come before the Boards required by law and any applicable regulations. They sign decisions with which they agree or take such action as appropriate including that of writing concurring and/or dissenting opinions. Also included there in are the following responsibilities, exercised by the Chair and the Board Members: establishing general policies for the Board's operations; participation at Board case conferences and at oral argument; and other responsibilities necessary for the orderly and efficient disposition of all matters properly before the Board.

Appointment Type: Excepted—The term of appointment is for four years or less and may be extended.

Qualifications: The applicant should be well versed in law and the appeals process as well as have the ability to interpret regulations and to come to a consensus to determine an overall appeals determination with members of board. This position has a Positive Education Requirement. Applicants must possess a J.D. and will be required to provide an original copy of their transcripts if selected. Applicants are required to be active members of the Bar in any US State or US Territory Court under the U.S. Constitution. Documentation of Bar License will be required before selection.

To Be Considered: A detailed resume is required to be considered for this vacancy announcement.

Closing Date: Resumes must be submitted by 11:59 p.m. EDT on August 28, 2023. Resumes must be submitted to: *white.robert.t@dol.gov,* phone: 202–693–2457. This is not a toll-free number.

Carolyn Angus-Hornbuckle,

Acting Assistant Secretary for Administration & Management.

[FR Doc. 2023–15974 Filed 7–27–23; 8:45 am]

BILLING CODE 4510–HW–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities

Arts and Artifacts Indemnity Panel Advisory Committee

AGENCY: Federal Council on the Arts and the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Federal Council on the Arts and the Humanities will hold a meeting of the Arts and Artifacts Domestic Indemnity Panel.

DATES: The meeting will be held on Thursday, August 17, 2023, from 12:00 p.m. until adjourned.

ADDRESSES: The meeting will be held by videoconference originating at the National Endowment for the Arts, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, Room 4060, Washington, DC 20506, (202) 606–8322; *evoyatzis@neh.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for panel review, discussion, evaluation, and recommendation on applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities, for exhibitions beginning on or after October 1, 2023. Because the meeting will consider proprietary financial and commercial data provided in confidence by indemnity applicants, and material that is likely to disclose trade secrets or other privileged or confidential information, and because it is important to keep the values of objects to be indemnified and the methods of transportation and security measures confidential, I have determined that that the meeting will be closed to the public pursuant to subsection (c)(4) of section 552b of Title 5, United States Code. I have made this determination under the authority granted me by the Chairman's Delegation of Authority to Close

Advisory Committee Meetings, dated April 15, 2016.

Dated: July 25, 2023.

Jessica Graves,

Legal Administrative Specialist, National Endowment for the Humanities.

[FR Doc. 2023–16055 Filed 7–27–23; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Requests: IMLS Evaluation of Grant Programs Funded by the American Rescue Plan Act (ARPA) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Notice, request for comments, collection of information.

SUMMARY: The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act. This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The purpose of this Notice is to solicit comments about the proposed evaluation of IMLS's grant programs funded through the American Rescue Plan Act (ARPA) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before September 26, 2023.

ADDRESSES: Send comments to Connie Bodner, Ph.D., Director of Grants Policy and Management, Office of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Bodner can be reached by telephone: 202–653–4636, or by email at *cbodner@imls.gov.* Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

FOR FURTHER INFORMATION CONTACT: Emily Plagman-Frank, Strategic Evaluation and Research Officer, Office of Research and Evaluation, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington DC 20024–2135. Ms. Plagman-Frank can be reached by telephone at 202–653–4763 or by email at *eplagman@imls.gov.* Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

SUPPLEMENTARY INFORMATION: IMLS is particularly interested in public comments that help the agency to:

- 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 submissions of responses.

I. Background

The Institute of Museum and Library Services is the primary source of federal support for the Nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. To learn more, visit *www.imls.gov.*

II. Current Actions

In direct response to the COVID–19 pandemic, IMLS awarded roughly $250 million in ARPA and CARES Act funds to State Library Administrative Agencies, libraries, museums, federally recognized Indian tribes, and nonprofit organizations that primarily serve and represent Native Hawaiians. The proposed evaluation of IMLS's ARPA and CARES Act grant programs will include a review of the relevant administrative processes and the distribution and use of the funds in order to improve the agency's understanding of the effectiveness of the program and the lessons learned, identify gaps and needs in continuing post-recovery, and improve or inform future design, technical support, and distribution of special use funds as part of an overall emergency response plan.

Agency: Institute of Museum and Library Services.

Title: IMLS Evaluation of Grant Programs Funded by the American Rescue Plan Act (ARPA) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

OMB Control Number: 3137–NEW.

Agency Number: 3137.

Respondents/Affected Public: IMLS applicants and awardees, museum staff, library staff, State Library Administrative Agency staff.

Total Estimated Number of Annual Respondents: 75.

Frequency of Response: Once per request.

Average Minutes per Response: TBD.

Total Estimated Number of Annual Burden Hours: TBD.

Cost Burden (dollars): TBD.

Public Comments Invited: Comments submitted in response to this Notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Dated: July 25, 2023.

Connie Bodner,

Director, Office of Grants Policy and Management, Institute of Museum and Library Services.

[FR Doc. 2023–16072 Filed 7–27–23; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: The meeting was noticed on July 25, 2023, at 88 FR 47923.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, July 26, 2023, from 1–2 p.m. EDT.

CHANGES IN THE MEETING: There is an additional agenda item in the meeting. It is: NSF Engines Type 2 Competition Update.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is:

Chris Blair, *cblair@nsf.gov,* 703/292–7000.

Christopher Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2023–16159 Filed 7–26–23; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–228; NRC–2023–0125]

Aerotest Operations, Inc.; Aerotest Radiography and Research Reactor

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of decommissioning plan; opportunity to provide comments.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received a decommissioning plan from Aerotest Operations, Inc. for the Aerotest Radiography and Research Reactor, located in Contra Costa County, California. The license authorizes the possession only of the reactor and fuel, but not use or operation of the permanently shutdown facility. Aerotest Operations, Inc. is requesting NRC review and approval of a proposed decommissioning plan. If approved, the NRC would amend the Aerotest Radiography and Research Reactor license to reference the NRC approved decommissioning plan. Additionally, the NRC would add a license condition requiring the licensee to submit more detailed information on remaining dismantlement and remediation activities, as well as the final status survey plan, for NRC review and approval prior to conducting final status surveys for license termination.

DATES: Submit comments by August 28, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0125. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jack Parrott, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6634; email: *Jack.Parrott@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0125 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0125.
- *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, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2023–0125 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Introduction

The NRC has received, by letter dated July 20, 2021 (ADAMS Accession No. ML21230A304), as supplemented by letter dated January 20, 2022 (ADAMS Accession No. ML22025A200), a request to review and approve the proposed decommissioning plan submitted by Aerotest Operations, Inc. for the Aerotest Radiography and Research Reactor, located in Contra Costa County, California. NRC License No. R–98 authorizes the possession only of the reactor and fuel, but not use or operation of the permanently shutdown facility. If approved, the NRC would amend the Aerotest Radiography and Research Reactor license to reference the NRC approved decommissioning plan and add a license condition. The license condition would require the licensee to submit more detailed information about remaining dismantlement and remediation activities, as well as the final status survey plan, for NRC review and approval prior to conducting final status surveys for license termination.

Aerotest Operations, Inc. submitted its proposed decommissioning plan pursuant to paragraph (b)(1) of section 50.82, ''Termination of license,'' of title 10 of the *Code of Federal Regulations* (10 CFR), which requires Aerotest Operations, Inc. to apply for license termination within 2 years of permanently ceasing operations, and also requires that each application for termination of a license be accompanied or preceded by a proposed decommissioning plan. An NRC administrative completeness review found the application acceptable to

begin a technical review (ADAMS Accession No. ML22098A092).

If the NRC approves the decommissioning plan, the NRC will amend NRC License No. R–98. However, prior to doing so, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and the NRC's regulations. The NRC's findings will be documented in a safety evaluation report. The proposed action appears to qualify for a categorical exclusion under 10 CFR 51.22; therefore a separate environmental assessment will not be prepared in relation to this action.

III. Notice and Solicitation of Comments

In accordance with section 10 CFR 20.1405, the Commission is providing notice and soliciting comments from local and State governments in the vicinity of the site and any Federally recognized Indian tribe that could be affected by the decommissioning activities for the Aerotest Radiography and Research Reactor. This notice and solicitation of comments is published pursuant to 10 CFR 20.1405, which provides for publication in the **Federal Register** and in a forum, such as local newspapers, letters to State or local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site. Comments should be provided within 30 days of the date of this notice.

Further, in accordance with 10 CFR 50.82(b)(5), notice is also provided to interested persons of the Commission's intent to approve the decommissioning plan by amendment, subject to such conditions and limitations as it deems appropriate and necessary, if the plan demonstrates that decommissioning of the Aerotest Radiography and Research Reactor will be performed in accordance with the applicable NRC regulations, and will not be inimical to the common defense and security or to the health and safety of the public.

Dated: July 24, 2023.

For the Nuclear Regulatory Commission.

Shaun M. Anderson,

Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2023–15978 Filed 7–27–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0063]

Information Collection: NRC Form 749, Manual License Verification Report/ License Verification System

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, NRC Form 749, ''Manual License Verification Report''/License Verification System.

DATES: Submit comments by September 26, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0063. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David C. Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0063 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0063. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2023–0063 on this website.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession ML23193B006. The supporting statement is available in ADAMS under Accession No. ML23107A160.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. 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.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2023–0063, in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 749, ''Manual License Verification Report''/License Verification System.
2. *OMB approval number:* 3150–0223.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 749.
5. *How often the collection is required or requested:* On occasion. Licensees subject to part 37 of title 10 of the *Code of Federal Regulations,* ''Physical Protection of Byproduct Material,'' license verification requirements must verify the legitimacy of the license with the issuing agency prior to transferring radioactive materials in quantities of concern.
6. *Who will be required or asked to respond:* Licensees are required to complete a license verification under the circumstances noted in 5 above. A License Verification System (LVS) is available to provide an electronic method for fulfilling this requirement. In cases where a licensee is unable to use the LVS to perform a verification, they will provide NRC Form 749 for manual license verification.
7. *The estimated number of annual responses:* 5,278 (589 manual license verification + 4,689 LVS).
8. *The estimated number of annual respondents:* 5,278 (589 manual license verification + 4,689 LVS).
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 297 (59 manual license verification + 238 LVS)
10. *Abstract:* When a licensee is unable to use the License Verification System to perform their license verification prior to transferring radioactive materials in quantities of concern, a manual process is available, in which licensees submit the NRC Form 749, ''Manual License Verification Report.'' The form provides the information necessary for the license issuing agencies to perform the verification on behalf of the licensee transferring the radioactive materials.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility? Please explain your answer.
2. Is the estimate of the burden of the information collection accurate? Please explain your answer.
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: July 25, 2023.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023–16021 Filed 7–27–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0177]

Information Collection: Licenses and Radiation Safety Requirements for Well Logging

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''Licenses and Radiation Safety Requirements for Well Logging.''

DATES: Submit comments by September 26, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0177. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the For **FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David C. Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0177 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0177.
- *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, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The supporting statement is available in ADAMS under Accession No. ML23033A481.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. 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.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without

charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0177, in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* 10 CFR part 39, Licenses and Radiation Safety Requirements for Well Logging.
2. *OMB approval number:* 3150–0130.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* Not applicable.
5. *How often the collection is required or requested:* Applications for new licenses and amendments may be submitted at any time (on occasion). Applications for renewal are submitted every 15 years. Reports are submitted as events occur.
6. *Who will be required or asked to respond:* Applicants for and holders of specific licenses authorizing the use of licensed radioactive material for well logging.
7. *The estimated number of annual responses:* 3,869 (26 reporting + 183 recordkeeping + 3,660 third-party disclosure).
8. *The estimated number of annual respondents:* 183 (22 NRC respondents + 161 Agreement States respondents).
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 41,047 (94 reporting + 38,666 recordkeeping + 2,287 third-party disclosure).
10. *Abstract:* Part 39 of title 10 of the *Code of Federal Regulations,* ''Licenses and Radiation Safety Requirements for Well Logging,'' establishes radiation safety requirements for the use of radioactive material for well logging. The information in the applications, reports and records is used by the NRC staff to ensure that the health and safety of the public is protected, and that licensee possession and use of source and byproduct material is in compliance with license and regulatory requirements.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility? Please explain your answer.
2. Is the estimate of the burden of the information collection accurate? Please explain your answer.
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: July 25, 2023.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023–16022 Filed 7–27–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0055]

Information Collection: DOE/NRC Form 740M, Concise Note; DOE/NRC Form 741, Nuclear Material Transaction Report; DOE/NRC Form 742, Material Balance Report; and DOE/NRC Form 742C, Physical Inventory Listing

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''DOE/NRC Form 740M, Concise Note; DOE/NRC Form 741, Nuclear Material Transaction Report; DOE/NRC Form 742, Material Balance Report; and DOE/NRC Form 742C, Physical Inventory Listing.''

DATES: Submit comments by September 26, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0055. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David C. Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0055 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0055. A copy

of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2023–0055 on this website.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.

• *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. 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.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2023–0055, in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* DOE/NRC Form 740M, Concise Note; DOE/NRC Form 741, Nuclear Material Transaction Report; DOE/NRC Form 742, Material Balance Report; and DOE/NRC Form 742C, Physical Inventory Listing.

2. *OMB approval number:* 3150–0057, 3150–0003, 3150–0004, and 3150–0058.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* DOE/NRC Form 740M, DOE/NRC Form 741, DOE/NRC Form 742, DOE/NRC Form 742C.

5. *How often the collection is required or requested:* DOE/NRC Form 741, Nuclear Material Transaction Report, will be collected whenever nuclear material is shipped or received into the Material Balance Area; DOE/NRC Form 742, Material Balance Report, will be collected on an annual basis; DOE/NRC Form 742C, Physical Inventory Listing, will be collected on an annual basis; DOE/NRC Form 740M, Concise Note, are used when needed.

6. *Who will be required or asked to respond:* Persons licensed to possess specified quantities of nuclear material and entities subject to the U.S.-IAEA Caribbean Territories Safeguards Agreement (INFCIRC/366) are required to respond as follows: Any licensee who ships, receives, or otherwise undergoes an inventory change of nuclear material is required to submit a DOE/NRC Form 741 to document the change. Additional information regarding these transactions shall be submitted through Form 740M, with Safeguards Information identified and handled in accordance with section 73.21 of title 10 of the *Code of Federal Regulations,* ''Requirements for the Protection of Safeguards Information.'' Any licensee who had possessed in the previous reporting period, at any one time and location, nuclear material in a quantity totaling one gram or more shall complete DOE/NRC Form 742. In addition, each licensee, Federal or State, who is authorized to possess, at any one time of location, one kilogram of foreign obligated source material, is required to file with the NRC an annual statement of source material inventory which is foreign obligated. Any licensee, who had possessed in the previous reporting period, at any one time and location, special nuclear material in a quantity totaling one gram or more shall complete DOE/NRC Form 742C.

7. *The estimated number of annual responses:*

DOE/NRC Form 740M: 67.
DOE/NRC Form 741: 28,031.
DOE/NRC Form 742: 327.
DOE/NRC Form 742C: 327.

8. *The estimated number of annual respondents:*

DOE/NRC Form 740M: 67.
DOE/NRC Form 741: 327.
DOE/NRC Form 742: 327.
DOE/NRC Form 742C: 327.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:*

DOE/NRC Form 740M: 50.
DOE/NRC Form 741: 35,039.
DOE/NRC Form 742: 1,145.
DOE/NRC Form 742C: 1,308.

10. *Abstract:* Persons licensed to possess specified quantities of nuclear material currently report inventory and transaction of material to the Nuclear Materials Management and Safeguards System via the DOE/NRC Forms: DOE/NRC Form 740M, Concise Note; DOE/NRC Form 741, Nuclear Material Transaction Report; DOE/NRC Form 742, Material Balance Report; and DOE/NRC Form 742C, Physical Inventory Listing. These forms provide data that is required under domestic and international safeguards regulations. This collection is being renewed to allow the U.S. to continue fulfilling its responsibilities as a participant in the U.S.-IAEA Safeguards Agreements and to satisfy various bilateral agreements for nuclear cooperation with other countries, and its domestic safeguards responsibilities.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility? Please explain your answer.

2. Is the estimate of the burden of the information collection accurate? Please explain your answer.

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

IV. Availability of Documents

The supplemental documents relate to each information collections are

identified in the following table and are available to interested persons in ADAMS.

Documents	ADAMS accession No.
Supporting statement and DOE/NRC Form 740M, ''Concise Note'' (3150–0057)	ML23138A347 and ML23139A259.
Support statement and DOE/NRC Form 741, ''Nuclear Material Transaction Report'' (3150–0003)	ML23138A350 and ML23139A261.
Supporting statement and DOE/NRC Form 742, ''Material Balance Report'' (3150–0004)	ML23138A348 and ML23139A262.
Supporting statement and DOE/NRC Form 742C, ''Physical Inventory Listing'' (3150–0058)	ML23138A349 and ML23139A263.
NUREG/BR–0006, Instructions for Completing Nuclear Material Transaction Reports, Revision 9	ML20240A155.
NUREG/BR–0007, Instructions for the Preparation and Distribution of Material Status Reports, Revision 8.	ML20240A181.

Dated: July 25, 2023.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023–16023 Filed 7–27–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of July 31, August 7, 14, 21, 28, September 4, 2023. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Wendy.Moore@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of July 31, 2023

There are no meetings scheduled for the week of July 31, 2023.

Week of August 7, 2023—Tentative

There are no meetings scheduled for the week of August 7, 2023.

Week of August 14, 2023—Tentative

There are no meetings scheduled for the week of August 14, 2023.

Week of August 21, 2023—Tentative

There are no meetings scheduled for the week of August 21, 2023.

Week of August 28, 2023—Tentative

There are no meetings scheduled for the week of August 28, 2023.

Week of September 4, 2023—Tentative

There are no meetings scheduled for the week of September 4, 2023.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: July 26, 2023.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2023–16227 Filed 7–26–23; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–194 and CP2023–198]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 1, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2023–194 and CP2023–198; *Filing Title:* USPS Request to Add Priority Mail Contract 782 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 24, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* August 1, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–16053 Filed 7–27–23; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34964; 812–15430]

RM Opportunity Trust and Rocky Mountain Private Wealth Management L.L.C.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act, as well as from certain disclosure requirements in rule 20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and sections 6–07(2)(a), (b), and (c) of Regulation S–X (''Disclosure Requirements'').

SUMMARY OF APPLICATION: The requested exemption would permit Applicants to enter into and materially amend subadvisory agreements with subadvisers without shareholder approval and would grant relief from the Disclosure Requirements as they relate to fees paid to the subadvisers.

APPLICANTS: RM Opportunity Trust and Rocky Mountain Private Wealth Management L.L.C.

FILING DATES: The application was filed on January 30, 2023, and amended on March 20, 2023 and June 23, 2023.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on August 18, 2023, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Andrew Davalla, Esq., Thompson Hine LLP, 41 South High Street, Suite 1700, Columbus, Ohio 43215–6101; Gabriel Gallegos, RM Opportunity Trust, 2245 Texas Dr., Suite 300, Sugar Land, TX 77479.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, or Lisa Reid Ragen, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' second amended application, dated June 23, 2023, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Dated: July 24, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–15989 Filed 7–27–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34963; File No. 812–15461]

T. Rowe Price OHA Select Private Credit Fund, et al.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of application for an order (''Order'') under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies (''BDCs'') and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

APPLICANTS: T. Rowe Price OHA Select Private Credit Fund, OHA Senior Private Lending Fund (U) LLC, OHA Private Credit Advisors, L.P., OHA Private Credit Advisors II, L.P., Oak Hill Advisors, L.P., Oak Hill Advisors (Europe), LLP, OHA (UK) LLP, OHA Artesian Customized Credit Fund I, L.P., OHA Black Bear Fund, L.P., OHA Credit Opportunities CA (C), L.P., OHA CA Customized Credit Fund, L.P.—OHA Senior Private Lending Fund (CA 3), OHA CA Customized Credit Fund, L.P.—OHA Senior Private Lending Fund (CA 5), OHA CA Customized Credit Fund, L.P.—OHA Co-Invest Opportunities Fund (CA), OHA CA Customized Credit Fund, L.P.—OHA Credit Solution Funds II (CA PARALLEL), OHA Credit Cadenza Fund, L.P., OHA–CDP ESCF, L.P., OHA BCSS SSD, L.P., OHA MPS SSD, L.P., OHA BCSS SSD II, L.P., OHA MPS SSD II, L.P., OHA Credit Origination Vehicle I, L.P., OHA Credit Solutions Fund ICAV, OHA Credit Solutions Fund, L.P., OHA Credit Solutions Fund (Offshore), L.P., OHA Credit Solutions II ICAV, OHA Credit Solutions Fund II, L.P., OHA Credit Solutions Fund II

(Offshore), L.P., OHA European Strategic Credit Master Fund (Euro), L.P., OHA KC Customized Credit Master Fund, L.P., OHA CLO Enhanced Equity Master Fund II, L.P., OHA CLO Enhanced Equity Master A Fund, L.P., OHA AD Dislocation Credit Fund II, L.P., OHA AD Customized Credit Fund (Europe), L.P., OHA AD Customized Credit Fund (International), L.P., OHA Real Asset Opportunities Master Fund I, L.P., OHA SA Customized Credit Fund, L.P., OHA Strategic Credit Master Fund II, L.P., OHA Strategic Credit Master Fund III, L.P., OHA Strategic Credit Fund III, L.P., OHA Strategic Credit Mini-Master Fund III (Offshore), L.P., OHA Structured Products Master Fund C, L.P., OHA Structured Products Master Fund D, L.P., OHA Structured Products Fund E, L.P., OHA Structured Products Master Fund II, L.P., OHA Tactical Investment Master Fund, L.P., OHA Tactical Investment Fund, L.P., OHA Tactical Investment Mini-Master Fund (Offshore), L.P., OHA TKY Customized Credit Fund, L.P., OHA TKY Customized Credit Fund II, L.P., OHA TKY Customized Credit Fund III, L.P., Aloha European Credit Fund, L.P., OHA Diversified Credit Strategies Fund (Parallel), L.P., OHA MD Opportunistic Credit Master Fund, L.P., OHA Enhanced Credit Strategies Master Fund, L.P., OHA Enhanced Credit Strategies Fund, L.P., OHA Enhanced Credit Strategies Mini-Master Fund, L.P., OHA Diversified Credit Strategies Tractor Master Fund, L.P., OHA LDN Customised Credit Master, L.P., OHA Diversified Credit Strategies Master Fund (Parallel II), L.P., OHA Centre Street Partnership, L.P., OHA CLO Strategies Master Fund, L.P., OHA Diversified Credit Strategies Fund Master, L.P., OHA Diversified Credit Strategies Fund, L.P., OHA Diversified Credit Strategies Fund Mini-Master, L.P., OHA UK Customized RMBS Master Fund, L.P., OHAT Credit Fund, L.P., OHA Delaware Customized Credit Fund-F, L.P., OHA Delaware Customized Credit Fund, L.P., OHA Dynamic Credit Orca Fund, L.P., OHA S.C.A., SICAV–SIF, OHA Finlandia Credit Fund, L.P., OHA Custom Multi-Sector Credit Master Fund, L.P., OHA AD Co-Investment Fund, L.P., OHA FD Custom Credit Fund, L.P., OHA HT Lev Loan Fund, L.P., OHA Credit Funding 1, Ltd., OHA Credit Funding 2, Ltd., OHA Credit Funding 3, Ltd., OHA Credit Funding 4, Ltd., OHA Credit Funding 5, Ltd., OHA Credit Funding 6, Ltd., OHA Credit Funding 7, Ltd., OHA Credit Funding 8, Ltd., OHA Credit Funding 9, Ltd., OHA Credit Funding 10, Ltd., OHA Credit Funding 11, Ltd., OHA Credit Funding 12, Ltd., OHA Credit Partners VII, Ltd., OHA Credit Partners IX, Ltd., OHA Credit Partners X–R, Ltd., OHA Credit Partners XI, Ltd., OHA Credit Partners XII, Ltd., OHA Credit Partners XIII, Ltd., OHA Credit Partners XIV, Ltd., OHA Credit Partners XV, Ltd., OHA Credit Partners XVI, Ltd., OHA Loan Funding 2013–1, Ltd., OHA Loan Funding 2013–2, Ltd., OHA Loan Funding 2015–1, Ltd., OHA Loan Funding 2016–1, Ltd., Oak Hill European Credit Partners III DAC, Oak Hill European Credit Partners IV, DAC, Oak Hill European Credit Partners V, DAC, Oak Hill European Credit Partners VI, DAC, Oak Hill European Credit Partners VII, DAC, Oak Hill European Credit Partners VIII, DAC, OHA Credit Solutions II Master Fund A SPV, L.P., OHA Credit Solutions II Master Fund B SPV, L.P., OHA Credit Solutions Master Fund I SPV, L.P., OHA Credit Solutions Master Fund II SPV, L.P., OHA Madison Loan Fund, L.P., OHA Falcon Fund, L.P., OHA KC Customized Credit Master Fund II, L.P., OHA TKY Customized Credit Fund IV, L.P., OHA Highlands, L.P., OHA Credit Funding 13, Ltd., OHA Credit Funding 14, Ltd., and OHA Credit Funding 15, Ltd.

FILING DATES: The application was filed on May 2, 2023.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on August 18, 2023, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Gregory S. Rubin, Esq., *GRubin@oakhilladvisors.com;* Richard Horowitz, Esq., *richard.horowitz@dechert.com.*

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, or Lisa Reid Ragen, Branch Chief, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' application, dated May 2, 2023, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at, at *http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Dated: July 24, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–15988 Filed 7–27–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97969; File No. SR–FICC–2023–010]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend and Restate the Cross-Margining Agreement between FICC and CM

July 24, 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 July 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 primarily by FICC. 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 consists of a proposed Amended and Restated Cross-Margining Agreement (the ''Restated Agreement'') between FICC and the Chicago Mercantile Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Inc. (''CME,'' collectively FICC and CME are referred to herein as the ''Clearing Organizations'' or ''Parties''). The proposed Restated Agreement would replace the current Cross-Margining Agreement between the Parties (the ''Existing Agreement'') [3] in its entirety and would be incorporated into the FICC Government Securities Division (''GSD'') Rulebook (''GSD Rules''). The proposed rule change does not require any changes to the text of the GSD Rules.[4] The proposed Restated Agreement was attached to this filing as Exhibit 5[sic].[5]

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

Executive Summary

Generally, the purpose of a cross-margining arrangement between two clearing organizations is to recognize the offsetting value of positions maintained by a member (or a member and its affiliate) at the two clearing organizations for margin purposes. Any resulting margin reductions create capital efficiencies for common members.

With regard to its cross-margining arrangement with CME, FICC is proposing to replace the Existing Agreement with the Restated Agreement, which would be incorporated into the GSD Rules. The purpose of the proposed Restated Agreement is to expand the scope and efficiency of the margin offsets that are available to clearing members of the two Clearing Organizations under the Existing Agreement, thus reducing their margin costs and allowing for more efficient capital usage by members. It would also streamline the default management and loss sharing processes by making clear that a joint liquidation would be the preferred method used by the Clearing Organizations in the event of a member default.

The key aspects of the proposed Restated Agreement are as follows (and are described in more detail below):

- Member participation: Participation in the cross-margining arrangement would continue to be voluntary and the criteria for participation under the proposed Restated Agreement would remain the same as it is under the Existing Agreement.[6]
- Eligible products: Additional CME products would become eligible under the proposed Restated Agreement,[7] allowing for greater potential margin offsets.
- Calculation of margin and margin reductions: The proposed Restated Agreement, would simplify the overall margin calculation process by eliminating the need for application of offset classes of securities and conversion of CME Eligible Products into equivalent GSD Treasury security products.[8] As a result, FICC believes, based on portfolio specific construction and market conditions, that these changes should generate margin savings in excess of those under the Existing Agreement. For example, based on a study comparing margin savings generated under the Existing Agreement and under the proposed Restated Agreement over the December 1, 2021 to November 30, 2022 period,[9] margin savings went from a range of 0.1% to 17.4% under the Existing Agreement, to a range of 0% to 36.6% under the proposed Restated Agreement.[10]
- Default management: Under the Existing Agreement, there is no express language requiring the Parties to attempt to conduct a joint liquidation. Whereas the proposed Restated Agreement would make clear that a joint liquidation is the preferred means of liquidation of cross-margining positions in the event of a member default. A joint liquidation is optimal because it maximizes the efficiency and effectiveness of the liquidation process by enabling each Clearing Organization to recognize reduced risk by offsetting risk positions together. The proposed Restated Agreement would also provide for the possible exchange of variation margin during the course of a joint liquidation. The exchange of variation margin during the course of a joint liquidation would be an improvement because instead of using other liquidity resources, it would enable a Party that has a mark-to-market loss arising out of cross-margining positions to use the variation margin gains on offsetting cross-margining positions held by the other Clearing Organization. The Existing Agreement has no such provisions and they would be added to improve the efficiency of the default management process.

FICC believes that the proposed expansion of the scope of CME Eligible Products (as defined below) available for cross-margining, the expansion of the scope and efficiency of the margin offsets that would be available to Cross-Margining Participants,[11] and the

[3] *See* Securities Exchange Act Release No. 49003 (Dec. 29, 2003), 69 FR 712 (Jan. 6, 2004) (SR–FICC–2003–10). For subsequent amendments to the Existing Agreement, *see* Securities Exchange Act Release Nos. 50790 (Dec. 3, 2004), 69 FR 71456 (Dec. 9, 2004) (SR–FICC–2004–16); 51178 (Feb. 9, 2005), 70 FR 7982 (Feb. 16, 2005) (SR–FICC–2005–03); 55217 (Jan. 31, 2007), 72 FR 5774 (Feb. 7, 2007) (SR–FICC–2006–16); 59498 (Mar. 4, 2009), 74 FR 10321 (Mar. 10, 2009) (SR–FICC–2009–01); 63986 (Feb. 28, 2011), 76 FR 12144 (Mar. 4, 2011) (SR–FICC–2010–09); and 72396 (June 16, 2014), 79 FR 35400 (June 20, 2014) (SR–FICC–2014–04).

[4] The Existing Agreement is incorporated in the GSD Rules *available at www.dtcc.com/legal/rules-and-procedures.aspx.* Unless otherwise specified, capitalized terms not defined herein shall have the meanings ascribed to them in the GSD Rules, which includes the Existing Agreement.

[5] Proposed Amended and Restated Cross-Margining Agreement by Fixed Income Clearing Corporation and Chicago Mercantile Exchange Inc.

[6] Currently cross-margining is only available for house (proprietary accounts) of CME clearing members that are also GSD Netting Members (either directly or through an affiliate).

[7] CME will add products to the proposed Restated Agreement as discussed in more detail below.

[8] References herein to ''offset classes'' refers to the grouping of securities by maturity for purposes of comparing those securities to CME Eligible Products whose price volatility is sufficiently correlated to determine whether long and short positions could be offset for purposes of determining margin requirements. Moving to security-level offsets would simplify the margin calculation process by removing the need to define and work with categories of securities.

[9] The study covered fifteen current Cross-Margining Participants' actual eligible FICC portfolios and simulated CME futures portfolios. FICC notes that margin savings will vary based on portfolio specific construction and market conditions.

[10] FICC notes, however, that cross-margining-related margin requirements account for only nineteen (19) percent of total margin requirements on average. FICC provided its analysis of the potential effects on margin requirements to the Commission in a confidential Exhibit 3 to File No. SR–FICC–2023–010. FICC provided responses to specific questions raised by Commission staff with regard to the conceptual review of margin reduction mechanics (*e.g.,* the applicable margin model, impact of proposed changes), the potential effect on other margin add-on charges, and how FICC intends to model Treasury futures. FICC also provided information pertaining to minimum and maximum margin reduction thresholds, potential effects of the proposed changes to margin calculations, and model backtesting.

[11] Pursuant to the proposed Restated Agreement, ''Cross-Margining Participant'' means a Joint Clearing Member that has become, or a Clearing Member that is part of a pair of affiliated Clearing Members each of which has become, a participant in the cross-margining arrangement between FICC and CME established pursuant to the proposed Restated Agreement. In the latter case, the term ''Cross-Margining Participant'' shall, where the

Continued

improvement in the efficiency and effectiveness of the default management process would enhance the cross-margining arrangement between FICC and CME. FICC believes that these enhancements would encourage greater utilization of centralized clearing, thereby facilitating systemic risk reduction.

Background

The Existing Agreement establishes a cross-margining arrangement [12] that allows FICC to consider the net risk of a participant's related eligible positions at FICC and CME when setting margin requirements of such positions.[13]

FICC proposes to enter into the proposed Restated Agreement which would, among other things, (i) generally expand the list of CME Eligible Products [14] available for cross-margining; (ii) remove certain existing appendices to the Existing Agreement that describe operational calculations and margin examples, and instead establish procedures to be included in a separate service level agreement, including certain other processes covering default management and changes to the lists of CME Eligible Products and FICC Eligible Products; (iii) revise and expand the scope and efficiency for calculating the margin reduction that would apply to a Cross-Margining Participant's Eligible Positions, including requiring more frequent exchange of Eligible Position information between CME and FICC that is used to collateralize risk exposures; (iv) add provisions describing default management in terms of (x) what steps would be taken in the event of a joint or separate liquidation of Defaulting Member's Eligible Positions, and (y) the exchange between the Parties of ''Variation Margin'' during the course of a joint liquidation (as defined in the proposed Restated Agreement) and loss sharing; and (v) revise certain other provisions that relate to the Clearing Organizations' contractual obligations to one another.[15]

Key Terms of the Existing Agreement

For purposes of additional background, the following is an overview of the key terms of the Existing Agreement.

1. Daily Margin Calculation

Under the Existing Agreement, the cross-margining calculation is not based upon FICC's VaR model. Rather, FICC and CME each separately hold and manage its own positions and collateral and independently determine the amount of margin that it would make available for cross-margining (after they each first conduct their own internal offsets). Once each Business Day, FICC and CME exchange files with respect to their members' positions that are eligible for cross-margining. FICC computes the amount by which a member's margin requirement can be reduced, by comparing that member's Eligible Positions and related margin requirements at GSD against those at CME. FICC and CME may then each reduce the amount of collateral that they collect to reflect the offsets between the Cross-Margining Participant's positions at FICC and its (or its Affiliate's) positions at CME.[16] Currently, the calculation of the offsets each Clearing Organization applies relies upon a methodology for the conversion of CME Eligible Products into equivalent GSD Treasury security products, as well as the use of minimum margin factors to measure interest rate exposure.

Additionally, the Clearing Organizations limit the potential margin reductions from cross-margining. Specifically, they apply a Disallowance Factor to a given CME and GSD Offset Class (an ''Offset Class'' being a grouping of securities by maturity).[17] Based on these Disallowance Factors, margin offsets are determined for each Offset Class. The sum of these margin offsets provides the member's Cross-Margining Reduction) at CME and at GSD.[18]

2. The Cross-Margining Guaranty and Reimbursement Obligation

As would also be the case under the proposed Restated Agreement, under the Existing Agreement, CME agrees to guaranty certain performance obligations of a Cross-Margining Participant to FICC, and FICC agrees to guaranty certain performance obligations of a Cross-Margining Participant to CME. These cross-margining Guaranties [19] are necessary to facilitate the Cross-Margining Arrangement and represent contractual commitments that each Clearing Organization has to the other.[20] Specifically, CME and FICC guarantee the Cross-Margining Participant's performance of its obligations to the other Clearing Corporation up to the amount of the member's Cross-Margining Reduction.[21] There is also a corresponding obligation of the Cross-Margining Participant to reimburse a Clearing Organization for any amounts paid under these Guaranties, which obligation is collateralized by the positions and margin of such Cross-Margining Participant held by the guarantor (CME or FICC, as applicable).

context requires, refer collectively to the pair of Cross-Margining Affiliates.

[12] Cross-margining arrangements are addressed in GSD Rule 43, *supra* note 4.

[13] *See* Section 5 of the Existing Agreement, ''Calculation of the Cross-Margining Reduction,'' *supra* note 4.

[14] *See* Exhibit A of the proposed Restated Agreement, ''CME Eligible Products.'' The CME Eligible Products are the following: CBT 26 2-year T-Note Futures, CBT 3YR 3-year T-Notes Futures, CBT 25 5-Year T-Note Futures, CBT 21 10-year T-Note Futures, CBT 17 U.S. Treasury Bond Futures, CBT TN Ultra Ten-Year T-Note Futures, CBT UBE Ultra U.S. Treasury Bond Futures, CBT TWE 20-Year U.S. Treasury Bond Futures, CBT 41 30 Day Federal Funds Futures, CME ED Eurodollar Futures, CME 1-Month Eurodollar Futures, CME SR1 One-Month SOFR Futures, CME SR3 Three-Month SOFR Futures. *Id.* Of the foregoing, the following CME products would be newly eligible under the Restated agreement: CBT 3YR 3-year T-Notes Futures, CBT TN Ultra Ten-Year T-Note Futures, CBT UBE Ultra U.S. Treasury Bond Futures, CBT TWE 20-Year U.S. Treasury Bond Futures, CBT 41 30 Day Federal Funds Futures, CME SR1 One-Month SOFR Futures, and CME SR3 Three-Month SOFR Futures. As noted above, certain Agency futures have not been used in the current arrangement and will not be carried into the proposed Restated Agreement. Specifically, the following CME products would no longer be eligible: the ''Five Year Agency'' and ''Ten Year Agency'' Futures identified in Appendix B of the Existing Agreement.

[15] These provisions include, but are not limited to, the confidentiality provisions and removing the arbitration provision.

[16] *See* Section 5 of the Existing Agreement, ''Calculation of the Cross-Margining Reduction,'' *supra* note 4.

[17] FICC and CME agree on the applicable Disallowance Factors from time to time. Examples of Disallowance Factor tables are included in Exhibit B of the Existing Agreement.

[18] Pursuant to the Existing Agreement, FICC and CME unilaterally have the right to (1) not reduce a Cross-Margining Participant's margin requirement by the Cross-Margining Reduction or (2) reduce it by less than the Cross-Margining Reduction. However, the Clearing Organizations may not reduce a Cross-Margining Participant's margin requirement by more than the Cross-Margining Reduction. *See* Section 5 of the Existing Agreement, ''Calculation of the Cross-Margining Reduction,'' *supra* note 4.

[19] Pursuant to the Existing Agreement, ''Guaranty'' is defined as ''the obligation of FICC to CME, or of CME to FICC, as in effect at a particular time with respect to a particular Cross-Margining Participant as set forth in Sections 8A and 8B of this Agreement. The term ''Guaranties'' refers to both the Guaranty of CME to FICC and the Guaranty of FICC to CME [. . .].'' *See* Section 1 of the Existing Agreement, ''Definitions,'' *supra* note 4.

[20] *See* Section 8A, ''Guaranty of FICC to CME,'' and Section 8B ''Guaranty of CME to FICC,'' of the Existing Agreement.

[21] Pursuant to the Existing Agreement, ''Cross-Margining Reduction'' is defined as ''the maximum amount by which a Cross-Margining Participant's margin requirement at one Clearing Organization may be reduced (irrespective of the amount by which it is actually reduced) as calculated in accordance with Section 5 of this Agreement. The Cross-Margining Reduction at each Clearing Organization is equal to the sum of the Margin Offsets at that Clearing Organization. There will always be a specified Cross-Margining Reduction that one Clearing Organization could be required to pay the other Clearing Organization. *See* Section 1 of the Existing Agreement, ''Definitions,'' *supra* note 4.

The provisions in the Existing Agreement covering the cross-margining Guaranties and the Cross-Margining Participant's Reimbursement Obligation would remain the same under the proposed Restated Agreement.[22]

3. Member Default Event

Under the Existing Agreement, there is no express language requiring the CME and FICC to conduct a joint liquidation at each Clearing Organization. However, there is language that provides that unless one of the Parties has elected to not liquidate, FICC and CME are required to use reasonable efforts to coordinate the liquidation of the positions covered by the Cross-Margining Arrangement so that offsetting or hedged positions can be closed out simultaneously.[23] There are also provisions covering the sharing of losses by CME and FICC in accordance with the terms of the cross-margining Guaranties.[24] The allocation of losses depends upon whether, as to each Party, the liquidation results in a Cross Margin Gain or Cross Margin Loss. A narrative description of the loss sharing process is set forth in Appendix I of the Existing Agreement titled, ''Loss Sharing Process.'' Additionally, after any payments are made pursuant to the Guaranties and loss sharing arrangement described above, if one of the Clearing Organizations computes an Aggregate Net Surplus, and the other an Aggregate Net Loss, the Existing Agreement includes an obligation for the Clearing Organization with the surplus to make a ''Maximization Payment'' [25] to the other Clearing Organization. There is also an associated ''Maximization Reimbursement Obligation'' [26] of the Defaulting Member to the Clearing Organization that is obligated to make a Maximization Payment. This provision enables excess collateral of a Defaulting Member to initially remain with the Clearing Organizations, if needed, to cover losses.

A. The Proposed Restated Agreement

Overview

As noted above, FICC proposes to enter into the proposed Restated Agreement with CME. The proposed Restated Agreement is primarily designed to, among other things, (i) expand the scope of CME Eligible Products, (ii) expand the scope and efficiency of the margin offsets that are available to Cross-Margining Participants, thus allowing for more efficient capital usage; (iii) improve the efficiency and effectiveness of the default management and loss sharing process; and (iv) as a result of such enhancements, further encourage greater utilization of centralized clearing, thereby facilitating systemic risk reduction. The material provisions of the proposed Restated Agreement are described in detail below.

Key Elements of the Proposed Restated Agreement

Proposal To Expand the List of CME Eligible Products

Pursuant to the proposed Restated Agreement, the list of CME products eligible for cross-margining would be amended to include an expanded list of interest rate futures that are cleared by CME.[27] Under the Existing Agreement, the interest rate futures and options contracts eligible for cross-margining are Eurodollar contracts listed on CME and certain U.S. Treasury contracts listed on the Chicago Board of Trade Incorporated (''CBOT'').[28] FICC understands that the purpose of the change in CME Eligible Products is to provide Cross-Margining Participants cross-margin benefits that better align with today's CME Interest Rates futures market structure. The original list of CME's product set does not include several CME Interest Rate futures contracts which have now become benchmark products for hedging in the broader U.S. Treasury Markets, for example the CBT TN Ultra Ten-Year T-Note Futures and the CBT UBE Ultra U.S. Treasury Bond Futures. The list would be expanded to include additional U.S. Treasury futures, which have been added to CME's suite of U.S. Treasury products since the Existing Agreement was established, and SOFR futures (which CME launched as a complement to and eventual replacement for Eurodollar futures). The list of FICC Eligible Products [29] would be comprised of U.S. Treasury securities which refers to Treasury notes and bonds, and would be set forth on Exhibit B to the proposed Restated Agreement, titled ''FICC Eligible Products.''

FICC and CME would each establish on their books and records a ''Cross-Margining Account'' [30] for each participating member that would identify for their respective member the transactions, positions and margin that are subject to the proposed Restated Agreement.[31]

Proposal To Establish a Separate Service Level Agreement

The proposed Restated Agreement also would include provisions intended to improve the procedures, information sharing, and documented steps covering the default management process between the Parties. Specifically, under the proposed Restated Agreement, Section 6(a) (Daily Procedures for Exchange of Portfolio Cross-Margining Data), FICC and CME would agree to put in place a separate service level agreement between the Parties (''SLA''), which would include specified timeframes, to exchange on each day on which trading in Eligible Products is conducted and on which FICC and CME both conduct money settlements (referred to as a ''Business Day''), such information as may reasonably be required in order to value the positions in the Cross-Margining Accounts and to

[22] The ''Reimbursement Obligation'' is defined under the Existing Agreement as ''the obligation, as set forth in Section 7(h) of this Agreement, of a Cross-Margining Participant to a Clearing Organization that is obligated to make a payment on behalf of such Cross-Margining Participant or its Cross-Margining Affiliate pursuant to a Guaranty.''

[23] Section 7(a) of the Existing Agreement, ''Suspension and Liquidation of a Cross Margining Participant,'' states in pertinent part that, ''Except to the extent that one Clearing Organization has determined unilaterally not to liquidate, FICC and CME shall use reasonable efforts to coordinate the liquidation of the Used Positions so that offsetting or hedged positions can be closed out simultaneously.''

[24] *See* Sections 8A, ''Guaranty of FICC to CME'' and 8B, ''Guaranty of CME to FICC,'' of the Existing Agreement, *supra* note 4.

[25] Pursuant to the Existing Agreement, ''Maximization Payment'' means the additional payment(s), if any, that are required to be made by FICC to CME, or vice versa, pursuant to Section 8C of this Agreement after payments are made under the Guaranty. *See* Section 8C of the Existing Agreement, ''Maximization Payment,'' *supra* note 4.

[26] Pursuant to the Existing Agreement, ''Maximization Reimbursement Obligation'' means the obligation, as set forth in Section 8C(d), of a Cross-Margining Participant to a Clearing Organization that is obligated to make a Maximization Payment on behalf of such Cross-Margining Participant or its Cross-Margining Affiliate pursuant to a Maximization Payment Guaranty. *Id.*

[27] *See* footnote 12 and Exhibit A (CME Eligible Products) of the proposed Restated Agreement.

[28] *Supra* note 4.

[29] *See* Exhibit B (FICC Eligible Products) of the proposed Restated Agreement. In the Existing Agreement, certain Agencies are also included, but these products have been rarely used in the current arrangement and will not be carried into the proposed Restated Agreement. Specifically, the following FICC products will no longer be eligible for cross-margining with CME products: Treasury bills (maturity of one year or less) and Treasury Inflation-Protected Securities (TIPS).

[30] Pursuant to the proposed Restated Agreement, ''Cross-Margining Account'' means with respect to a Clearing Member of FICC, the transactions, positions and margin maintained in the Account (as defined in the GSD Rules) at FICC that are identified in FICC's books and records as being subject to the proposed Restated Agreement, and, with respect to a Clearing Member of CME, means a cross-margining account that is carried on the books of CME for such Clearing Member that is limited to the transactions, positions and margin of the Proprietary Accounts of such Clearing Member that are subject to the proposed Restated Agreement.

[31] *See* Section 1, ''Definitions.'' of the proposed Restated Agreement.

calculate the Cross-Margin Requirement for each Cross-Margining Participant.[32] The SLA would also include operational processes consistent with the default management provisions set forth in the proposed Restated Agreement. The Parties would update the SLA as their operational needs evolve over time.

Further, in order to streamline and ensure coordination between the Clearing Organizations regarding any changes to the products eligible for cross-margining, the SLA would include the process and criteria under which FICC or CME may make a request to the other Clearing Organization to modify its list of CME Eligible Products or FICC Eligible Products, as applicable. Such process would include that only those products that do not require a change to FICC's or CME's margin model would be permitted to be subject to this process,[33] and that any modifications would require the mutual written consent of both Parties.

The SLA would replace certain appendices [34] to the Existing Agreement, which would no longer be applicable under the terms of the proposed Restated Agreement. Operational processes and related information would instead be incorporated into the SLA, which would reflect the process changes necessitated by the proposed changes to the calculation of the cross-margin requirements and loss sharing arrangements under the proposed Restated Agreement (described below).

Proposed Changes to the Calculation of Cross-Margin Requirements

The proposed Restated Agreement would adopt a different methodology applicable to the daily calculation of a Cross-Margining Participant's Cross-Margin Requirements. The purpose of the proposed changes is to expand the scope and efficiency of the margin offsets that are available to clearing members of GSD and CME under the Existing Agreement, thus reducing their margin costs and allowing for more efficient capital usage. This is because by including new Eligible Products, such as Ultras and 20-Year Treasury Futures, CME and FICC are able to reduce the risk exposure at more points of the interest rate curve. The greater margin efficiency is realized by using the security level sensitivity to calculate the VaR charge, instead of what is done today, which is to use the net market value of the Eligible Products in a similar maturity bucket. The proposed new methodology, which is based on offsetting Eligible Positions at FICC and CME, would also simplify the overall margin calculation process by eliminating the need to group securities by maturity and the conversion of CME Eligible Products into equivalent GSD Treasury security products to facilitate such grouping.[35]

Under the Existing Agreement in order to determine the amount of margin it collects, each Clearing Organization separately manages its own positions and collateral, and independently determines the ''Residual Margin Amount'' that remains after each Clearing Organization conducts its own internal offsets.[36] This process requires each Clearing Organization to apply Offset Classes and convert its Eligible Products into equivalent Eligible Products of the other Clearing Organization. The proposed Restated Agreement, in contrast, would provide that FICC and CME each treat a participant's relevant products as a single portfolio (the ''Combined Portfolio'').[37] Treatment as a Combined Portfolio provides the ability for the Clearing Organizations to assess risk at a security level and eliminates the need to use separate margin calculations and apply offset classes and conversions of Eligible Products.

The proposed Restated Agreement would provide that FICC and CME would independently determine the percentage of margin savings that would be derived for a Cross-Margining Account [38] as if it was a Combined Portfolio. First, pursuant to Section 4(a) of the proposed Restated Agreement, each Clearing Organization would calculate the difference between the sum of the (x) ''Stand-Alone Margin Requirements'' [39] for the CME Eligible Products and FICC Eligible Products, and (y) the Combined Portfolio of CME Eligible Products and FICC Eligible Products. Based on the above, each Clearing Organization would determine the percentage of margin savings that would be derived by it by margining the Combined Portfolio.

Second, the Clearing Organizations would compare their respective margin savings percentages with one another, and, if the lesser of such margin savings percentage exceeds the minimum margin offset threshold [40] agreed by the Clearing Organizations, each Clearing Organization would reduce the amount of margin required to be deposited by a Cross-Margining Participant by the lower of such margin savings percentages (referred to as the Cross-Margining Participant's ''Margin Reduction''). If the respective margin savings percentages of both Clearing Organizations are less than the agreed

[32] FICC provided the SLA in a confidential Exhibit 3 to File No. SR–FICC–2023–010.

[33] Proposed changes that require a margin model change would require an amendment to the proposed Restated Agreement and regulatory review and approval, as applicable.

[34] The specific Appendices to be removed from the Existing Agreement in accordance with these proposed changes are: Appendix B (Example of Disallowance Factor Schedule Applicable to CME Eligible Products and FICC Eligible Products); Appendix C1 (CME Calculation Process to Convert Eurodollar Futures and Options into Treasury Cash Equivalents and to Determine the Applicable CME Offset Classes); Appendix C2 (Conversion of Futures Contracts into Treasury Equivalents); Appendix F (Methodology for Allocation of Margin Based on Order of Increasing Disallowances); Appendix G (Computation of Cross-Margin Reduction); Appendix H (Data Elements to Be Provided by CME and Returned by FICC); Appendix I (Loss Sharing Process); Appendix J (Examples of Loss Sharing Process); and Appendix K (Timing of the Effectiveness of the Base Amount of the Guaranty). *See* Existing Agreement, *supra* note 4.

[35] Grouping securities by maturity along with the conversion of products may, in some cases, previously have resulted in overestimating the margin credit that should be provided to a Cross-Margining Participant because such grouping and conversion of products is less precise than measuring risk at the individual security level. However, such overestimation of margin credit is no longer an issue under the Existing Agreement, as it has been previously addressed by FICC through a process of daily surveillance in which any instances of any excess margin credits are identified and remediated, prior to submission to the Cross-Margining Participant of their margin reduction amount. FICC provided its assessment of the excess margin credit issue as well as a description of how it remediated the issue in a confidential Exhibit 3 to File No. SR–FICC–2023–010.

[36] *See* Section 5 of the Existing Agreement, ''Calculation of the Cross-Margining Reduction,'' *supra* note 4.

[37] *See* Section 4(a) of the proposed Restated Agreement (Calculation of Cross-Margining Requirements).

[38] *Id.* Also, FICC would utilize the same Value-at Risk (''VaR'') calculation method for the FICC Eligible Positions (*see* GSD Rule 4, *supra* note 4) and the CME Eligible Position (*i.e.,* the same VaR engine for the cash positions and the futures positions).

[39] Pursuant to the proposed Restated Agreement, ''Stand-Alone Margin Requirement'' means, as to each Clearing Organization, the margin requirement that such Clearing Organization would calculate with respect to a Cross-Margining Account it carries as if calculated by such Clearing Organization without regard to this Agreement or another cross-margining agreement.'' FICC would calculate this requirement using a its VaR methodology, applying it also to the standalone CME portfolio, and the Combined Portfolio.

[40] The Clearing Organizations would set the initial margin offset threshold at 1% (which may be subject to change) to prevent any negatively correlated portfolios and/or portfolios with little to no correlation to receive cross-margin benefit, which requires the operational coordination between the two Clearing Organizations in the event of Member default, and they would reserve the right to amend the threshold from time to time. Changes to the minimum margin offset threshold would be subject the requirements of the Clearing Agency Model Risk Management Framework, which addresses review of margin methodologies, such as the model that would be used for the proposed Restated Agreement.

upon margin offset threshold, no Margin Reduction would be applied.[41]

Lastly, the Parties would agree that the Cross-Margin Requirement with respect to a Cross-Margining Participant may not be changed without the consent of both Clearing Organizations. Further, CME and FICC would agree to cause CME Eligible Products and FICC Eligible Products, respectively, to be cross-margined solely pursuant to the proposed Restated Agreement, and neither CME nor FICC would permit such Eligible Products to be subject to any other cross-margining arrangement.[42] This feature will prevent underlying Eligible Products from being double-counted to reduce margin in another cross-margining program or account, and ensure that each Clearing Organization will have the appropriate amount of margin to satisfy obligations if a default occurs.

Proposed Changes Related to Default Management

1. The Liquidation Process—Overview

Like the Existing Agreement, the proposed Restated Agreement would provide that either FICC or CME may at any time exercise any rights under its Rules to terminate, suspend or otherwise cease to act for or limit the activities of a Cross-Margining Participant (a ''Defaulting Member''). Upon such event (a ''Default Event''), the Clearing Organization that has taken the foregoing actions (referred to as the ''Liquidating CO'') would be required to immediately notify the other Clearing Organization (referred to for purposes of this provision of the proposed Restated Agreement as the ''other Clearing Organization'') of the actions it has taken.[43] Under the Existing Agreement, absent certain exceptions, both Clearing Organizations are required to promptly and prudently liquidate Eligible Positions of the Defaulting Member. However, in contrast to the Existing Agreement, the proposed Restated Agreement would provide a different approach to the liquidation process by delineating a sequence of coordinated steps the Clearing Organizations are required to take depending upon whether or not the other Clearing Organization elects to treat the Cross-Margining Participant as a Defaulting Member under its Rules. The objective of this proposed new approach is to improve the efficiency and effectiveness of the default management process and lead to greater coordination between the Clearing Organizations.

One Clearing Organization Elects To Treat the Member as a Defaulting Member and the Other Clearing Organization Does Not

The proposed Restated Agreement includes provisions to cover the scenario where one Clearing Organization (the ''Liquidating CO'') elects to treat the Cross-Margining Participant as a Defaulting Member, and the other Clearing Organization (the Non-Liquidating CO'') does not.[44] Generally, the Non-Liquidating CO would provide the Liquidating CO with cash to cover the margin reduction provided under the proposed Restated Agreement. The purpose of such cash payment is to align the Defaulting Member's margin resources with its exposures at the Liquidating CO.

Specifically, the Non-Liquidating CO would be obligated to require the Defaulting Member to pay the Non-Liquidating CO in immediately available funds the sum of (x) its Margin Reduction at the Liquidating CO, and (y) its Margin Reduction at the Non-Liquidating CO, within one hour of demand. If the Non-Liquidating CO receives this payment in full from the Defaulting Member or otherwise, such as from the Non-Liquidating CO, within such timeframe, the Non-Liquidating CO would be required, within one hour of such receipt, to pay the Liquidating CO in immediately available funds the Defaulting Member's Margin Reduction at the Liquidating CO. After the Non-Liquidating CO makes such payment in full, then, it would have no further obligations to the Liquidating CO with respect to the Default Event. If the Non-Liquidating CO does not receive this payment in full from the Defaulting Member or otherwise, within one hour of such receipt or other agreed upon timeframe, then the Non-Liquidating CO would cease to act for the Defaulting Member, and the provisions of the proposed Restated Agreement pertaining to the scenario where both Clearing Organizations treat the Member as a Defaulting Member (discussed immediately below) would apply.[45]

3. Both Clearing Organizations Elect To Treat the Member as a Defaulting Member

If both Clearing Organizations determine to treat the Cross-Margining Participant as a Defaulting Member, there are three possible liquidation routes under the proposed Restated Agreement the Clearing Organizations can take regarding a Defaulting Member. The following liquidation alternatives would be determined after evaluating the portfolio exposure, resources, hedging cost and approved through DTCC's default management governance process.

First, the Clearing Organizations would attempt in good faith to conduct a joint liquidation in which the Parties jointly transfer, liquidate or close out the Eligible Positions in the Cross-Margining Accounts carried for the Defaulting Member (the ''Relevant Positions'').[46]

Second, in the event a Clearing Organization determines that jointly transferring, liquidating or closing out the Relevant Positions is not feasible or advisable, the proposed Restated Agreement provides that either Clearing Organization may offer to buy-out the Relevant Positions, and any remaining collateral relating thereto, at the last settlement price for such positions immediately prior to the time such offer is made.[47]

Finally, if a Clearing Organization determines that it is not advisable or feasible to resolve the Default Event pursuant to the first or second options above, the proposed Restated Agreement provides that it shall so notify the other Clearing Organization. In such event, each Clearing Organization would promptly transfer, liquidate or otherwise close out the Eligible Positions in the Cross-Margining Account carried for the Defaulting Member at that Clearing Organization.[48]

Each of the foregoing liquidation routes is described in detail below.

a. Joint Liquidation

A joint liquidation is optimal because it maximizes the efficiency and effectiveness of the liquidation process by enabling each Clearing Organization to recognize reduced risk by liquidating offsetting risk positions together. To the extent there is a joint liquidation, the proposed Restated Agreement provides for an exchange of variation margin during the course of the liquidation and loss sharing following liquidation. The exchange of variation margin during the liquidation process would be designed to address scenarios in which either CME or FICC has a payment obligation arising out of cross-margin positions

[41] *Supra* note 36.

[42] *See* Section 4(b) of the proposed Restated Agreement (Calculation of Cross-Margining Requirements).

[43] *See* Section 7(a) of the proposed Restated Agreement (Suspension and Liquidation of Cross-Margining Participant).

[44] *Id.*

[45] *Id.*

[46] *See* Section 7(b)(i) of the proposed Restated Agreement.

[47] *See* Section 7(b)(ii) of the proposed Restated Agreement.

[48] *See* Section 7(b)(iii) of the proposed Restated Agreement.

that could be covered by the variation margin gains on offsetting cross-margin positions held by the other Clearing Organization. The Existing Agreement has no such provisions, and they would be added to the proposed Restated Agreement to improve the efficiency of the default management process. Following liquidation, payments made as part of a cross-guaranty between FICC and CME would be designed to minimize total credit losses across the Clearing Organizations related to cross-margin positions. The Existing Agreement also includes a cross-guaranty and loss-sharing provisions but is determined based upon a significantly more complex formula for calculating closeout gains and losses post-liquidation than are included in the proposed Restated Agreement.

VM Margin: The exchange of Variation Margin [49] during the joint liquidation process under certain circumstances would be as follows:

- If, on any Business Day during the liquidation of a Defaulting Member, a Clearing Organization has a Cross-Margin VM Gain [50] and an Other VM Gain [51] with respect to a Defaulting Member (such Clearing Organization being the ''VM Payor''), and the other Clearing Organization has a Cross-Margin VM Loss with respect to a Defaulting Member (such Clearing Organization being the ''VM Receiver''), the proposed Restated Agreement provides that the VM Payor would make a payment to the VM Receiver in the amount of the VM Receiver's Cross-Margin VM Loss, but not to exceed the VM Payor's Cross-Margin VM Gain. The proposed Restated Agreement provides, however, that the VM Payor will not be required to make such payment to the extent it reasonably determines that the liquidation of the Defaulting Member will result in a loss to it following liquidation [52] or that the VM Receiver will be limited by statute, court order or other applicable law from making the payment.[53]
- If, on any Business Day during the liquidation of a Defaulting Member, a Clearing Organization has a Cross-Margin VM Gain and an Other VM Loss (such Clearing Organization being the ''VM Payor'') and the sum of these amounts is positive (hereinafter ''Aggregate VM Gain''), and the other Clearing Organization has a Cross-Margin VM Loss with respect to a Defaulting Member (such Clearing Organization being the ''VM Receiver''), the proposed Restated Agreement provides that the VM Payor will make a payment to the VM Receiver in the amount of the VM Receiver's Cross-Margin VM Loss, but not to exceed the VM Payor's Aggregate VM Gain unless the Clearing Organizations otherwise agree that the VM Payor shall pay a higher amount. The proposed Restated Agreement provides, however, that the VM Payor will not be required to make such payment to the extent it reasonably determines that the liquidation of the Defaulting Member will result in a loss to it following liquidation or that the VM Receiver will be limited by statute, court order or other applicable law from making the payment.[54]
- If, on any Business Day during the liquidation of a Defaulting Member, a Clearing Organization has a Cross-Margin VM Gain and an Other VM Loss with respect to a Defaulting Member and the sum of these two amounts is negative, and the other Clearing Organization has a Cross-Margin VM Loss with respect to the Defaulting Member, the proposed Restated Agreement states that neither Clearing Organization will be required to make a payment unless otherwise agreed to by the Parties.[55]

Following the liquidation of a Defaulting Member, the VM Receiver must repay any variation margin payments it received from the VM Payor.[56] Such repayment obligation, however, shall be netted and offset against the VM Payor's payment obligation pursuant to the loss sharing provisions in Section 7 of the Agreement, discussed immediately below.[57]

Loss Sharing: The sharing of losses following a joint liquidation would be calculated under the proposed Restated Agreement as follows:

- Each Clearing Organization would calculate its individual ''Net Gain'' or individual ''Net Loss,'' if any, taking into account solely its individual ''Collateral on Hand'' and its individual ''Liquidation Cost.'' These terms have specific meanings in the proposed Restated Agreement as follows:
  - ○ The proposed Restated Agreement defines ''Net Gain'' or ''Net Loss'' to mean, with respect to the Cross-Margining Account of a Defaulting Member held at a Clearing Organization, the sum of the (i) Collateral on Hand; and (ii) Liquidation Cost. If such amount is a positive number, a Clearing Organization shall be deemed to have a ''Net Gain'' with respect to the relevant account and if such amount is a negative number, a ''Net Loss.'' [58]
  - ○ The proposed Restated Agreement defines ''Collateral on Hand'' to mean the margin held with respect to the Cross-Margining Account of a Defaulting Member immediately prior to the time at which the Default Event occurred.[59]
  - ○ The proposed Restated Agreement defines ''Liquidation Cost'' to mean the aggregate gain or loss realized in the liquidation, transfer, or management of Eligible Positions held by the Clearing Organization in the Cross-Margining Account of the Defaulting Member, including, without limitation, (i) any Variation Margin [60] owed to the Defaulting Member by the Clearing Organization and unpaid (which shall constitute gains); (ii) any Variation Margin owed by the Defaulting Member

[49] The proposed Restated Agreement defines ''Variation Margin'' to mean, with respect to the Cross-Margining Account of a Defaulting Member, the amounts owed to or by the Defaulting Member, as applicable, by or to a Clearing Organization due to the mark-to-market movement arising from or related to the positions in the Defaulting Member's Cross-Margining Account at CME or the Defaulting Member's Cross-Margin Positions at FICC from the time immediately prior to a Default Event until the time the liquidation of a Defaulting Member is complete for both CME and FICC. *See* Section 1 (Definitions) of the proposed Restated Agreement.

[50] The proposed Restated Agreement defines ''Cross-Margin VM Gain'' or ''Cross-Margin VM Loss'' to mean, with respect to the Cross-Margining Account of a Defaulting Member, the amounts owed to or by the Defaulting Member, as applicable, by or to a Clearing Organization due to the mark-to-market movement arising from or related to the positions in the Defaulting Member's Cross-Margining Account at CME or the Defaulting Member's Cross-Margin Positions at FICC. *See* Section 1 (Definitions) of the proposed Restated Agreement.

[51] The proposed Restated Agreement defines ''Other VM Gain'' or ''Other VM Loss'' to mean, (x) with respect to a Defaulting Member of FICC, the amounts owed to or by the Defaulting Member, as applicable, by or to FICC due to the Funds-Only Settlement payments (as defined in the GSD Rules) arising from or related to the mark-to-market movement of the portion of the Defaulting Member's GSD Accounts that does not include the positions in the Cross-Margining Account at FICC; and (y) with respect to a Defaulting Member of CME, the amounts owed to or by the Defaulting Member, as applicable, by or to CME arising from or related to the mark-to-market movement of the positions (excluding positions in IRS Contracts (as defined under CME's Rules)) or positions that are commingled with positions in IRS Contracts pursuant to CME Rule 8G831 in the Defaulting Member's accounts (but excluding its Cross-Margining Account) at CME. *See* Section 1 ''Definitions'' of the proposed Restated Agreement.

[52] *See* discussion of ''Net Loss'' below.

[53] *See* Section 7(c)(v)(1) of the proposed Restated Agreement.

[54] *See* Section 7(c)(v)(2) of the proposed Restated Agreement.

[55] *See* Section 7(c)(v)(3) of the proposed Restated Agreement.

[56] A VM Receiver will only be required to pay such amount to the VM Payor if it is not prohibited by statute, court order or other applicable law from making such payment.

[57] *See* Section 7(c)(vi) of the proposed Restated Agreement.

[58] *Supra* note 31.

[59] *Id.*

[60] The exchange of Variation Margin during a joint liquidation is discussed above.

to the Clearing Organization and unpaid (which shall constitute losses); and (iii) any reasonable costs, fees and expenses incurred by the Clearing Organization in connection therewith.[61]

The Clearing Organizations would determine whether the sum of the individual Net Gains and Net Losses results in a combined Net Gain or Net Loss. The Clearing Organizations would then allocate any combined Net Gain or Net Loss pro rata based on each Clearing Organization's ''Share of the Cross-Margining Requirement'' [62] (its ''Allocated Net Gain'' or ''Allocated Net Loss,'' as applicable).[63]

If a Clearing Organization has an individual Net Gain that is less than its Allocated Net Gain, an individual Net Loss that is greater than its Allocated Net Loss or an individual Net Loss when the joint liquidation resulted in a combined Net Gain (the ''worse-off party'') then the other Clearing Organization shall be required to pay to the worse-off party an amount equal to the difference between the worse-off party's individual Net Gain or Net Loss and its Allocated Net Gain and Allocated Net Loss.[64]

b. Buy-Out

As noted above, in the event a Clearing Organization determines that jointly transferring, liquidating, or closing out the Relevant Positions is not feasible or advisable, for example if a Member's portfolio has changed materially since the last cross margin calculation, any Clearing Organization (''X'') may, upon written notice to the other Clearing Organization (''Y''), offer to buy-out the Relevant Positions at the last settlement price for such positions immediately prior to the time such offer is made and any remaining collateral relating thereto from Y (which Y may accept or reject in its sole discretion). The value of the remaining collateral would reflect the last available price based on market conditions, which for FICC, would be obtained from its pricing vendor(s). Upon reviewing exposures of the defaulter's portfolio, the hedge or risk reduction that may be achieved through a buy-out and comparing the results to the available risk budget, or defaulter's margin, an economic decision would be made in consideration of a separate liquidation option. If such a buy-out occurs, then Y shall have no further obligations to X with respect to the Default Event. For the avoidance of doubt, the loss sharing provisions set forth in Default Management section of the Agreement would not apply.[65]

c. Separate Liquidations

If a Clearing Organization determines that it is not advisable or feasible to resolve the Default Event pursuant to a joint liquidation or a buy-out, it would notify the other Clearing Organization. In such event, each Clearing Organization shall promptly transfer, liquidate or otherwise close out the Eligible Positions in the Cross-Margining Account carried for the Defaulting Member at that Clearing Organization.[66]

The loss sharing provisions that would be applicable under this separate liquidation scenario would be as follows:

- If, with respect to the Cross-Margining Account of the Defaulting Member, both Clearing Organizations have a Net Gain or a Net Loss, no payment will be due to either Clearing Organization in respect of the Guaranties between FICC and CME referred to in Sections 8 and 9 of the proposed Restated Agreement.[67]
- If either Clearing Organization has a Net Loss (the ''worse-off party'') and the other has a Net Gain (the ''better-off party''), then the better-off party will pay the worse-off party the lesser of the Net Gain or the absolute value of the Net Loss.[68]

The proposed Restated Agreement would not retain language included in the Existing Agreement covering the fact that each Clearing Organization's calculation of Available Margin (as defined in the Existing Agreement) for loss sharing purposes is subject to such Clearing Organization's prior satisfaction of its obligations under the other cross-margining agreements and loss sharing arrangements that it may have listed on Appendix A.[69] FICC and the CME are proposing to eliminate this priority which means that all margin amounts calculated pursuant to the proposed Restated Agreement would be available to cover a Clearing Organization's losses. As a result of this change, the proposed Restated Agreement would not include the priority provision nor the related Appendix A.

Other Terms of the Proposed Restated Agreement

The proposed Restated Agreement also would continue to include a number of other provisions intended to either generally maintain the usual and customary terms for an agreement of this type included in the Existing Agreement or update them to better reflect the Clearing Organizations' course of dealing and industry practices. For example, similar to the Existing Agreement,[70] the proposed Restated Agreement would include a confidentiality provision reflecting each Clearing Organization's obligation not to disclose to a third-party the other Clearing Organization's Confidential Information except under certain circumstances. Under the proposed Restated Agreement, this provision would be updated to reflect that the Clearing Organizations' confidentiality obligations would survive three (3) years after the termination of the proposed Restated Agreement. In addition, this provision would state that an actual or threatened violation by a Clearing Organization of its confidentiality obligations would entitle the other Clearing Organization to seek immediate injunctive and other equitable relief, without the necessity of proving monetary damages or posting bond or other security. The updated confidentiality provision included in the proposed Restated Agreement (Section 10, Confidentiality) would replace the similar provision in the Existing Agreement.

Additionally, the proposed Restated Agreement would retain the indemnification provision included in the Existing Agreement, but for purposes of clarity and simplification, would revise the language in that section that describes the administrative process between the Clearing

[61] *Supra* note 31.

[62] Under the proposed Restated Agreement, the ''Share of the Cross-Margining Requirement'' in respect of a Clearing Organization is the ratio of (i) the margin required for the Cross-Margining Account at the Clearing Organization after taking into account the Margin Reduction to (ii) the total Cross-Margining Requirement across both Clearing Organizations.

[63] *See* Section 7(c)(ii) of the proposed Restated Agreement.

[64] *See* Section 7(c)(iii) of the proposed Restated Agreement.

[65] *See* Section 7(b)(ii) of the proposed Restated Agreement.

[66] *See* Section 7(b)(iii) of the proposed Restated Agreement.

[67] *See* Section 7(d) of the proposed Restated Agreement.

[68] *See* Sections 7(e) and (f) of the proposed Restated Agreement. The proposed Restated Agreement provides, however, that the better-off party shall only be required to pay the amount of such Net Loss to the worse-off party if it is not prohibited by statute, court order or other applicable law from making such payment.

[69] *See* Appendix A to the Existing Agreement: (1) with respect to the CME, the cross-margining agreement between the CME, The Options Clearing Corporation (''OCC'') and New York Clearing Corporation dated June 1993 as amended from time to time; and (2) with respect to FICC, the multilateral netting contract and limited cross-guaranty agreement among The Depository Trust Company, FICC, National Securities Clearing Corporation and OCC dated January 1, 2003, *supra* note 4.

[70] *See* Section 9 of the Existing Agreement, ''Confidentiality,'' *supra* note 4.

Organizations regarding notification and control of the defense of an indemnification claim.[71]

The proposed Restated Agreement would include some revisions to the language in the Existing Agreement and would add a provision covering the limitation of liability between FICC and CME. Specifically, a clause would be added to provide that, to the fullest extent permitted under applicable law, and other than with respect to a Clearing Organization's breach of its confidentiality obligations, in no case would either Clearing Organization be liable to the other for any indirect, consequential, incidental, punitive, exemplary or special damages.[72] The purpose of this new provision is to provide clear and specific terms regarding each Clearing Organization's potential liability to the other for these types of damages under the proposed Restated Agreement.

The proposed Restated Agreement would add certain usual and customary provisions for an agreement of this type that are not contained in the Existing Agreement, including that (i) no remedy conferred by any provision of the proposed Restated Agreement is intended to be exclusive of any other remedy,[73] (ii) no provision is intended, expressly or by implication, to purport to confer a benefit or right of action upon a third-party,[74] and (iii) each Clearing Organization waives any right it may have to a trial by jury with respect to any litigation directly or indirectly arising out of, under or in connection with the proposed Restated Agreement, or transactions contemplated by it.[75] Also, the proposed Restated Agreement would include updates to the relevant FICC and CME contacts to whom notices would be directed.

In order to simplify and improve its structure, the proposed Restated Agreement would consolidate into a new separate section,[76] language addressing the fact that the proposed Restated Agreement, together with GSD Rules, CME Rules, the Clearing Member Agreement and any other agreements between FICC, CME and a Cross-Margining Participant or any Affiliate thereof is, for purposes of Title IV, Subtitle A of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401–4407) a ''netting contract.'' This same language is currently included in the Existing Agreement but is broken out across multiple sections. This provision would also state that ''all payments made or to be made hereunder, including payments made in accordance with this Agreement in connection with the liquidation of a Cross-Margining Participant are ''covered contractual payment obligations'' or ''covered contractual payment entitlements,'' as the case may be, as well as ''covered clearing obligations;'' and for purposes of the Bankruptcy Code and the Federal Deposit Insurance Act is considered a ''master netting agreement'' with respect to some or all of ''swap agreements,'' ''commodity contracts,'' ''forward contracts,'' and ''securities contracts.''[77]

Further, the proposed Restated Agreement would remove the arbitration clause included in the Existing Agreement in its entirety.[78] Instead, the proposed Restated Agreement would add language to the Governing Law provision stating disputes under the agreement would be resolved in the federal or state courts located in New York, New York, including the United States District Court for the Southern District of New York.[79] FICC believes that New York venue and forum are appropriate because New York courts can more efficiently and effectively adjudicate disputes arising under an agreement governed by New York law. In addition, New York venue and forum is generally consistent with FICC's current approach to dispute management.

B. Delayed Implementation of the Proposal

The proposed rule change would become operative within 180 business days after the later date of the Commission's approval of this proposed rule change, and the Commodity Futures Trading Commission's approval of the CME's proposed rule change (collectively, the ''Date of Regulatory Approval''). Not later than two (2) business days following the date of the Commission's approval of this proposed rule change, FICC would add a legend to the proposed Restated Agreement to state that the specified changes are approved but not yet operative. The legend would also include the file numbers of the approved proposed rule change, and would state that once operative, the legend would automatically be removed from the proposed Restated Agreement. FICC will issue a notice to members providing notice of the specific operative date at least two weeks prior to such date.

2. Statutory Basis

FICC believes that the proposed rule change is consistent with section 17A of the Act[80] and the rules thereunder applicable to FICC. Section 17A(b)(3)(F) of the Act, requires, in part, that the rules of a clearing agency be designed 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.[81] FICC is proposing to replace the Existing Agreement with the proposed Restated Agreement. As described in the discussion of the proposed changes to the calculation of cross-margin requirements above, the proposed Restated Agreement would, among other things, revise and enhance the method for calculating the margin reduction that would apply to a Cross-Margining Participant's Eligible Positions, including requiring more frequent exchange of Eligible Position information between CME and FICC that is used to collateralize risk exposures. The proposed new methodology would simplify the overall margin calculation process by eliminating the need for application of offset classes and the conversion of CME Eligible Products into equivalent GSD Treasury security products. By enhancing the method for calculating the margin reduction as described above, FICC believes that a more appropriate margin reduction would be calculated. As such, FICC believes that the proposed rule change would assure the safeguarding of securities and funds which are in the custody and control of FICC or for which it is responsible.[82]

In addition, as described in the discussion of a joint liquidation above, the proposed Restated Agreement would enhance the efficiency of the default management process between FICC and CME by providing for the exchange of Variation Margin under certain circumstances during the course of a liquidation and by improving the efficiency and effectiveness of the default management and loss sharing process. By enhancing these processes, FICC believes that overall default losses

[71] *See* Section 12(c) (Indemnification) of the proposed Restated Agreement.

[72] *See* Section 17 (Liability) of the proposed Restated Agreement.

[73] *See* Section 18(l) (Remedies Not Exclusive) of the proposed Restated Agreement.

[74] *See* Section 18(m) (No Third-Party Beneficiaries) of the proposed Restated Agreement.

[75] *See* Section 18(n) (Waiver of Jury Trial) of the proposed Restated Agreement.

[76] *See* Section 11 (FDICIA) of the proposed Restated Agreement.

[77] *Id.*

[78] *See* Section 16 of the Existing Agreement, ''Arbitration,'' *supra* note 4.

[79] *See* Section 18(c) (Governing Law) of the proposed Restated Agreement.

[80] 15 U.S.C. 78q–1.

[81] 15 U.S.C. 78q–1(b)(3)(F).

[82] *Id.*

could be minimized and thereby reduce the potential risk to non-defaulting members. As such, FICC believes that the proposed rule change would assure the safeguarding of securities and funds which are in the custody and control of FICC or for which it is responsible.

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[83] FICC believes that the proposal is consistent with this requirement for the following reasons.

First, the proposal to amend the list of CME products that would be eligible for cross-margining would expand the potential opportunity for cross-margin benefits that Cross-Margining Participants receive.

Second, the removal of the operational details to an SLA would streamline the proposed Restated Agreement by removing information that may not be relevant to the Cross-Margining Participants and would place this information in a separate document that the Clearing Organizations can more easily amend as their operational needs evolve.

Third, the proposal to amend the margin calculation would simplify the calculation and provide transparency.

Fourth, the proposed liquidation procedures and loss sharing arrangements would provide transparency into the steps that the Clearing Organizations would take during a liquidation and how gains and losses would be allocated.

Fifth, the revisions to various provisions throughout the proposed Restated Agreement would update provisions to ensure that they are reflective of the current standards and industry practices that each Clearing Organization adheres to in the ordinary course of business.

As such, given the foregoing, FICC believes that the proposed rule change is designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[84]

Rule 17Ad–22(e)(6)(i) under the Act requires a covered clearing agency to establish a risk-based margin system that, at a minimum considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.[85] As described above, the proposed Restated Agreement would revise and enhance the method for calculating the margin reduction that would apply to a Cross-Margining Participant's Eligible Positions, including requiring more frequent exchange of Eligible Position information between CME and FICC that is used to collateralize risk exposures. The proposed new methodology would simplify the overall margin calculation process by eliminating the need for application of offset classes and the conversion of CME Eligible Products into equivalent GSD Treasury security products. By enhancing the method for calculating the margin reduction as described above, FICC believes that a more appropriate margin reduction would be calculated and reduce the complexity of the calculations. Accordingly, FICC believes the proposed changes are reasonably designed to establish a risk-based margin system that, at a minimum considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market in a manner consistent with Rule 17Ad–22(e)(6)(i).[86]

As described above in the discussion of a joint liquidation, FICC and CME would agree to put in place a separate SLA, which would include specified timeframes, to exchange on each Business Day, such information as may reasonably be required in order to value the positions in the Cross-Margining Account and to calculate the Cross-Margin Requirement for each Cross-Margining Participant. The SLA would also include operational processes consistent with the default management provisions set forth in the proposed Restated Agreement. By agreeing to share certain information as described herein, FICC believes that each Clearing Organization would be able to effectively identify, monitor, and manage risks that may be presented by the proposed Restated Agreement. Accordingly, FICC believes the proposed changes are reasonably designed to identify, monitor, and manage risks related to the link established between FICC and CME in a manner consistent with Rule 17Ad–22(e)(20) under the Act.[87]

(B) Clearing Agency's Statement on Burden on Competition

FICC believes that the proposed rule change to replace the Existing Agreement with the Restated Agreement could have an impact on competition. Specifically, FICC believes that the proposed changes could both burden and promote competition because the margin savings for the Cross-Margining Participants (and therefore their margin requirements) would change under the proposed Restated Agreement. As noted in the Executive Summary in Item 3(a) above[sic], the margin savings under the Existing Agreement range from 0.1% to 17.4%, whereas the study conducted by FICC under the proposed Restated Agreement showed margin savings in the range of 0% to 36.6%. Some Cross-Margining Participants could see an increase in margin savings under the proposed rule change and some could see a decrease in margin savings under the proposed rule change. When the proposal results in decreased margin savings and therefore higher margin requirements, the proposed rule change could burden competition for Cross-Margining Participants that have lower operating margins or higher costs of capital compared to other Members. When the proposal results in higher margin savings and therefore lower margin requirements, the proposed rule change could promote competition by resulting in lower operating costs and capital efficiencies for Cross-Margining Participants. FICC does not believe that these impacts are significant because based on FICC's analysis, the proposal would not result in a significant change to the average margin requirement of Cross-Margining Participants.

Regardless of whether the burden on competition discussed above could be deemed significant, FICC believes that any related burden on competition would be necessary and appropriate, as permitted by section 17A(b)(3)(I) of the Act, for the following reasons.[88]

FICC believes that any burden on competition would be necessary in furtherance of the Act, specifically section 17A(b)(3)(F) of the Act.[89] As stated above, the proposed Restated Agreement, would, among other things, revise and enhance the method for calculating the margin reduction that would apply to a Cross-Margining Participant's Eligible Positions, including requiring more frequent exchange of Eligible Position information between CME and FICC that is used to collateralize risk exposure. The proposed new methodology would simplify the overall margin calculation process by eliminating the need for application of offset classes and the conversion of CME Eligible Products

[83] *Id.*

[84] *Id.*

[85] 17 CFR 240.17Ad–22(e)(6)(i).

[86] *Id.*

[87] 17 CFR 240.17Ad–22(e)(20).

[88] 15 U.S.C. 78q–1(b)(3)(I).

[89] 15 U.S.C. 78q–1(b)(3)(F).

into equivalent GSD Treasury security products. By enhancing the method for calculating the margin reduction as described above, FICC believes that a more appropriate margin reduction would be calculated. Therefore, FICC believes this proposed change is consistent with the requirements of section17A(b)(3)(F) of the Act, which requires that the Rules be designed to assure the safeguarding of securities and funds that are in FICC's custody or control or for which it is responsible.[90]

FICC believes the proposed rule change would also support FICC's compliance with Rule 17Ad–22(e)(6)(i) under the Act, which requires a covered clearing agency to establish a risk-based margin system that, at a minimum considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.[91] By enhancing the method for calculating the margin reduction as described above, FICC believes that a more appropriate margin reduction would be calculated and would reduce the complexity of the calculations. Accordingly, FICC believes the proposed changes are reasonably designed to establish a risk-based margin system that, at a minimum considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market in a manner consistent with Rule 17Ad–22(e)(6)(i).[92]

FICC also believes the proposed rule change would support FICC's compliance with Rule 17Ad–22(e)(20) under the Act.[93] Specifically, as described above, FICC and CME would agree to put in place a separate SLA, which would cover information exchange between the two parties and would also include operational processes consistent with the default management provisions set forth in the proposed Restated Agreement. By agreeing to the SLA, FICC believes that it would be able to effectively identify, monitor, and manage risks that may be presented by the proposed Restated Agreement. Accordingly, FICC believes the proposed changes are reasonably designed to identify, monitor, and manage risks related to the link established between FICC and CME in a manner consistent with Rule 17Ad–22(e)(20) under the Act.[94]

FICC believes that the above-described burden on competition that could be created by the proposed changes would be appropriate in furtherance of the Act because such changes have been appropriately designed to assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible, as described in detail above. The proposed Restated Agreement has been designed to allow FICC to recognize the offsetting value of positions maintained by Cross-Margining Participants at the two Clearing Organizations for margin purposes by using a risk-based margining approach that would produce margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio and market. As such, by enhancing the method for calculating the margin reduction as described above, FICC believes the proposal is appropriately designed to meet its risk management goals and its regulatory obligations.

Therefore, as described above, FICC believes the proposed changes are necessary and appropriate in furtherance of FICC's obligations under the Act, specifically section 17A(b)(3)(F) of the Act[95] and Rule 17Ad–22(e)(6)(i) and Rule 17Ad–22(e)(20) under the Act.[96]

(C) 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[sic], 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 reserves the right to not respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FICC–2023–010 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–FICC–2023–010. 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

[90] *Id.*

[91] 17 CFR 240.17Ad–22(e)(6)(i).

[92] *Id.*

[93] 17 CFR 240.17Ad–22(e)(20).

[94] *Id.*

[95] 15 U.S.C. 78q–1(b)(3)(F).

[96] 17 CFR 240.Ad–22(e)(6)(i), (e)(20).

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 (*dtcc.com/legal/sec-rule-filings*).

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–2023–010 and should be submitted on or before August 18, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[97]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–15981 Filed 7–27–23; 8:45 am]

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[97] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97964; File No. SR–PEARL–2023–31]

Self-Regulatory Organizations; MIAX Pearl LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Equities Fee Schedule

July 24, 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 July 11, 2023, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the fee schedule (''Fee Schedule'') applicable to MIAX Pearl Equities, an equities trading facility of the Exchange.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-equities/pearl-equities/rule-filings,* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to: (1) reduce the rebate for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity to the Exchange (''Added Displayed Volume''); (2) increase the fees applicable to the Remove Volume Tiers [3] for executions of orders in securities priced at or above $1.00 per share that remove liquidity from the Exchange (''Removed Volume''); and (3) adopt new Liquidity Indicator Codes and for executions of orders in all securities that remove Retail Orders [4] from the Exchange (displayed and non-displayed liquidity).[5] The Exchange originally filed this proposal on June 30, 2023 (SR–PEARL–2023–29). On July 11, 2023, the Exchange withdrew SR–PEARL–2023–29 and refiled this proposal.

Proposal To Reduce the Rebate for Added Displayed Volume in Securities Priced at or Above $1.00 per Share

The Exchange proposes to reduce the standard rebate for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity to the Exchange. Currently, the Exchange provides a standard rebate of ($0.0029) [6] per share for executions of Added Displayed Volume in all Tapes. The Exchange now proposes to reduce the standard rebate for executions of Added Displayed Volume in securities priced at or above $1.00 per share from ($0.0029) to ($0.0027) per share for all Tapes.[7] Accordingly, the Exchange proposes to amend Section 1)a), Standard Rates, to reflect this proposed change and amend Section 1)b), Liquidity Indicator Codes and Associated Fees, to reflect the corresponding changes to the applicable Liquidity Indicator Codes, AA, AB and AC. The Exchange notes that executions of orders in securities priced below $1.00 per share for Added Displayed Volume on the Exchange will continue to receive the standard rebate applicable to such executions (*i.e.,* 0.15% of the total dollar value of the transaction).

The purpose of reducing the standard rebate for executions of Added Displayed Volume is for business and competitive reasons in light of recent volume growth on the Exchange. The Exchange notes that despite the modest reduction proposed herein, the proposed standard rebate for executions of Added Displayed Volume (*i.e.,* ($0.0027) per share) remains higher than, and competitive with, the standard rebates provided by other exchanges for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity to those exchanges.[8]

Proposal To Increase the Fees for the Remove Volume Tiers

Next, the Exchange proposes to amend Section 1)d) of the Fee Schedule to increase the fees applicable to executions of orders in securities priced at or above $1.00 per share that qualify for the reduced fees of the Exchange's Remove Volume Tiers. Currently, Section 1)d) of the Fee Schedule provides reduced fees for executions of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Fee Schedule, Section 1)d).

[4] A ''Retail Order'' is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. *See* Exchange Rule 2626(a)(2).

[5] The Exchange notes that it is not adopting new fees for these types of transactions. The Exchange proposes to adopt the new Liquidity Indicator Codes, as described below, for purposes of clarification in the Fee Schedule.

[6] Rebates are indicated by parentheses. *See* the General Notes section of the Fee Schedule.

[7] *See* Fee Schedule, Section 1)a), Standard Rates, for the standard pricing for executions of Added Displayed Volume, among other rates.

[8] *See e.g.,* NYSE Arca Equities Fee Schedule, *available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf* (providing standard rebates of $0.0020 per share (Tapes A and C) and $0.0016 per share (Tape B) for adding displayed liquidity in securities priced at or above $1.00 per share); *see also* Cboe BZX Equities Fee Schedule, *available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/* (providing a standard rebate of $0.0016 per share for adding displayed liquidity in securities priced at or above $1.00 per share).

orders in securities priced at or above $1.00 per share that remove liquidity from the Exchange if Equity Members meet certain criteria. Equity Members that qualify for the Remove Volume Tiers are charged a lower fee of $0.00285 per share in Tier 1 for executions of Removed Volume in securities priced at or above $1.00 per share and a lower fee of $0.00275 per share in Tier 2 for executions of Removed Volume in securities priced at or above $1.00 per share. To achieve the reduced fees of the Remove Volume Tiers, Equity Members must, (i) for Tier 1, achieve an average daily volume (''ADV'') [9] that is equal to or greater than 0.10% of the total consolidated volume (''TCV'') [10] and execute at least 1,000 shares of added liquidity during the month; and (ii) for Tier 2, achieve an ADV that is equal to or greater than 0.15% of TCV and execute at least 1,000 shares of added liquidity during the month. Equity Members that qualify for the discounted rates of the Remove Volume Tiers in a particular month will be charged the lower fee according to the threshold tier achieved instead of the standard Remove Volume fee of $0.00295 per share for executions of orders in securities priced at or above $1.00 per share in that particular month.

The Exchange now proposes to increase the fees applicable to the Remove Volume Tiers. In particular, the Exchange proposes that the fee applicable to Tier 1 of the Remove Volume Tiers will be increased from $0.00285 to $0.00290 per share and the fee applicable to Tier 2 of the Remove Volume Tiers will be increased from $0.00275 to $0.00285 per share. The Exchange does not propose to amend the calculation or criteria for achieving the reduced rates of the Remove Volume Tiers. The purpose of this change is for business and competitive reasons. The Exchange notes that despite the modest increases proposed herein, the Exchange's fees for its Remove Volume Tiers remain competitive with the fees to remove liquidity in securities priced at or above $1.00 per share charged by other equity exchanges, including other equity exchanges that also have reduced fees for meeting certain criteria for removing liquidity.[11] The Exchange charges Equity Members a fee of 0.25% of the total dollar value of the transaction for executions of orders that remove liquidity from the Exchange in securities priced below $1.00 per share, which the Exchange does not propose to change in this proposal.

Proposal To Adopt New Liquidity Indicator Codes for Removing Retail Order Liquidity

Next, the Exchange proposes to adopt new Liquidity Indicator Codes for executions of orders in all securities that remove Retail Order liquidity [12] from the Exchange (displayed and non-displayed liquidity). The current fees for orders that remove liquidity (other than Retail Orders that remove liquidity) will continue to apply to the proposed Liquidity Indicator Codes for executions of orders in all securities that remove Retail Orders from the Exchange (displayed and non-displayed).[13] The purpose of this change is to provide additional clarity in the Fee Schedule regarding these particular types of transactions.

The Exchange proposes to amend the Liquidity Indicator Codes and Associated Fees table in Section 1)b) of the Fee Schedule to adopt Retail Order liquidity indicator codes ''RT'' and ''Rt,'' as follows:

- Add new liquidity indicator code RT, Removes Retail Order Liquidity, Displayed Order (All Tapes). The Liquidity Indicator Codes and Associated Fees table would specify that orders that yield liquidity indicator code RT would be subject to a fee $0.00295 per share in securities priced at or above $1.00 and 0.25% of the transaction's dollar value in securities priced below $1.00.
- Add new liquidity indicator code Rt, Removes Retail Order Liquidity, Non-Displayed Order (All Tapes). The Liquidity Indicator Codes and Associated Fees table would specify that orders that yield liquidity indicator code Rt would be subject to a fee of $0.00295 per share in securities priced at or above $1.00 and 0.25% of the transaction's dollar value in securities priced below $1.00.

The Exchange also proposes to add the new Liquidity Indicator Codes to the Standard Rates table in Section 1)a) of the Fee Schedule. Specifically, Liquidity indicator codes RT and Rt would be added to the ''Removing Liquidity'' column of the Standard Rates table. The Exchange also proposes to add the new Liquidity Indicator Codes RT and Rt to the Liquidity Indicator Codes applicable to the Remove Volume Tiers in Section 1)d) of the Fee Schedule.

The purpose of these changes is to provide greater clarity in the Fee Schedule. The Exchange believes that adding the new proposed Liquidity Indicator Codes RT and Rt to the Liquidity Indicator Codes and Associated Fees table will provide greater clarity in the Fee Schedule regarding the fees for these types of transactions, which benefits all market participants. The Exchange notes that the proposed fees for Liquidity Indicator Codes RT and Rt are the same as the current rates for removing liquidity in other types of orders that are not Retail Orders, *i.e.,* $0.00295 per share in securities priced at or above $1.00 per share and 0.25% of the transaction's total dollar value in securities priced below $1.00 per share. The Exchange notes that the use of Liquidity Indicator Codes is not unique to the Exchange and are currently utilized and described in the fee schedules of other equity exchanges.[14]

[9] ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis. *See* the Definitions Section of the Fee Schedule. The Exchange excludes from its calculation of ADV shares added or removed on any day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours, on any day with a scheduled early market close, and on the ''Russell Reconstitution Day'' (typically the last Friday in June). Routed shares are also not included in the ADV calculation. *See id.*

[10] ''TCV'' means total consolidated volume calculated as the volume in shares reported by all exchanges and reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. The Exchange excludes from its calculation of TCV volume on any given day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during Regular Trading Hours, on any day with a scheduled early market close, and on the ''Russell Reconstitution Day'' (typically the last Friday in June). *See* the Definitions Section of the Fee Schedule.

[11] *See* MEMX LLC (''MEMX'') Fee Schedule, *available at https://info.memxtrading.com/fee-schedule/(providing standard remove volume fee of $0.0030 per share and reduced remove Liquidity Removal Tier fee of $0.00295 per share); see also* Cboe EDGX Equities Fee Schedule, *available at https://www.cboe.com/us/equities/membership/fee_schedule/edgx/* (providing a standard fee of $0.0030 per share to remove liquidity in securities priced at or above $1.00 per share, Remove Volume Tier 1 fee of $0.00285 per share and Remove Volume Tier 2 fee of $0.00275 per share to remove liquidity in securities priced at or above $1.00 per share); *and* Cboe BZX Equities Fee Schedule, *available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/* (providing a fee of $0.0030 per share to remove liquidity in securities priced at or above $1.00 per share).

[12] The Exchange notes that the proposed description in the Fee Schedule capitalizes the word ''Liquidity'' in the proposed new Liquidity Indicator Codes; however, the Exchange notes that this is solely for purposes of uniformity throughout the Liquidity Indicator Codes and Associated Fees table and is not meant to be a newly defined term.

[13] *See* Fee Schedule, Section 1)a). Currently, displayed and non-displayed orders that remove liquidity (other than Retail Orders that remove liquidity) in securities at or above $1.00 per share are charged $0.00295 per share (Liquidity Indicator Codes RA, RB, RC, Ra, Rb and Rc).

[14] *See, e.g.,* Investors Exchange LLC (''IEX'') Fee Schedule, *available at https://iextrading.com/trading/fees/ and* MEMX Fee Schedule, *supra* note 11.

Implementation

The proposed changes are immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with section 6(b) of the Act [15] in general, and furthers the objectives of section 6(b)(4) of the Act [16] in particular, in that it is an equitable allocation of reasonable fees and other charges among its Equity Members and issuers and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange operates in a highly fragmented and competitive market in which market participants can readily direct their order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of sixteen registered equities exchanges, and there are a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. As of June 23, 2023, based on publicly available information, no single registered equities exchange has more than approximately 14–17% of the total market share of executed volume of equities trading for the month of June 2023.[17] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange represents approximately 1.90% of the overall market share as of June 23, 2023 for the month of June 2023.[18] The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, 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.'' [19]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue or reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct additional orders that add liquidity to the Exchange, which the Exchange believes would deepen liquidity and promote market quality on the Exchange to the benefit of all market participants.

Reduce Standard Rebate for Added Displayed Volume

The Exchange believes that the proposal to reduce the standard rebate for executions of Added Displayed Volume ($0.0027) per share is reasonable, equitably allocated and not unfairly discriminatory because it represents a modest decrease from the current standard rebate for executions of Added Displayed Volume and remains competitive with the standard rebates provided by competing exchanges for orders in securities priced at or above $1.00 per share that add liquidity.[20] The Exchange believes its proposal to reduce the standard rebate for executions of Added Displayed Volume is reasonable and not unfairly discriminatory because this change is for business and competitive reasons in light of recent volume growth on the Exchange. The Exchange notes that despite the modest reduction proposed herein, the proposed standard rebate for executions of Added Displayed Volume (*i.e.,* ($0.0027) per share) remains higher than, and competitive with, the standard rebates provided by other exchanges for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity to those exchanges.[21]

The Exchange further believes that the proposed reduced standard rebate for executions of Added Displayed Volume is equitably allocated and not unfairly discriminatory because each will apply equally to all Members who are similarly situated. The Exchange also believes its proposal to amend Section 1)b), Liquidity Indicator Codes and Associated Fees, to reflect the proposed decreased rebate for Added Displayed Volume in the corresponding Liquidity Indicator Codes AA, AB and AC is reasonable because it provides uniformity and clarity in the Fee Schedule.

Increase Fees for the Remove Volume Tiers

The Exchange believes that its proposal to increase the fees applicable to the Remove Volume Tiers is reasonable, equitably allocated and not unfairly discriminatory because, even with the proposed increase, the Remove Volume Tiers continue to provide incentives for Equity Members to strive for higher ADV on the Exchange in order to qualify for the lower fees for executions of Removed Volume. As such, with the proposed increased fees, the Exchange believes that the Remove Volume Tiers are designed to continue to encourage Equity Members to maintain their order flow directed to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. The Exchange notes that the proposed fees for executions of Remove Volume applicable to Equity Members that qualify for one of the Remove Volume Tiers (*i.e.,* $0.00290 or $0.00285) is comparable to, and competitive with, the fees charged for executions of liquidity-removing orders charged by competing exchanges under similar volume-based tiers.[22] The Exchange further believes the proposed increased fees for the Remove Volume Tiers is fair, equitable and not unfairly discriminatory because the Remove Volume Tiers will continue to be available to all Equity Members that meet the requisite criteria.

New Liquidity Codes for Executions of Orders That Remove Retail Order Liquidity (Displayed and Non-Displayed)

The Exchange believes its proposal to adopt two new Liquidity Indicator Codes for orders that remove Retail Order liquidity is reasonable and not unfairly discriminatory as they will apply to all Equity Members equally that submit orders to remove Retail Orders. The Exchange notes that the current fees attributed to these types of transactions is not changing with this proposal; [23] rather, the proposal

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4).

[17] *See* the ''Market Share'' Section of the Exchange's website, *available at https://www.miaxglobal.com/* (last visited June 23, 2023).

[18] *See id.*

[19] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37499 (June 29, 2005).

[20] *See supra* note 8.

[21] *See id.*

[22] *See supra* note 11.

[23] *See* Securities Exchange Act Release Nos. 97124 (March 13, 2023), 88 FR 16504 (March 17,

Continued

provides Liquidity Indicator Codes for certain types of transactions thereby providing additional clarity in the Fee Schedule, which benefits all market participants.

The Exchange believes that adding the new proposed Liquidity Indicator Codes of RT and Rt to the Liquidity Indicator Codes and Associated Fees table will make the Fee Schedule clearer and eliminate the potential for confusion in regard to fees charged and rebates earned, thereby removing impediments to, and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest. Further, as noted above, this practice is consistent with the pricing practices of other exchanges.[24]

The Exchange believes its proposal provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory. For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of sections 6(b)(4) and 6(b)(5) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Equity Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange believes that its proposal to reduce the standard rebate for Added Displayed Volume for executions of orders in securities priced at or above $1.00 per share will not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes its proposal to reduce the standard rebate for executions of Added Displayed Volume will not impose any burden on intramarket competition that is not necessary or appropriate because this change is for business and competitive reasons in light of recent volume growth on the Exchange. The Exchange notes that despite the modest reduction proposed herein, the proposed standard rebate for executions of Added Displayed Volume (*i.e.,* ($0.0027) per share) remains higher than, and competitive with, the standard rebates provided by other exchanges for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity to those exchanges.[25]

The Exchange believes that, even with the proposed decrease to the standard Added Displayed Volume rebate, the Exchange's standard rebate for such orders will continue to incentivize market participants to direct order flow to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. The Exchange believes that this, in turn, will continue to encourage market participants to direct additional Added Displayed Volume in securities priced at or above $1.00 per share to the Exchange. Greater liquidity benefits all Equity Members by providing more trading opportunities and encourages Equity Members to send orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants.

The Exchange believes that its proposal to increase the fees for the Remove Volume Tiers will not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The opportunity to qualify for the Remove Volume Tiers, and thus receive the proposed lower fees for executions of Removed Volume, will continue to be available to all Equity Members that meet the associated requirements in any month. The Exchange believes that meeting the volume requirements of the Remove Volume Tiers will continue to be attainable for market participants, as the Exchange believes the thresholds are relatively low and reasonably related to the enhanced liquidity and market quality that the Remove Volume Tiers are designed to promote. The Exchange notes that it does not propose to change the volume requirements for the Remove Volume Tiers pursuant to this proposal. Even with the modest increase proposed herein, the Exchange's fees for its Remove Volume Tiers will remain competitive with the fees to remove liquidity in securities priced at or above $1.00 per share charged by other equity exchanges.[26]

The Exchange believes that the proposed change to adopt new Liquidity Indicator Codes for executions of orders in all securities that remove Retail Orders from the Exchange (displayed and non-displayed liquidity) will not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the new Liquidity Indicator Codes RT and Rt will provide additional clarity in the Fee Schedule, which benefits all market participants. The use of Liquidity Indicator Codes is not new or novel as they are used on other equity exchanges.[27] Additionally, the proposed new Liquidity Indicator Codes will be applied equally to all Equity Members that submit orders to remove Retail Orders and the new Liquidity Indicator Codes of RT and Rt will provide additional specificity in the Fee Schedule so that Equity Members may connect an execution to the applicable fee. As such, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

The Exchange believes the proposed changes will benefit competition as the Exchange operates in a highly competitive market. Equity Members have numerous alternative venues that they may participate on and direct their order flow to, including fifteen other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than approximately 14–17% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow in response to new or different pricing structures being introduced to the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates generally, including with respect to Added Displayed Volume, orders to remove Retail Order

2023) (SR–PEARL–2023–10); 97308 (April 13, 2023), 88 FR 24249 (April 19, 2023) (SR–PEARL–2023–16).

[24] *See supra* note 11.

[25] *See supra* note 8.

[26] *See supra* note 11.

[27] *See supra* note 14.

liquidity, and Removed Volume, as market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable. As described above, the proposed changes are competitive proposals through which the Exchange is seeking to encourage certain order flow to the Exchange and to promote market quality through pricing incentives that are similar in structure and purpose to pricing programs at other Exchanges.[28] Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar incentives to market participants that enhance market quality.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, 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.'' [29] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. circuit stated: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possess a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . .''.[30] Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[28] *See supra* notes 8 and 11.

[29] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[30] *See NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSE–2006–21)).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act,[31] and Rule 19b–4(f)(2) [32] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–PEARL–2023–31 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–PEARL–2023–31. 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 a.m. and 3 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–PEARL–2023–31 and should be submitted on or before August 18, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–15980 Filed 7–27–23; 8:45 am]

BILLING CODE 8011–01–P

[31] 15 U.S.C. 78s(b)(3)(A)(ii).

[32] 17 CFR 240.19b–4(f)(2).

[33] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before September 26, 2023.

ADDRESSES: Send all comments to Dawn Saddler, IT Program Manager, Office of Entrepreneurial Development, Small Business Administration at email address *nexus@sba.gov.*

FOR FURTHER INFORMATION CONTACT: Dawn Saddler, *Dawn.Saddler@sba.gov* (562) 400–1473 or Curtis B. Rich,

Agency Clearance Officer *curtis.rich@sba.gov* 202–205–7030.

SUPPLEMENTARY INFORMATION: The recipients of SBA counseling and training grant awards are required by the terms of their Notice of Award and as outlined in each Program Announcement, to collect the information on SBA Form 641 (Counseling Information Form) from each small business or prospective small business that receives one-on-one counseling or advising, and to collect the information on SBA Form 888 (Management Training Report) for each group training session. SBA's Resource Partners submit this information to SBA via the Nexus system. The information is pertinent to management's analysis of each OED program or activity funded by SBA and assists SBA in evaluating the impact of each program or activity. The information is also used to support SBA's budget requests, performance plans, evaluations and other submissions made to the Office of Management and Budget, the President and the Congress.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

PRA Control Number: 3245–0324.

(1) *Title:* U.S. Small Business Administration Counseling Information Form/U.S. Small Business Administration Management Training Report.

Description of Respondents: To aid, counsel, assist, and protect the interests of small business concerns to preserve free competitive enterprise.

Form Number: 641 and 888.

Total Estimated Annual Responses: 1,633,000.

Total Estimated Annual Hour Burden: 253,833.

Curtis B. Rich,

Agency Clearance Officer.

[FR Doc. 2023–16013 Filed 7–27–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17852 and #17853; CALIFORNIA Disaster Number CA–00380]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 7.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only 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 through 07/10/2023.

DATES: Issued on 07/25/2023.

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 Private Non-Profit organizations in the State of California, dated 04/03/2023, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Alameda, Imperial, San Joaquin, San Bernardino, Stanislaus, Ventura.

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. 2023–16028 Filed 7–27–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12132]

30-Day Notice of Proposed Information Collection: Family Reunification Assistance for Afghan Parolees' Immediate Family Members Outside the United States

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments up to August 28, 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: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, may be sent to: Family Reunification Project Manager, Office of the Coordinator for Afghan Relocation Efforts, Bureau of South and Central Asian Affairs, Department of State, Washington, DC, 20522–0603, who may be reached at *CAREFamReunification@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Family Reunification Assistance for Afghan Parolee's Immediate Family Outside the United States.
- *OMB Control Number:* 1405–0251.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of South and Central Asian Affairs, SCA/CARE.
- *Form Number:* DS–4317.
- *Respondents:* Respondents are Afghan nationals who were paroled into the United States and remain a parolee or who were paroled into the United States and subsequently granted Temporary Protect Status (TPS).
- *Estimated Number of Respondents:* 20,000.

- *Estimated Number of Responses:* 5,000.
- *Average Time per Response:* 30 minutes.
- *Total Estimated Burden Time:* 2,500 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The U.S. Government has determined that Afghans paroled under Operation Allies Welcome (OAW), or those paroled and then subsequently granted Temporary Protected Status (TPS), could request U.S. Government-supported family reunification assistance for their spouses and unmarried children under 21 years of age. Use of the Form DS–4317 will enable the Department to build a current picture of how many Afghans may be eligible for relocation and to assist them in departing Afghanistan. This online form helps avoid unstructured requests for assistance, such as those that arrive via email messages, which may not include important information, such as family size and biodata, and which often require entry into other systems to facilitate responses. This form is integrated with other elements of the Department's evolving information technology platform, enhancing the efficient handling of individual cases.

Methodology

Information from applicants is collected through an electronic version of the Form DS–4317. Data from the application is stored in IRM's ServiceNow platform.

Kevin E. Bryant,

Deputy Director, Office of Directives Management, U.S. Department of State.

[FR Doc. 2023–16080 Filed 7–27–23; 8:45 am]

BILLING CODE 4710–31–P

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of Federal Advisory Committee Act meeting.

SUMMARY: The TVA Regional Resource Stewardship Council (RRSC) will hold a meeting on August 21 and 22, 2023, regarding TVA's natural resources and stewardship matters in the Tennessee Valley.

DATES: The meeting will be held in Guntersville, Alabama at the Lake Guntersville State Park, Monday, August 21, 2023, from 12:00 p.m. to 5:45 p.m. C.T. and Tuesday, August 22, 2023, from 12:30 p.m. to 5:00 p.m. C.T. RRSC council members are invited to attend the meeting in person. The public is invited to view the meeting virtually or to attend in-person. A one hour virtual or in-person public listening session will be held August 21, at 4:30 p.m. C.T. A link and instructions to view the meeting will be posted on TVA's RRSC website at *www.tva.gov/rrsc* at least one week prior to the scheduled meeting.

ADDRESSES: The public is invited to view the meeting virtually or attend in person. The in-person meeting will be held at the Lake Guntersville State Park, Guntersville, AL 35976. Members of the public are also invited to speak either virtually or in person during a public listening session. Persons who wish to speak virtually must preregister by 5:00 p.m. E.T. Friday, August 18, 2023, by emailing *bhaliti@tva.gov* and specify whether they wish to speak virtually or in-person. Anyone needing special accommodations should let the contact below know at least one week in advance.

FOR FURTHER INFORMATION CONTACT: Bekim Haliti, *bhaliti@tva.gov,* 931–349–1894.

SUPPLEMENTARY INFORMATION: The RRSC is a discretionary advisory committee established under the authority of the Tennessee Valley Authority (TVA) in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. app. 2.

The meeting agenda includes the following:

Day 1—August 21

1. Welcome and Introductions
2. RRSC and TVA Meeting Update
3. TVA's Sustainability Program Workshop with EPRI
4. Public Listening Session

Day 2—August 22

5. Welcome and Review of Day 1
6. Finalize Advice Statement
7. Update on TVA's River Management and Natural Resources
8. TVA's Cultural Compliance Presentation

The RRSC will hear views of the public by providing a 1-hour public comment session starting August 21 at 4:30 p.m. C.T. Persons wishing to speak virtually must register at *bhaliti@tva.gov* or call 931–349–1894 by 5:00 p.m. E.T. Friday, August 18, 2023, and will be called on during the public listening session for up to five minutes to share their views. Written comments are also invited and may be emailed to *bhaliti@tva.gov.*

Dated: July 17, 2023.

Melanie Farrell,

Vice President, External Stakeholders and Regulatory Oversight, Tennessee Valley Authority.

[FR Doc. 2023–16056 Filed 7–27–23; 8:45 am]

BILLING CODE 8120–08–P

TENNESSEE VALLEY AUTHORITY

Charter Renewal of the Regional Energy Resource Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Renewal of federal advisory committee.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the TVA Board of Directors has renewed the Regional Energy Resource Council (RERC) charter for an additional two-year period.

FOR FURTHER INFORMATION CONTACT: Bekim Haliti, *bhaliti@tva.gov,* 931–349–1894.

SUPPLEMENTARY INFORMATION: Pursuant to FACA and its implementing regulations, and following consultation with the Committee Management Secretariat, General Services Administration (GSA) in accordance with 41 CFR 102–3.60(a), notice is hereby given that the RERC has been renewed for a two-year period. The RERC will provide advice to TVA on its issues affecting energy resource

activities. The RERC was originally established in 2013 to advise TVA on its energy resource activities and the priority to be placed among competing objectives and values. It has been determined that the RERC continues to be needed to provide an additional mechanism for public input regarding energy resource issues. The charter can be found at *www.tva.com/rerc.*

Dated: July 17, 2023.

Melanie Farrell,

Vice President, External Stakeholders and Regulatory Oversight, Tennessee Valley Authority.

[FR Doc. 2023–16054 Filed 7–27–23; 8:45 am]

BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2023–0003]

Submission of Post-Hearing Comments: Annual Review of Country Eligibility for Benefits Under the African Growth and Opportunity Act for Calendar Year 2024

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for post-hearing comments.

SUMMARY: On July 24, 2023, the Office of the United States Trade Representative (USTR) held a virtual public hearing to receive oral testimony related to the annual review of the eligibility of sub-Saharan African countries to receive the benefits of the African Growth and Opportunity Act (AGOA). USTR is accepting post-hearing comments until August 8, 2023.

DATES: *August 8, 2023 at 5:00 p.m. EDT:* Deadline for the submission of post hearing submissions, briefs, supplementary materials, and statements related to the virtual public hearing.

ADDRESSES: The AGOA Subcommittee strongly prefers electronic submissions made through the Federal eRulemaking Portal: *https://www.regulations.gov* (*Regulations.gov*). Follow the instructions for submitting written comments sections II and III below, using Docket Number USTR–2023–0003. For alternatives to on-line submissions, please contact Jeremy Streatfeild, Director of African Affairs, Office of African Affairs, in advance of the deadline at *Jeremy.E.Streatfeild@ustr.eop.gov* or (202) 395–8642.

FOR FURTHER INFORMATION CONTACT: Jeremy Streatfeild, Director of African Affairs, Office of African Affairs, at *Jeremy.E.Streatfeild@ustr.eop.gov* or (202) 395–8642.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published on May 23, 2023 (88 FR 31579) (May 23 notice), USTR requested public comments for the annual review of the eligibility of sub-Saharan African countries to receive the benefits of the AGOA, and announced a virtual public hearing which was held on July 24, 2023. The May 23 notice included the hearing date, as well as deadlines for requests to testify and the submissions of written comments. An announcement regarding post-hearing submissions was made during the July 24 virtual hearing, and the transcript of the hearing will be available on the USTR website.

This notice announces that interested parties may submit post-hearing briefs, supplementary materials, and statements by 5:00 p.m. EDT on August 8, 2023.

II. Procedures for Written Submissions

To be assured of consideration, submit your post-hearing briefs, supplementary materials, and statements by the August 8, 2023, 5:00 p.m. EDT deadline. All submission must be in English. The AGOA Subcommittee strongly encourages submissions via *Regulations.gov,* using Docket Number USTR–2023–0003.

To make a submission via *Regulations.gov,* enter Docket Number USTR–2023–0003 in the 'search for' field on the home page and click 'search.' The site will provide a search results page listing all documents associated with this docket. Find a reference to this notice by selecting 'notice' under 'document type' in the 'refine documents results' section on the left side of the screen and click on the link entitled 'comment.' *Regulations.gov* allows users to make submissions by filling in a 'type comment' field or by attaching a document using the 'upload file' field. The AGOA Subcommittee prefers that you provide submissions in an attached document and note 'see attached' in the 'comment' field on the online submission form. The AGOA Subcommittee prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If you use an application other than those two, please indicate the name of the application in the 'type comment' field.

At the beginning of your submission or on the first page (if an attachment), include the following text: (1) 2024 AGOA Eligibility Review; and (2) the relevant country or countries. Submissions should not exceed 30 single-spaced, standard letter-size pages in 12-point type, including attachments. Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the submission itself. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files. You will receive a tracking number upon completion of the submission procedure at *Regulations.gov*. The tracking number is confirmation that *Regulations.gov* received your submission. Keep the confirmation for your records. USTR is not able to provide technical assistance for *Regulations.gov*.

For further information on using *Regulations.gov*, please consult the resources provided on the website by clicking on 'How to Use *Regulations.gov*' on the bottom of the home page. The AGOA Subcommittee may not consider submissions that you do not make in accordance with these instructions.

If you are unable to provide submissions as requested, please contact Jeremy Streatfeild, Director of African Affairs, Office of African Affairs, in advance of the deadline at *Jeremy.E.Streatfeild@ustr.eop.gov* or (202) 395–8642, to arrange for an alternative method of transmission. USTR will not accept hand-delivered submissions. General information concerning USTR is available at *www.ustr.gov.*

III. Business Confidential Information (BCI) Submissions

If you ask the AGOA Subcommittee to treat information you submit as BCI, you must certify that the information is business confidential and you would not customarily release it to the public. For any comments submitted electronically containing BCI, the file name of the business confidential version should begin with the characters 'BCI.' You must clearly mark any page containing BCI with 'BUSINESS CONFIDENTIAL' at the top of that page. Filers of submissions containing BCI also must submit a public version of their submission that will be placed in the docket for public inspection. The file name of the public version should begin with the character 'P.'

IV. Public Viewing of Review Submissions

USTR will post written submissions in the docket for public inspection, except properly designated BCI. You can view submissions at *Regulations.gov* by entering Docket

Number USTR–2023–0003 in the search field on the home page.

William Shpiece,

Chair of the Trade Policy Staff Committee, Office of the United States Trade Representative.

[FR Doc. 2023–16027 Filed 7–27–23; 8:45 am]

BILLING CODE 3390–F3–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2023–1644]

Notice of Intent To Designate as Abandoned Horizon Instruments, Inc., Supplemental Type Certificate No. SA5842NW

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of intent to designate Horizon Instruments, Inc., Supplemental Type Certificate as abandoned; request for comments.

SUMMARY: This notice announces the FAA's intent to designate Horizon Instruments, Inc., Supplemental Type Certificate (STC) No. SA5842NW as abandoned and make the related engineering data available upon request. The FAA has received a request to provide engineering data concerning this STC. The FAA has been unsuccessful in contacting Horizon Instruments, Inc., concerning the STC. This action is intended to enhance-aviation safety.

DATES: The FAA must receive all comments by January 24, 2024.

ADDRESSES: You may send comments on this notice by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Chuck Ayala, Aviation Safety Engineer, West Certification Branch, AIR–775, 3960 Paramount Blvd., Suite 100 Lakewood, CA 90712–4137.
- *Email: Charles.L.Ayala@faa.gov.* Include ''Docket No. FAA–2023–1644'' in the subject line of the message.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chuck Ayala, Aviation Safety Engineer, AIR–775, FAA; telephone 562–627–5226; email *Charles.L.Ayala@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested parties to provide comments, written data, views, or arguments relating to this notice. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2023–1644'' at the beginning of your comments. The FAA will consider all comments received on or before the closing date. All comments received will be available in the docket for examination by interested persons.

Background

The FAA is posting this notice to inform the public of the intent to designate as abandoned Horizon Instruments, Inc., STC No. SA5842NW for the installation of an engine electronic digital tachometer, Horizon Model P–1000, P/N P100070-, in Piper Aircraft PA–28–140, –150, –151, –160, –161, –180, –181, –235, –236, –201T, R–180, R–200, R–201, R–201T, RT–201, RT201T, and S–160 series airplanes, and subsequently release the related engineering data.

The FAA has received a third-party request for the release of the aforementioned engineering data under the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552. The FAA cannot release commercial or financial information under FOIA without the permission of the data owner. However, in accordance with title 49 of the United States Code 44704(a)(5), the FAA can provide STC ''engineering data'' it possesses for STC maintenance or improvement, upon request, if the following conditions are met:

1. The FAA determines the STC has been inactive for three years or more;
2. Using due diligence, the FAA is unable to locate the owner of record or the owner of record's heir; and
3. The availability of such data will enhance aviation safety.

There has been no activity on this STC for more than three years.

On June 9, 2023, the FAA sent a registered letter to Horizon Instruments, Inc., at its last known address, 600 S. Jefferson St., Unit C, Placentia, CA 92870. The letter was returned, unable to be forwarded. The letter informed Horizon Instruments, Inc., that the FAA had received a request for engineering data related to STC No. SA5842NW and was conducting a due diligence search to determine whether the STC was inactive and may be considered abandoned. The letter further requested Horizon Instruments, Inc., to respond in writing within 60 days and state whether it is the holder of the STC. The FAA also attempted to make contact with Horizon Instruments, Inc., by other means, including telephone communication and emails, without success.

Information Requested

If you are the owner or heir or a transferee of STC No. SA5842NW or have any knowledge regarding who may now hold STC No. SA5842NW, please contact Chuck Ayala using a method described in this notice under **FOR FURTHER INFORMATION CONTACT.** If you are the heir of the owner, or the owner by transfer, of STC No. SA5842NW, you must provide a notarized copy of your government-issued identification with a letter and background establishing your ownership of the STC and, if applicable, your relationship as the heir to the deceased holder of the STC.

Conclusion

If the FAA does not receive any response by January 24, 2024, the FAA will consider STC No. SA5842NW abandoned, and the FAA will proceed with the release of the requested data. This action is for the purpose of maintaining the airworthiness of an aircraft and enhancing aviation safety.

Issued on July 24, 2023.

Victor Wicklund,

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

[FR Doc. 2023–15961 Filed 7–27–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Request To Release Airport Property for Land Disposal

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to rule on release of airport property for land disposal at the Southeast Iowa Regional Airport (BRL), Burlington, Iowa.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the Southeast Iowa Regional Airport (BRL), Burlington, Iowa.

DATES: Comments must be received on or before August 28, 2023.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Amy J. Walter, Airports Land Specialist, Federal Aviation Administration, Airports Division, ACE–620G, 901 Locust, Room 364, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: Sara Sandburg, Airport Director, Southeast

Iowa Regional Airport, 2515 Summer St., Burlington, Iowa 52601, (319) 754–1414.

FOR FURTHER INFORMATION CONTACT: Amy J. Walter, Airports Land Specialist, Federal Aviation Administration, Airports Division, ACE–620G, 901 Locust, Room 364, Kansas City, MO 64106, (816) 329–2603, *amy.walter@faa.gov.* The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release one tract of land consisting of approximately 0.30 acres of airport property at the Southeast Iowa Regional Airport (BRL) under the provisions of 49 U.S.C. 47107(h)(2). On July 24, 2023, the Airport Director for the Southeast Iowa Regional Airport requested a release from the FAA to sell a tract of land, approximately 0.30 acres. Buyer, the Wynn family, will continue to use the land as part of a residential lot. On July 25, 2023, the FAA determined the request to release property at the Southeast Iowa Regional Airport (BRL) submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the release of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this notice.

The following is a brief overview of the request:

The Southeast Iowa Regional Airport (BRL) is proposing the release of airport property containing 0.30 acres, more or less. The release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The sale of the subject property will result in the land at the Southeast Iowa Regional Airport (BRL) being changed from aeronautical to non-aeronautical use and release the lands from the conditions of the Airport Improvement Program Grant Agreement Grant Assurances in order to dispose of the land. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market value for the property, which will be subsequently reinvested in another eligible airport improvement project for general aviation use.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon appointment and request, inspect the application, notice and other documents determined by the FAA to be related to the application in person at the Southeast Iowa Regional Airport.

Issued in Kansas City, MO, on July 25, 2023.

James A. Johnson,

Director, FAA Central Region, Airports Division.

[FR Doc. 2023–16071 Filed 7–27–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0081]

Entry-Level Driver Training Requirements; Training Departments of Millis Transfer LLC (Millis Training Institute (MTI)); Heartland Express (Heartland Training Institute (HTI)); and Contract Freighter's Inc. (CFI); Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), (DOT).

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received a joint application from the training departments of Millis Transfer LLC (Millis Training Institute (MTI)); Heartland Express (Heartland Training Institute (HTI)); and Contract Freighter's Inc. (CFI) requesting an exemption from the entry-level driver training regulations requiring that a behind-the-wheel (BTW) training instructor have at least two years' experience driving a commercial motor vehicle (CMV) or two years' experience as a BTW CMV instructor, as set forth in the definition of behind-the-wheel instructor. MTI conducts training for all three companies and describes its trainer evaluation process as ''second to none.'' FMCSA requests public comment on the applicants' request for exemption.

DATES: Comments must be received on or before August 28, 2023.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number (FDMS) FMCSA–2023–0081 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the Public Participation and Request for Comments section below for further information.
- *Mail:* Docket Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number (FMCSA–2023–0081) for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

Privacy Act: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice DOT/ALL–14 FDMS, which can be reviewed at *https://www.transportation.gov/privacy,* the comments are searchable by the name of the submitter.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; 202–366–4225 or *pearlie.robinson@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Dockets Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2023–0081), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means.

FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number ''FMCSA–2023–0081'' in the ''Keyword'' box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from certain Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Applicant's Request

The applicants seek an exemption from the BTW instructor qualification requirements as set forth in the definition of ''Behind-the-wheel (BTW) instructor'' in FMCSA's entry level driver training regulations (49 CFR 380.605). The applicants state that the two-year experience requirement for BTW instructors impedes their ability to hire enough trainers to meet the demand. The applicants further explain that MTI conducts training for all three acquired companies and believe MTI's pre-ELDT policy of a one-year minimum experience for its over-the-road (OTR) trainers and its ''extensive'' safety evaluation of those trainers has allowed it to be a positive contributor to highway safety.

MTI reports an estimated student enrollment of 500 to 700 students for 2023 for all three companies. Its 131 trainers currently spend up to 90 days with a student before letting them drive solo and because of the shortage of trainers, MTI will have to turn some students away. The proposed exemption would allow MTI to continue its one-year minimum training experience requirement so that it can add another 90 to 150 BTW trainers to its current trainer group. Should the exemption be granted, these additional trainers would be allowed to conduct BTW training without meeting the two-year minimum requirement for BTW instructors.

A copy of the application for exemption is included in the docket for this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on this joint application for an exemption from the BTW instructor qualification requirements in 49 CFR 380.605. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the Addresses section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–16044 Filed 7–27–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. DOT–MARAD–2023–0154]

Request for Comments on the Renewal of a Previously Approved Collection: Information To Determine Seaman's Reemployment Rights—National Emergency

AGENCY: Maritime Administration, DOT.

ACTION: 30-Day **Federal Register** notice.

SUMMARY: The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 2133–0526 (Information to Determine Seamen's Reemployment Rights—National Emergency) will be used to determine if U.S. civilian mariners are eligible for reemployment rights under the Maritime Security Act of 1996, which established provisions to allow for and procedures to obtain the necessary MARAD certification for re-employment rights and other benefits. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995. The Paperwork Reduction Act of 1995 requires that we publish this notice in the **Federal Register** to obtain comments from the public and affected agencies. A 60-day **Federal Register** notice soliciting comments on this information collection was published on May 2, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collections 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: Matthew Mueller, 202–366–7173, MAR–650, Mail Stop 2 1200 New Jersey Avenue SE, Washington, DC 20590, Email: *careersafloat@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information to Determine Seamen's Reemployment Rights—National Emergency.

OMB Control Number: 2133–0526.

Type of Request: Renewal of a previously approved information collection.

Abstract: This information collection is needed in order to implement

provisions of the Maritime Security Act of 1996. These provisions grant re-employment rights and other benefits to certain merchant seamen serving aboard vessels used by the United States during times of national emergencies. The Maritime Security Act of 1996 establishes the procedures for obtaining the necessary MARAD certification for re-employment rights and other benefits.

Respondents: Individual U.S. citizen mariners, currently working ashore, who possess U.S. Coast Guard merchant mariner credentials and serve on U.S. vessels in time of national emergency.

Affected Public: U.S. merchant seamen who have completed designated national service during a time of maritime mobilization need and are seeking re-employment with a prior employer.

Estimated Number of Respondents: 10.

Estimated Number of Responses: 10.

Estimated Hours per Response: 1.

Annual Estimated Total Annual Burden Hours: 10.

Frequency of Response: Annually.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.49.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–16045 Filed 7–27–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0155]

Request for Comments on the Renewal of a Previously Approved Information Collection: Voluntary Tanker Agreement

AGENCY: Maritime Administration, DOT.

ACTION: 30-Day Federal Register notice.

SUMMARY: The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 2133–0505 (Voluntary Tanker Agreement) is used to gather information from tanker operators who agree to contribute, either by direct charter to the Department of Defense or to other participants, tanker capacity as requested by the Maritime Administrator to meet the essential needs for the transportation of petroleum and petroleum products in bulk by sea. The public burden is being updated to include mailing costs for respondents to submit responses for this collection. We are required to publish this notice in the **Federal Register** to obtain comments from the public and affected agencies. A 60-day **Federal Register** notice soliciting comments on this information collection was published on May 5, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collections 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: David Hatcher, (202) 366–0688, Office of Sealift Support, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, Email: *David.Hatcher1@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Voluntary Tanker Agreement.

OMB Control Number: 2133–0505.

Type of Request: Renewal of a previously approved information collection.

Abstract: The Voluntary Tanker Agreement is a voluntary agreement, in accordance with section 708, Defense Production Act, 1950, as amended (50 U.S.C. App. 2158). The collection consists of a request from the Maritime Administration (MARAD) that each VTA participant submit a list of the names of ships owned, chartered, or contracted for by the participant, their size, flags of registry, and other pertinent information. This collection of information is necessary to evaluate and plan for the use of tanker capability during national emergencies. The collected information will also be used by both MARAD and Department of Defense personnel to establish contingency plans.

Respondents: Coastwise qualified vessel owners, operators, charterers, brokers, and vessel representatives.

Affected Public: Business or other for profit.

Estimated Number of Respondents: 15.

Estimated Number of Responses: 15.

Estimated Hours per Response: 1.

Annual Estimated Total Annual Burden Hours: 15.

Frequency of Response: Annually.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.49.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–16046 Filed 7–27–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See Supplementary Information section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2420; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; or Assistant Director for Regulatory Affairs, tel.: 202–622–4855.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On July 19, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individual

1. KAMCEV, Jordan (a.k.a. KAMCEV, Orce), North Macedonia, The Republic of; DOB 24 Jul 1970; POB Skopje, North Macedonia; nationality North Macedonia, The Republic of; Gender Male; National ID No. 2407970450009 (North Macedonia, The Republic of) (individual) [BALKANS–EO14033].

Designated pursuant to section 1(a)(v) of Executive Order 14033 of June 8, 2021,

''Blocking Property and Suspending Entry into the United States of Certain Persons Contributing to the Destabilizing Situation in the Western Balkans'' (E.O. 14033), 86 FR 31079 (June 10, 2021), 3 CFR 2021 Comp., p. 591, for being responsible for or complicit in, or to have directly or indirectly engaged in, corruption related to the Western Balkans, including corruption by, on behalf of, or otherwise related to a government in the Western Balkans, or a current or former government official at any level of government in the Western Balkans, such as the misappropriation of public assets, expropriation of private assets for personal gain or political purposes, or bribery.

Dated: July 19, 2023.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–15977 Filed 7–27–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Request for Information on the Department of Veterans Affairs Creative Arts Therapists (Dance/Movement) Standard of Practice

AGENCY: Department of Veterans Affairs (VA).

ACTION: Request for information.

SUMMARY: Dance/Movement Therapists use psychotherapeutic movement to promote emotional, social, cognitive, spiritual and physical integration of the individual for the purpose of improving health and well-being. VA is requesting information to assist in developing a national standard of practice for VA Creative Arts Therapists (Dance/Movement). VA seeks comments on various topics to help inform VA's development of this national standard of practice.

DATES: Comments must be received on or before September 26, 2023.

ADDRESSES: Comments must be submitted through *www.regulations.gov.* Except as provided below, comments received before the close of the comment period will be available at *www.regulations.gov* for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* VA will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm the individual. VA encourages individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in any potential future rulemaking.

FOR FURTHER INFORMATION CONTACT: Ethan Kalett, Office of Regulations, Appeals and Policy (10BRAP), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 202–461–0500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Authority

Chapters 73 and 74 of 38 U.S.C. and 38 U.S.C. 303 authorize the Secretary to regulate the professional activities of VA health care professions to make certain that VA's health care system provides safe and effective health care by qualified health care professionals to ensure the well-being of those Veterans who have borne the battle.

On November 12, 2020, VA published an interim final rule confirming that VA health care professionals may practice their health care profession consistent with the scope and requirements of their VA employment, notwithstanding any State license, registration, certification, or other requirements that unduly interfere with their practice. 38 CFR 17.419; 85 FR 71838. Specifically, this rulemaking confirmed VA's current practice of allowing VA health care professionals to deliver health care services in a State other than the health care professional's State of licensure, registration, certification, or other State requirement, thereby enhancing beneficiaries' access to critical VA health care services. The rulemaking also confirmed VA's authority to establish national standards of practice for its health care professionals that would standardize a health care professional's practice in all VA medical facilities.

The rulemaking explained that a national standard of practice describes the tasks and duties that a VA health care professional practicing in the health care profession may perform and may be permitted to undertake. Having a national standard of practice means that individuals from the same VA health care profession may provide the same type of tasks and duties regardless of the VA medical facility where they are located or the State license, registration, certification, or other State requirement they hold. We emphasized in the rulemaking and reiterate here that VA will determine, on an individual basis, that a health care professional has the necessary education, training and skills to perform the tasks and duties detailed in the national standard of practice and will only be able to perform such tasks and duties after they have been incorporated into the individual's privileges, scope of practice, or functional statement. The rulemaking explicitly did not create any such national standards and directed that all national standards of practice would be subsequently created via policy.

Need for National Standards of Practice

As the Nation's largest integrated health care system, it is critical that VA develops national standards of practice to ensure beneficiaries receive the same high-quality care regardless of where they enter the system and to ensure that VA health care professionals can efficiently meet the needs of beneficiaries when practicing within the scope of their VA employment. National standards are designed to increase beneficiaries' access to safe and effective health care, thereby improving health outcomes. The importance of this initiative has been underscored by the Coronavirus Disease 2019 pandemic. With an increased need for mobility in our workforce, including through VA's Disaster Emergency Medical Personnel System, creating a uniform standard of practice better supports VA health care professionals who already frequently practice across State lines. In addition, the development of national standards of practice aligns with VA's long-term deployment of a new electronic health record (EHR). National standards of practice are critical for optimal EHR implementation to enable the specific roles for each health care profession in EHR to be consistent across the Veterans Health Administration (VHA) and to support increased interoperability between VA and the Department of Defense (DoD). DoD has historically standardized practice for certain health care professionals, and VHA closely partnered with DoD to learn from their experience.

Process To Develop National Standards of Practice

Consistent with 38 CFR 17.419, VA is developing national standards of practice via policy. There will be one overarching national standard of practice directive that will generally describe VHA's policy and have each individual national standard of practice as an appendix to the directive. The directive and all appendices will be

accessible on VHA Publications website at: *https://vaww.va.gov/vhapublications/* (internal) and *https://www.va.gov/vhapublications/* (external) once published.

To develop these national standards, VA is using a robust, interactive process that is consistent with the guidance outlined in Executive Order (E.O.) 13132 to preempt State law. The process includes consultation with internal and external stakeholders, including State licensing boards, VA employees, professional associations, Veterans Service Organizations, labor partners and others. For each identified VA occupation, a workgroup comprised of health care professionals conducts State variance research to identify internal best practices that may not be authorized under every State license, certification, or registration, but would enhance the practice and efficiency of the profession throughout the agency. The workgroup is comprised of VA employees who are health care professionals in the identified occupation; they may consult with internal stakeholders at any point throughout the process. If a best practice is identified that is not currently authorized by every State, the workgroup determines what education, training and skills are required to perform such task or duty. The workgroup then drafts a proposed VA national standard of practice using the data gathered during the State variance research and incorporates internal stakeholder feedback to date.

The proposed national standard of practice is internally reviewed, to include by an interdisciplinary workgroup consisting of representatives from Quality Management; Field Chief of Staff; Academic Affiliates; Field Chief Nursing Officer; Ethics; Workforce Management and Consulting; Surgery; Credentialing and Privileging; Field Chief Medical Officer; and EHR Modernization.

Externally, the proposed national standard of practice is provided to our partners in DoD. In addition, VA labor partners are engaged informally as part of a pre-decisional collaboration. Consistent with E.O. 13132, a letter is sent to each State board and certifying organization that includes the proposed national standard and an opportunity to further discuss the national standard with VA. After the States and certifying organization have received notification, the proposed national standard of practice is published to the **Federal Register** for 60 days to obtain feedback from the public, including professional associations and unions. At the same time, the proposed national standard is published on an internal VA site to obtain feedback from VA employees. Feedback from State boards, professional associations, unions, VA employees and any other person or organization who informally provides comments via the **Federal Register** will be reviewed. VA will make appropriate revisions in light of the comments, including those that present evidence-based practice and alternatives that help VA meet our mission and goals, and that are better for Veterans or VA health care professionals. We will publish a collective response to all comments at *https://www.va.gov/standardsofpractice.*

After the national standard of practice is finalized, approved and published in VHA policy, VA will implement the tasks and duties authorized by that national standard of practice. Any tasks or duties included in the national standard will be incorporated into an individual health care professional's privileges, scope of practice, or functional statement following any training and education necessary for the health care professional to perform those functions. Implementation of the national standard of practice may be phased in across all medical facilities, with limited exemptions for health care professionals as needed.

National Standard for Creative Arts Therapists (Dance/Movement)

The proposed format for national standards of practice when there is a national certification and some States require a license is as follows. The first paragraph provides general information about the profession and what the health care professionals can do. The second paragraph references the education and certification needed to practice this profession at VA. The third paragraph confirms that this profession follows the standard set by the national certifying body. A final statement explains that while VA only requires a national certification, some States also require licensure for this profession. The standard includes information on which States offer an exemption for Federal employees and where VA will preempt State laws, if applicable.

We note that the proposed standards of practice do not contain an exhaustive list of every task and duty that each VA health care professional can perform. Rather, it is designed to highlight whether there are any areas of variance in how this profession can practice across States and how this profession will be able to practice within VA notwithstanding their State license, certification, registration and other requirements.

VA qualification standards require Dance/Movement Therapists to have an active, current, full and unrestricted Board Certified Dance/Movement Therapist (BC–DMT) certification from the Dance/Movement Therapy Certification Board (DMTCB), the credentialing affiliate of the American Dance Therapy Association (ADTA). Please note that while VA Handbook 5005, Part II, Appendix G60 refers to this position as Creative Arts Therapists (Dance/Movement), this position is commonly referred to as Dance/Movement Therapists, and we will use that terminology throughout. The Code of Ethics and Standards of the ADTA and the DMTCB (developed jointly) is followed by all VA Dance/Movement Therapists. VA reviewed whether there are any alternative registrations, certifications, or State requirements that could be required for a Dance/Movement Therapists and found that one State requires a license. The standard set forth in the licensure requirements for the State is consistent with what is permitted under the national certification. Therefore, there is no variance in how Dance/Movement Therapists practice in any State.

VA proposes to adopt a standard of practice consistent with the national BC–DMT certification; therefore, VA Dance/Movement Therapists will continue to follow the same standard as set by their national certification. The Code of Ethics and Standards of the ADTA and the DMTCB can be found here: *https://www.adta.org/assets/DMTCB/Code-of-the-ADTA-DMTCB-Final.pdf.*

Because the practice of Dance/Movement Therapists is not changing, there will be no impact on the practice of this occupation when this national standard of practice is implemented.

Proposed National Standard of Practice for Dance/Movement Therapists

1. Dance/Movement Therapists use psychotherapeutic movement to promote emotional, social, cognitive, spiritualand physical integration of theindividual, for the purpose of improving health and well-being.Dance/Movement Therapists observe and assess the individual's movements, using verbal and nonverbal communication to create and implement interventions that will address the emotional, social, physical and cognitive integration of that individual.

2. Dance/Movement Therapists in VA possess the education and certification required by VA qualification standards. See VA Handbook 5005, Staffing, Part II, Appendix G60, dated June 7, 2019.

3. VA Dance/Movement Therapists practice in accordance with the Code of Ethics and the Standards of the ADTA and DMTCB, available at: *https://www.adta.org/dmtcb.* VA reviewed license and certification requirements for this occupation in June 2023 and confirmed that all Dance/Movement Therapists in VA follow this national certification.

4. Although VA only requires a certification, one State requires a State license in order to practice as a Dance/Movement Therapist in that State: New York. VA reviewed license and certification requirements for this occupation in June 2023 and confirmed that there is no variance in how VA Dance/Movement Therapists practice in any State.

Request for Information

1. Are there any required trainings for the aforementioned practices that we should consider?

2. Are there any factors that would inhibit or delay the implementation of the aforementioned practices for VA health care professionals in any States?

3. Is there any variance in practice that we have not listed?

4. What should we consider when preempting conflicting State laws, regulations, or requirements regarding supervision of individuals working toward obtaining their license or unlicensed personnel?

5. Is there anything else you would like to share with us about this national standard of practice?

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on July 7, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2023–16006 Filed 7–27–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Request for Information on the Department of Veterans Affairs Creative Arts Therapists (Drama) Standard of Practice

AGENCY: Department of Veterans Affairs.

ACTION: Request for information.

SUMMARY: The Department of Veterans Affairs (VA) is requesting information to assist in developing a national standard of practice for VA Creative Arts Therapists (Drama). VA seeks comments on various topics to help inform VA's development of this national standard of practice.

DATES: Comments must be received on or before September 26, 2023.

ADDRESSES: Comments must be submitted through *www.regulations.gov.* Except as provided below, comments received before the close of the comment period will be available at *www.regulations.gov* for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* VA will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm the individual. VA encourages individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in any potential future rulemaking.

FOR FURTHER INFORMATION CONTACT: Ethan Kalett, Office of Regulations, Appeals and Policy (10BRAP), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 202–461–0500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Authority

Chapters 73 and 74 of 38 U.S.C. and 38 U.S.C. 303 authorize the Secretary to regulate the professional activities of VA health care professions to make certain that VA's health care system provides safe and effective health care by qualified health care professionals to ensure the well-being of those Veterans who have borne the battle.

On November 12, 2020, VA published an interim final rule confirming that VA health care professionals may practice their health care profession consistent with the scope and requirements of their VA employment, notwithstanding any State license, registration, certification or other requirements that unduly interfere with their practice. 38 CFR 17.419; 85 FR 71838. Specifically, this rulemaking confirmed VA's current practice of allowing VA health care professionals to deliver health care services in a State other than the health care professional's State of licensure, registration, certification or other State requirement, thereby enhancing beneficiaries' access to critical VA health care services. The rulemaking also confirmed VA's authority to establish national standards of practice for its health care professionals that would standardize a health care professional's practice in all VA medical facilities.

The rulemaking explained that a national standard of practice describes the tasks and duties that a VA health care professional practicing in the health care profession may perform and may be permitted to undertake. Having a national standard of practice means that individuals from the same VA health care profession may provide the same type of tasks and duties regardless of the VA medical facility where they are located or the State license, registration, certification or other State requirement they hold. VA emphasized in the rulemaking and now reiterate herein that VA will determine, on an individual basis, that a health care professional has the necessary education, training and skills to perform the tasks and duties detailed in the national standard of practice and will only be able to perform such tasks and duties after they have been incorporated into the individual's privileges, scope of practice or functional statement. The rulemaking explicitly did not create any such national standards and directed that all national standards of practice would be subsequently created via policy.

Need for National Standards of Practice

As the Nation's largest integrated health care system, it is critical that VA develops national standards of practice to ensure beneficiaries receive the same high-quality care regardless of where they enter the system and to ensure that VA health care professionals can efficiently meet the needs of beneficiaries when practicing within the scope of their VA employment. National standards are designed to increase beneficiaries' access to safe and effective health care, thereby improving health outcomes. The importance of this initiative has been underscored by the COVID–19 pandemic. With an increased need for mobility in our workforce, including through VA's Disaster Emergency Medical Personnel System, creating a uniform standard of practice better supports VA health care professionals who already frequently

practice across State lines. In addition, the development of national standards of practice aligns with VA's long-term deployment of a new electronic health record (EHR). National standards of practice are critical for optimal EHR implementation to enable the specific roles for each health care profession in EHR to be consistent across the Veterans Health Administration (VHA) and to support increased interoperability between VA and the Department of Defense (DoD). DoD historically has standardized practice for certain health care professionals, and VHA closely partnered with DoD to learn from their experience.

Process To Develop National Standards of Practice

Consistent with 38 CFR 17.419, VA is developing national standards of practice via policy. There will be one overarching national standard of practice directive that will generally describe VHA's policy and have each individual national standard of practice as an appendix to the directive. The directive and all appendices will be accessible on VHA Publications website at: *https://vaww.va.gov/vhapublications/* (internal) and *https://www.va.gov/vhapublications/* (external) once published.

To develop these national standards, VA is using a robust, interactive process that is consistent with the guidance outlined in Executive Order (E.O.) 13132, Federalism, to preempt State law. The process includes consultation with internal and external stakeholders, including State licensing boards, VA employees, professional associations, Veterans Service Organizations, labor partners and others. For each identified VA occupation, a workgroup comprised of health care professionals conducts State variance research to identify internal best practices that may not be authorized under every State license, certification or registration, but would enhance the practice and efficiency of the profession throughout the agency. The workgroup is comprised of VA employees who are health care professionals in the identified occupation and may consult with internal stakeholders at any point throughout the process. If a best practice is identified that is not currently authorized by every State, the workgroup determines what education, training and skills are required to perform such task or duty. The workgroup then drafts a proposed VA national standard of practice using the data gathered during the State variance research and incorporates internal stakeholder feedback to date.

The proposed national standard of practice is internally reviewed by an interdisciplinary workgroup consisting of representatives from Quality Management; Field Chief of Staff; Academic Affiliates; Field Chief Nursing Officer; Ethics; Workforce Management and Consulting; Surgery; Credentialing and Privileging; Field Chief Medical Officer; and EHR Modernization.

Externally, the proposed national standard of practice is provided to our partners in DoD. In addition, VA labor partners are engaged informally as part of a pre-decisional collaboration. Consistent with E.O. 13132, a letter is sent to each State board and registration organization that includes the proposed national standard and an opportunity to further discuss the national standard with VA. After the States and registration organization have received notification, the proposed national standard of practice is published to the **Federal Register** for 60 days to obtain feedback from the public, including professional associations and unions. At the same time, the proposed national standard is published on an internal VA site to obtain feedback from VA employees. Feedback from State boards, professional associations, unions, VA employees and any other person or organization who informally provides comments via the **Federal Register** will be reviewed. VA will make appropriate revisions in light of the comments, including those that present evidence-based practice and alternatives that help VA meet our mission and goals and that are better for Veterans or VA health care professionals. VA will publish a collective response to all comments at *https://www.va.gov/standardsofpractice.*

After the national standard of practice is finalized, approved and published in VHA policy, VA will implement the tasks and duties authorized by that national standard of practice. Any tasks or duties included in the national standard will be incorporated into an individual health care professional's privileges, scope of practice or functional statement following any training and education necessary for the health care professional to perform those functions. Implementation of the national standard of practice may be phased in across all medical facilities, with limited exemptions for health care professionals as needed.

National Standard for Creative Arts Therapists (Drama)

Please note that while VA Handbook 5005, Part II, Appendix G60 refers to this position as Creative Arts Therapists (Drama), these positions are commonly referred to as Drama Therapists and that terminology will be used throughout herein.

The proposed format for national standards of practice follows for when there are State licenses and a national registration. The first paragraph provides general information about the profession and what the health care professionals can do. The second paragraph references the education and registration needed to practice this profession at VA. The third paragraph confirms that this profession follows the standard set by the national registration body. A final statement explains that while VA only requires a national registration, some States also require licensure for this profession. The standard includes information on which States offer an exemption for Federal employees and where VA will preempt State laws, if applicable.

The proposed standards of practice do not contain an exhaustive list of every task and duty that each VA health care professional can perform. Rather, it is designed to highlight whether there are any areas of variance in how this profession can practice across States and how this profession will be able to practice within VA notwithstanding their State license, certification, registration and other requirements.

Drama Therapists use storytelling, projective play, purposeful improvisation and performance to invite participants to rehearse desired behaviors; practice being in a relationship; expandand find flexibility between life roles; and perform personal and social change. VA qualification standards require Drama Therapists to have an active, current, full and unrestricted Registered Drama Therapists (RDT) registration from the North American Drama Therapy Association (NADTA). VA reviewed whether there are any alternative registrations, certifications or State requirements that could be required for a Drama Therapist and found that one State requires a license. The standard set forth in the licensure requirements for the one State is consistent with what is permitted under the national registration. Therefore, there is no variance in how Drama Therapists practice in any State.

VA proposes to adopt a standard of practice consistent with the national registration; therefore, VA Drama Therapists will continue to follow the same standard as set by the registration. The standard for the registration can be found at *https://www.nadta.org/scope-of-practice.*

Because the practice of Drama Therapists is not changing, there will be no impact on the practice of this occupation when this national standard of practice is implemented.

Proposed National Standard of Practice for Drama Therapists

1. Drama Therapists use an active, experiential approach to facilitate social, emotional and cognitive change. Through storytelling, projective play, purposeful improvisation and performance, participants are invited to rehearse desired behaviors, practice being in relationship, expandand find flexibility between life roles and perform personal and social change.

2. Drama Therapists in the Department of Veterans Affairs (VA) possess the education and registration required by VA qualification standards. See VA Handbook 5005, Staffing, Part II, Appendix G60, dated June 7, 2019.

3. VA Drama Therapists practice in accordance with the Registered Drama Therapists (RDT) national standards from the North American Drama Therapy Association, available at *https://www.nadta.org/.* VA reviewed license and certification requirements for this occupation in June 2023 and confirmed that all Drama Therapists in VA follow this national registration.

4. Although VA only requires a registration, one State, New York, requires a State license to practice as a Drama Therapist in that State.

VA reviewed license and certification requirements for this occupation in June 2023 and confirmed that there is no variance in how VA Drama Therapists practice in any State.

Request for Information

1. Are there any required trainings for the aforementioned practices that VA should consider?

2. Are there any factors that would inhibit or delay the implementation of the aforementioned practices for VA health care professionals in any States?

3. Is there any variance in practice that VA has not listed?

4. What should VA consider when preempting conflicting State laws, regulations or requirements regarding supervision of individuals working toward obtaining their license or unlicensed personnel?

5. Is there anything else you would like to share with VA about this national standard of practice?

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on July 10, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2023–16004 Filed 7–27–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Implementation of the Dr. Kate Hendricks Thomas Supporting Expanded Review for Veterans in Combat Environments (SERVICE) Act

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing this notice to inform the public about how it is implementing the SERVICE Act.

DATES: This notice is effective on July 28, 2023.

FOR FURTHER INFORMATION CONTACT: Office of Women's Health, Acting Chief Officer, Dr. Sally Haskell, at 202–461–7671. This is not a toll-free telephone number.

SUPPLEMENTARY INFORMATION: The SERVICE Act was signed into law by the President on June 7, 2022 (Pub. L. 117–133, 136 stat. 1238). The SERVICE Act amended 38 U.S.C. 7322 to ensure that certain Veterans who were deployed in support of a contingency operation in certain locations and during certain time periods can receive a breast cancer risk assessment and clinically appropriate mammography screening. As added by the SERVICE Act, 38 U.S.C. 7322(c) requires this eligibility expansion to be included in the national mammography policy mandated by subsection (a). This notice provides information on how VA will implement the amendments made by the SERVICE Act and is not a solicitation for public comment or request for information regarding VA's implementation of the SERVICE Act as described in this notice. Therefore, responses to this notice may not be used to inform VA's implementation of the SERVICE Act.

VA is announcing its program for breast cancer risk assessment and clinically appropriate mammography screening for any individual covered by the SERVICE Act. VA considers the amendments made by the SERVICE Act to be self-executing. We will therefore issue no regulations but instead provide this notice to announce operationally how VA will implement these new authorities. This notice includes sections on eligible Veterans, eligible services, eligible providers and other matters.

Eligible Veterans

General Discussion

The SERVICE Act includes as Veterans eligible for a breast cancer risk assessment and clinically appropriate mammography screening those Veterans who have ''a record of service in a location and during a period specified in subsection (d)''. See 38 U.S.C. 7322(b)(2)(B). This authority allows Veterans under the age of 40 who were not otherwise previously eligible to be included in VA's National mammography screening policy but who may have an elevated risk due to in-service toxic exposures such as an open burn pit. As amended, section 7322(b)(2) requires VA's National policy to include Veterans who are over the age of 39 and Veterans, without regard to age, who have clinical symptoms, risk factors, a family history of breast cancer, or a record of service in a location and during a period specified in subsection (d). A record is defined as a DD Form 214, Certificate of Release or Discharge from Active Duty, or original Certificate of Discharge, military orders, service records and/or records of awards received. All documentation will be reviewed to determine eligibility. If these documents are not present, VA will follow its standard process to attempt retrieval of relevant documents. This information will be provided to Veterans in the same manner through which they contacted VA to request SERVICE Act care, unless the Veteran has specified a preferred alternate means of contact. In these cases, the policy shall, pursuant to section 7322(b)(3), also provide for clinician discretion when developing the clinical screening recommendations for the Veteran-cohorts covered by section 7322(b)(2). Breast cancer screening (screening mammogram) is generally applicable only to birth sex female Veterans and transgender women Veterans who have been on hormone therapy for 5 years or more. Birth sex male Veterans who are not symptomatic will not be screened, but those who develop breast symptoms such as breast lump, breast pain, or nipple discharge will be eligible for a risk assessment and diagnostic mammogram.

Locations and Periods of Active-Duty Service

Section 7322(d), as added by the SERVICE Act, establishes the following qualifying locations and service periods:

(A) Iraq during:

(i) The period beginning on August 2, 1990, and ending on February 28, 1991.

(ii) The period beginning on March 19, 2003, and ending on such date as the Secretary determines burn pits are no longer used in Iraq.

(B) The Southwest Asia theater of operations, other than Iraq, during the period beginning on August 2, 1990, and ending on such date as the Secretary determines burn pits are no longer used in such location, including the following locations:

(i) Kuwait.

(ii) Saudi Arabia.

(iii) Oman.

(iv) Qatar.

(C) Afghanistan during the period beginning on September 11, 2001, and ending on such date as the Secretary determines burn pits are no longer used in Afghanistan.

(D) Djibouti during the period beginning on September 11, 2001, and ending on such date as the Secretary determines burn pits are no longer used in Djibouti.

(E) Syria during the period beginning on September 11, 2001, and ending on such date as the Secretary determines burn pits are no longer used in Syria.

(F) Jordan during the period beginning on September 11, 2001, and ending on such date as the Secretary determines burn pits are no longer used in Jordan.

(G) Egypt during the period beginning on September 11, 2001, and ending on such date as the Secretary determines burn pits are no longer used in Egypt.

(H) Lebanon during the period beginning on September 11, 2001, and ending on such date as the Secretary determines burn pits are no longer used in Lebanon.

(I) Yemen during the period beginning on September 11, 2001, and ending on such date as the Secretary determines burn pits are no longer used in Yemen.

(J) Such other locations and corresponding periods as set forth by the Airborne Hazards and Open Burn Pit Registry established under section 201 of the Dignified Burial and Other Veterans' Benefits Improvement Act of 2012 (Pub. L. 112–260; 38 U.S.C. 527, note).

Section 7322(d)(1)(K) authorizes VA, in collaboration with the Department of Defense, to include such other locations and corresponding periods as determined appropriate in a report to Congress pursuant to section 7322(d)(2). At this time, VA has identified no such locations and has not yet submitted a report to Congress; the first report to Congress is due no later than June 7, 2024. VA will announce any added locations and periods of service, which will only be effective at the time of such announcement. There will be no individual *ad hoc* decisions made by VA providers, making this content self-executing.

Section 7322(d)(3) provides that a location under this subsection does not include any body of water around or any airspace above such location. VA has no discretion in this regard.

Section 7322(d)(4) defines the term ''burn pit'' to mean an area of land that—(A) is used for disposal of solid waste by burning in the outdoor air; and (B) does not contain a commercially manufactured incinerator or other equipment specifically designed and manufactured for the burning of solid waste. VA has no discretion in this regard.

For any individual who seeks a mammography screening under section 7332(c), VA will confirm an individual's qualifying service under section 7332(d).

Application

This eligibility for mammography screening in section 7322(c) is akin to eligibility for a registry examination. For registry examinations, individuals must apply for such screening. Consistent with this practice, VA will require individuals to apply for a mammography screening pursuant to section 7322. Veterans can choose to either apply for enrollment in VA health care or to apply only for care under the SERVICE Act. If Veterans are seeking SERVICE Act care only, they will need to check the Registration box on the 10–10EZ (under ''Type of Benefit(s) Applying for''), and VA will then ensure they are placed in the system as registered only.

VA will provide applicants an eligibility determination in accordance with the requirements set forth in 38 U.S.C. 5104. Eligible Veterans will be provided a mammogram only when clinically appropriate, as determined by a VA clinician. A VA clinician's decision to deny an eligible Veteran's request for a mammogram may be appealed under VA's Clinical Appeals processes.

Eligible Services

Veterans who served in certain locations during specific periods identified by law, regardless of their enrollment in VA health care, may receive clinically appropriate mammography screening, risk evaluation and counseling. We recognize that without these amendments, asymptomatic individuals less than 40 years of age with qualifying service in a covered location would not likely be able to receive mammography screening on that basis outside the VA health care system. Further, section 7322(c) ensures that Veterans who are not enrolled in VA health care or eligible to receive VA health care without enrolling may receive a breast cancer risk assessment and clinically appropriate mammography under this Act. The screening will be furnished to all eligible Veterans at no cost to the individual.

While section 7322(c) refers to eligibility for ''a mammography screening by a health care provider of the Department,'' this must be clinically indicated in the first place, and if clinically indicated, would require the prior, voluntary informed consent of the individual in accordance with 38 U.S.C. 7331 and 38 CFR 17.32. Each eligible individual who seeks a mammogram under section 7322(c) will receive, in advance of such screening, a breast cancer risk assessment to determine if further evaluation is clinically needed. If so, the individual will receive all relevant clinical information about the nature of the screening, their individual risk assessment for breast cancer based on all relevant clinical factors and histories, reasonably foreseeable associated risks, complications or side effects of the screening, reasonable and available alternatives to undergoing the screening and anticipated results if no screening occurs. In other words, they will receive all the relevant information an individual would want to make a full, informed, consensual decision. The determination of clinical need and informed consent can occur at the same encounter, but the latter is dependent on the former.

Veterans seeking care under this Act are understandably concerned about any long-term adverse health consequences associated with any in-service toxic exposures they may have experienced while deployed on active duty to a covered location, even if they are not experiencing symptoms. We emphasize, though, the inherent risk in undergoing mammography; mammography screening is not currently recommended by the United States Preventive Services Task Force, the American Cancer Society, or other agencies for average-risk women younger than 40 years of age because interpretation is hindered by dense breast tissue in young women, leading to frequent false positive results.

False positive results can lead to unnecessary additional imaging or diagnostic testing through their personal treating providers, including biopsies and unnecessary surgeries, the costs of which may be borne by the subject individual. Veterans seeking a mammography screening under section 7322(c) will be assessed to ensure that further evaluation is clinically needed, and if so, Veterans will receive a risk assessment, along with clinically appropriate discussions before an ultimate decision is made on whether to furnish a mammography.

There are several important limitations regarding the authority in section 7322(c) that should be made clear. First, the expanded eligibility authority in section 7322(c) does not create eligibility for Veterans to obtain mammography screening if it is not determined to be clinically appropriate. Clinical necessity is a threshold requirement for the delivery of all care. If care is clinically, indicated, a patient must also provide informed consent to receive such care. Second, section 7322(c) does not independently authorize the provision of any recommended or additional needed medical care through VA; Veterans who are enrolled in VA health care or eligible to receive VA health care without enrolling may receive any necessary follow up care from VA, but Veterans without such eligibility can only receive the breast cancer risk assessment and clinically appropriate mammography screening as authorized by section 7322(c). Section 7322(c) does not authorize the delivery of any care or services for the treatment of breast cancer or any other condition for Veterans who are not enrolled in VA health care. Asymptomatic Veterans less than 40 years of age may return for the breast cancer risk assessment and mammogram screening as indicated every 5 years until age 40 when they would become eligible for standard breast cancer screening. This is consistent with current national guidelines and standards. Veterans who are eligible for care exclusively under the SERVICE Act will be eligible to present for a breast cancer risk assessment and mammogram screening as indicated more frequently than once every 5 years at any time in which they develop interim symptoms such as breast lump, breast pain or nipple discharge. This is also consistent with current national guidelines and standards. Third, section 7322(c) does not establish a claim for service-connection. Section 7322(c) only authorizes the provision of a breast cancer risk assessment and mammogram screening; it has no effect on establishing eligibility for any other benefits.

The American College of Radiology has established a uniform way for radiologists to describe mammogram findings. See *https://www.cancer.gov/types/breast/mammograms-fact-sheet#what-is-the-breast-imaging-reporting-and-database-system-bi-rads*. The Breast Imaging Reporting and Data System (BI–RADS) categories included in mammography reports help inform radiologists and other providers whether any follow-up testing, or imaging is recommended or needed, including any MRI imaging, biopsy, or sonagram. *Id.* VA will ensure the mammography screening performed is of the quality required for the assigned radiologist to reliably list the appropriate BI–RADS category. BI–RADS are scored from 0–6. BI–RADS 0 represents an incomplete evaluation. In this case, VA must perform additional imaging as needed, such as ultrasound, to assign a final BI–RADS category. VA may perform additional imaging, such as ultrasound, for all SERVICE Act eligible Veterans to reach a ''complete'' exam designation (BIRADS 1–6). VA is not authorized under the SERVICE Act to provide further care to Veterans based on the results of the breast cancer risk assessment and/or clinically appropriate mammogram. If the Veteran is enrolled in VA health care, VA may perform the additional imaging that is required because of an abnormal BI–RADS (3–6). However, if the Veteran is not enrolled in VA health care and additional imaging is needed beyond establishing the final BI–RADS (such as follow up for an abnormal BI–RADS category (3, 4, 5 or 6), VA will not be able to provide that care and will advise such individuals to pursue follow-up care promptly with their health care provider.

Eligible Providers

Section 7332(c) establishes a Veteran's eligibility for a mammography screening ''by a health care provider of the Department.'' This language allows for screenings to be conducted by VA-authorized community providers who have entered into an appropriate agreement with VA to furnish such care. As mentioned above, many Veterans who qualify under section 7322(c) would not be eligible for a mammography screening in the community (based on applicable screening standards to which the health care system outside of VA is bound). Based on the Veteran's eligibility under section 7322(c), however, VA can provide the mammography screening in-house or through a contractual arrangement. Any service VA is authorized to provide the mammography screening, it may also provide by contract or agreement, subject to other applicable law and regulations. Veterans who are covered under the Veterans Community Care Program (38 U.S.C. 1703 and §§ 17.4000 through 17.4040 of title 38, CFR) may elect to receive their screening in the community if they are eligible to make such an election under that Program. For Veterans who are not covered for purposes of 38 U.S.C. 1703 and §§ 17.4000 through 17.4040 of title 38, CFR, if VA is not able to furnish the mammography screening itself, a VA provider will order such a screening to be performed, and, per the terms of the authorization, receive a report of the imaging results. We do not view this as conflicting with the language of the SERVICE Act because it is the VA provider who still provides this preventive health care benefit, even if indirectly in some cases.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on July 20, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2023–15928 Filed 7–27–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Request for Information on the Department of Veterans Affairs Creative Arts Therapists (Art) Standard of Practice

AGENCY: Department of Veterans Affairs.

ACTION: Request for information.

SUMMARY: The Department of Veterans Affairs (VA) is requesting information to assist in developing a national standard of practice for VA Creative Arts Therapists (Art). VA seeks comments on various topics to help inform VA's development of this national standard of practice.

DATES: Comments must be received on or before September 26, 2023.

ADDRESSES: Comments must be submitted through *www.regulations.gov.*

Except as provided below, comments received before the close of the comment period will be available at *www.regulations.gov* for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* VA will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm the individual. VA encourages individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in any potential future rulemaking.

FOR FURTHER INFORMATION CONTACT: Ethan Kalett, Office of Regulations, Appeals and Policy (10BRAP), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 202–461–0500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Authority

Chapters 73 and 74 of 38 U.S.C. and 38 U.S.C. 303 authorize the Secretary to regulate the professional activities of VA health care professions to make certain that VA's health care system provides safe and effective health care by qualified health care professionals to ensure the well-being of those Veterans who have borne the battle.

On November 12, 2020, VA published an interim final rule confirming that VA health care professionals may practice their health care profession consistent with the scope and requirements of their VA employment, notwithstanding any State license, registration, certification or other requirements that unduly interfere with their practice (38 CFR 17.419; 85 FR 71838). Specifically, this rulemaking confirmed VA's current practice of allowing VA health care professionals to deliver health care services in a State other than the health care professional's State of licensure, registration, certification or other State requirement, thereby enhancing beneficiaries' access to critical VA health care services. The rulemaking also confirmed VA's authority to establish national standards of practice for its health care professionals which would standardize a health care professional's practice in all VA medical facilities.

The rulemaking explained that a national standard of practice describes the tasks and duties that a VA health care professional practicing in the health care profession may perform and may be permitted to undertake. Having a national standard of practice means that individuals from the same VA health care profession may provide the same type of tasks and duties regardless of the VA medical facility where they are located or the State license, registration, certification or other State requirement they hold. We emphasized in the rulemaking and reiterate here that VA will determine, on an individual basis, that a health care professional has the necessary education, training and skills to perform the tasks and duties detailed in the national standard of practice and will only be able to perform such tasks and duties after they have been incorporated into the individual's privileges, scope of practice, or functional statement. The rulemaking explicitly did not create any such national standards and directed that all national standards of practice would be subsequently created via policy.

Need for National Standards of Practice

As the Nation's largest integrated health care system, it is critical that VA develops national standards of practice to ensure beneficiaries receive the same high-quality care regardless of where they enter the system and to ensure that VA health care professionals can efficiently meet the needs of beneficiaries when practicing within the scope of their VA employment. National standards are designed to increase beneficiaries' access to safe and effective health care, thereby improving health outcomes. The importance of this initiative has been underscored by the COVID–19 pandemic. With an increased need for mobility in our workforce, including through VA's Disaster Emergency Medical Personnel System, creating a uniform standard of practice better supports VA health care professionals who already frequently practice across State lines. In addition, the development of national standards of practice aligns with VA's long-term deployment of a new electronic health record (EHR). National standards of practice are critical for optimal EHR implementation to enable the specific roles for each health care profession in EHR to be consistent across the Veterans Health Administration (VHA) and to support increased interoperability between VA and the Department of Defense (DoD). DoD has historically standardized practice for certain health care professionals, and VHA closely partnered with DoD to learn from their experience.

Process To Develop National Standards of Practice

Consistent with 38 CFR 17.419, VA is developing national standards of practice via policy. There will be one overarching national standard of practice directive that will generally describe VHA's policy and have each individual national standard of practice as an appendix to the directive. The directive and all appendices will be accessible on VHA Publications website at: *https://vaww.va.gov/vhapublications/* (internal) and *https://www.va.gov/vhapublications/* (external) once published.

To develop these national standards, VA is using a robust, interactive process that is consistent with the guidance outlined in Executive Order (E.O.) 13132 to preempt State law. The process includes consultation with internal and external stakeholders, including State licensing boards, VA employees, professional associations, Veterans Service Organizations, labor partners and others. For each identified VA occupation, a workgroup comprised of health care professionals conducts State variance research to identify internal best practices that may not be authorized under every State license, certification or registration, but would enhance the practice and efficiency of the profession throughout the agency. The workgroup is comprised of VA employees who are health care professionals in the identified occupation; they may consult with internal stakeholders at any point throughout the process. If a best practice is identified that is not currently authorized by every State, the workgroup determines what education, training and skills are required to perform such task or duty. The workgroup then drafts a proposed VA national standard of practice using the data gathered during the State variance research and incorporates internal stakeholder feedback to date.

The proposed national standard of practice is internally reviewed, to include by an interdisciplinary workgroup consisting of representatives from Quality Management; Field Chief of Staff; Academic Affiliates; Field Chief Nursing Officer; Ethics; Workforce Management and Consulting; Surgery; Credentialing and Privileging; Field Chief Medical Officer; and EHR Modernization.

Externally, the proposed national standard of practice is provided to our partners in DoD. In addition, VA labor partners are engaged informally as part of a pre-decisional collaboration. Consistent with E.O. 13132, a letter is sent to each State board and registration organization that includes the proposed national standard and an opportunity to further discuss the national standard with VA. After the States and registration organization have received notification, the proposed national standard of practice is published to the **Federal Register** for 60 days to obtain feedback from the public, including professional associations and unions. At the same time, the proposed national standard is published on an internal VA site to obtain feedback from VA employees. Feedback from State boards, professional associations, unions, VA employees and any other person or organization who informally provides comments via the **Federal Register** will be reviewed. VA will make appropriate revisions in light of the comments, including those that present evidence-based practice and alternatives that help VA meet our mission and goals, and that are better for Veterans or VA health care professionals. We will publish a collective response to all comments at *https://www.va.gov/standardsofpractice.*

After the national standard of practice is finalized, approved and published in VHA policy, VA will implement the tasks and duties authorized by that national standard of practice. Any tasks or duties included in the national standard will be incorporated into an individual health care professional's privileges, scope of practice or functional statement following any training and education necessary for the health care professional to perform those functions. Implementation of the national standard of practice may be phased in across all medical facilities, with limited exemptions for health care professionals as needed.

National Standard for Creative Arts Therapists (Art)

The proposed format for national standards of practice when there is a national registration and some States require a license is as follows. The first paragraph provides general information about the profession and what the health care professionals can do. The second paragraph references the education and registration needed to practice this profession at VA. The third paragraph confirms that this profession follows the standard set by the national registration body. A final statement explains that while VA only requires a national registration, some States also require licensure for this profession. The standard includes information on which States offer an exemption for Federal employees and where VA will preempt State laws, if applicable.

We note that the proposed national standards of practice do not contain an exhaustive list of every task and duty that each VA health care professional can perform. Rather, it is designed to highlight whether there are any areas of variance in how this profession can practice across States and how this profession will be able to practice within VA notwithstanding their State license, certification, registration and other requirements.

Art Therapists integrate psychotherapeutic principles and art interventions to evaluate, diagnose and treat individuals with various clinical mental health and rehabilitation issues that impact their health, function and quality of life. VA qualification standards require Art Therapists to have an active, current, full and unrestricted registration as a Registered Art Therapist (ATR) from the Art Therapy Credentials Board (ATCB). Please note that while VA Handbook 5005, Part II, Appendix G60 refers to this position as Creative Arts Therapists (Art), this position is commonly referred to as Art Therapists, and we will use that terminology throughout. Although ATCB is the registration body for Art Therapists, the American Art Therapy Association (AATA) has developed the Ethical Principles for Art Therapists, which is followed by all VA Art Therapists.

VA reviewed whether there are any alternative registrations, certifications or State requirements that could be required for an Art Therapist and found that 14 States require a license to practice as an Art Therapist in that State. Of those, one State exempts Federal employees from its State license requirements. The standards set forth in the licensure requirements for all 14 States are consistent with what is permitted under the Ethical Principles for Art Therapists standards from the AATA. Therefore, there is no variance in how Art Therapists practice in any State.

VA proposes to adopt a standard of practice consistent with the Ethical Principles for Art Therapists by the AATA. The AATA standards can be found here: *https://arttherapy.org/wp-content/uploads/2017/06/Ethical-Principles-for-Art-Therapists.pdf.*

Because the practice of Art Therapists is not changing, there will be no impact on the practice of this occupation when this national standard of practice is implemented.

Proposed National Standard of Practice for Art Therapists

1. Art Therapists integrate psychotherapeutic principles and art interventions to evaluate, diagnose and treat individuals with various clinical mental health and rehabilitation issues that impact their health, function and quality of life. Art Therapists use art-making and the creative process to improve cognitive and sensorimotor functions, foster self-esteem and emotional resilience, promote insight, enhance social skills and reduce and resolve conflicts and distress in order to ameliorate biopsychosocial conditions.

2. Art Therapists in VA possess the education and registration required by VA qualification standards. See Handbook 5005, Staffing, Part II, Appendix G60, dated June 7, 2019.

3. VA Art Therapists practice in accordance with the Ethical Principles for Art Therapists from the American Art Therapy Association (AATA), available at: *https://arttherapy.org.* VA reviewed license and certification requirements for this occupation in June 2023 and confirmed that all Art Therapists in VA follow the AATA standards.

4. Although VA only requires a registration, 14 States require a State license in order to practice as an Art Therapist in that State: Connecticut, Delaware, District of Columbia, Kentucky, Maryland, Mississippi, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Tennessee, Texas and Virginia. Of those, the following State exempts Federal employees from its State license requirements: Virginia.

VA reviewed license and certification requirements for this occupation in June 2023 and confirmed that there is no variance in how VA Art Therapists practice in any State.

Request for Information

1. Are there any required trainings for the aforementioned practices that we should consider?

2. Are there any factors that would inhibit or delay the implementation of the aforementioned practices for VA health care professionals in any States?

3. Is there any variance in practice that we have not listed?

4. What should we consider when preempting conflicting State laws, regulations or requirements regarding supervision of individuals working toward obtaining their license or unlicensed personnel?

5. Is there anything else you would like to share with us about this national standard of practice?

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on July 10, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2023–16008 Filed 7–27–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Veterans Health Administration (VHA), Department of Veterans Affairs (VA).

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, notice is hereby given that VA is modifying the system of records entitled, ''Community Residential Care and Medical Foster Home Programs–VA'' (142VA114). This system is used for determining a potential facility's initial eligibility and ongoing participation in the program, provision of medical and psycho-social services to Veterans, operation of the programs, and information required by VA Medical Centers to complete quarterly statistical reports.

DATES: Comments on this modified system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the modified system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005X6F), Washington, DC 20420. Comments should indicate that they are submitted in response to ''Community Residential Care and Medical Foster Home Programs–VA'' (142VA114). Comments received will be available at *regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Stephania Griffin, VHA Chief Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue NW, (105HIG) Washington, DC 20420; telephone 704–245–2492 (Note: This is not a toll-free number) or *stephania.griffin@va.gov.*

SUPPLEMENTARY INFORMATION: VA is amending the system of records by revising the System Number; System Location; System Manager; Categories of Records in the System; Routine Uses of Records Maintained in the System; Policies and Practices for Retention and Disposal of Records; and Administrative, Technical and Physical Safeguards. VA is republishing the system notice in its entirety.

The System Number is being updated from 142VA114 to 142VA10 to reflect the current VHA organizational routing symbol.

The System Location will be updated to replace VA Data Processing Center, with Austin Information Technology Center (AITC). Also being added, Community Residential Care (CRC) locations are listed in VA Appendix 5. Medical Foster Home (MFH) programs have been established or are in development at all VA health care facilities.

The System Manager is being updated to include Director, Home and Community Based Programs. Telephone number 202–632–8321. (Note: This is not a toll-free number).

The Categories of Records in the System is being updated to include operators and staff of CRC and MFH Homes.

The language in Routine Use number 4 is being updated. It previously reflected the following language, ''Disclosure of the records to the Department of Justice (DoJ) is a use of the information contained in the records that is compatible with the purpose for which VA collected the records and that VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.''

Routine Use number 4 will now read as follows, ''DoJ, or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when:

(a) VA or any component thereof;

(b) Any VA employee in his or her official capacity;

(c) Any VA employee in his or her official capacity where DoJ has agreed to represent the employee; or

(d) The United States, where VA determines that litigation is likely to affect the agency or any of its components,

is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings.''

Routine use number 15 is being added to state, VA may disclose any information or records to appropriate agencies, entities and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities or persons is reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize or remedy such harm.

Policies and Practices for Retention and Disposal of Records is being updated to remove ''Paper records and information are maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.'' This section is being updated to state that Records are scheduled in accordance with Records Control Schedule (RCS) 10–1, 6110.4, temporary disposition; Destroy approved applications 1 year after home withdraws from program. Destroy disapproved applications after 5 years.

Administrative, Technical and Physical Safeguards is being updated to replace Austin VA Data Processing Center with Austin Information Technology Center (AITC).

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB Circular No. A–108, Federal Agency Responsibilities for Review, Reporting, and Publication Under the Privacy Act, 81 FR 94424 (December 23, 2016).

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Kurt D. DelBene, Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on June 19, 2023 for publication.

Dated: July 25, 2023.

Amy L. Rose,

Government Information Specialist, VA Privacy Service, Office of Compliance, Risk and Remediation, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

''Community Residential Care and Medical Foster Home Programs–VA'' (142VA10).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at selected VA health care facilities that have Community Residential Care (CRC) and Medical Foster Home (MFH) Programs (in most cases, back-up computer tape information is stored at the Austin Information Technology Center (AITC), 1615 East Woodward Street, Austin, Texas 78772). Address locations for VA facilities are listed in VA Appendix 1. CRC locations are listed in VA Appendix 5. MFH programs have been established or are in development at all VA health care facilities. In addition, information from these records or copies of records may be maintained at the Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC, Austin Information Technology Center (AITC), and Veterans Integrated Service Network (VISN) Offices.

SYSTEM MANAGER(S):

Official responsible for policies and procedures: Director, Home and Community Based Programs, Office of Geriatrics and Extended Care, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. Telephone number 202–632–8321. (Note: This is not a toll-free number).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38 U.S.C 1730.

PURPOSE(S) OF THE SYSTEM:

The records and information may be used for determining a potential non-VA facility's initial eligibility and ongoing participation in the program, provision of medical and psycho-social services to Veterans, operation of the programs, and information required by VA health care facility to complete quarterly statistical reports.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

These records include information concerning Veterans who reside in CRC or MFH homes. In addition, the records include information on the operators and staff of these homes.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records may include information on operators and staff of CRC and MFH Homes related to:

1. Applications, background checks, agreements with Veterans, educational programs, driver's licenses, health screenings, *etc.*
2. Home inspection reports, corrective plans of action, emergency plans, correspondence and hearing documents.
3. Personal identifiers (including name, date of birth, financial information, pictures, *etc.*)

These records may include information on Veterans who reside in CRC and MFH Homes related to:

1. Personal identifiers (including name, date of birth, Social Security Number, VA claim number, financial information, pictures) and health records.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by individuals requesting participation in the CRC and MFH programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 38 U.S.C. 7332, *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia, or infection with the human immunodeficiency virus, or 45 CFR parts 160 and 164, *i.e.,* individually identifiable health information of VHA or any of its business associates, that information cannot be disclosed under a routine use unless there is also specific statutory authority in those provisions.

1. *Congress:* To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

2. *National Archives and Records Administration (NARA):* To the NARA in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities. The disclosure of the names and addresses of Veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

3. *Law Enforcement:* To a Federal, state, local, territorial, tribal or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law, provided that the disclosure is limited to information that, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature. The disclosure of the names and addresses of Veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

4. *Department of Justice (DoJ), Litigation, Administrative Proceeding:* To the DoJ, or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when:

(a) VA or any component thereof;

(b) Any VA employee in his or her official capacity;

(c) Any VA employee in his or her official capacity where DoJ has agreed to represent the employee; or

(d) The United States, where VA determines that litigation is likely to affect the agency or any of its components,

is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings.

5. *Contractors:* To contractors, grantees, experts, consultants, students and others performing or working on a contract, service, grant, cooperative agreement or other assignment for VA, when reasonably necessary to accomplish an agency function related to the records.

6. *Federal Agencies, Fraud and Abuse:* To other Federal agencies to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

7. *Data Breach Response and Remediation, for Another Federal Agency:* To another Federal agency or

Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

8. *Federal Agencies, for Computer Matches:* To other Federal agencies for the purpose of conducting computer matches to obtain information to determine or verify eligibility of Veterans receiving VA benefits or medical care under Title 38, U.S.C.

9. *Health Care Providers, for Referral by VA: To:* (1) a Federal agency or health care provider when VA refers a patient for medical and other health services, or authorizes a patient to obtain such services and the information is needed by the Federal agency or health care provider to perform the services; or (2) a Federal agency or to health care provider under the provisions of 38 U.S.C. 513, 7409, 8111, or 8153, when treatment is rendered by VA under the terms of such contract or agreement or the issuance of an authorization, and the information is needed for purposes of medical treatment or follow-up, determination of eligibility for benefits, or recovery by VA of the costs of the treatment.

10. *Office of Management and Budget (OMB):* To OMB for the performance of its statutory responsibilities for evaluating Federal programs.

11. *Guardians Ad Litem, for Representation:* To a fiduciary or guardian ad litem in relation to his or her representation of a claimant in any legal proceeding as relevant and necessary to fulfill the duties of the fiduciary or guardian ad litem.

12. *Guardians, Courts, for Incompetent Veterans:* To a court, magistrate or administrative tribunal in the course of presenting evidence; in matters of guardianship, inquests and commitments; to private attorneys representing Veterans rated incompetent in conjunction with issuance of Certificates of Incompetency; and to probation and parole officers in connection with court-required duties.

13. *Claims Representatives:* At the request of the claimant, *i.e.,* Veteran or their beneficiary, to accredited service organizations, VA-approved claim agents, and attorneys acting under a declaration of representation, the name, address, the basis and nature of a claim, amount of benefit payment information, medical information, and military service and active duty separation information, so that these individuals can aid claimants in the preparation, presentation, and prosecution of claims under the laws administered by VA.

14. *Nursing Home, for Pre-Admission Screening:* To a non-VA nursing home facility that is considering the patient for admission, when information concerning the individual's medical care is needed for the purpose of preadmission screening under 42 CFR 483.20(f) to identify patients who are mentally ill or mentally retarded so they can be evaluated for appropriate placement.

15. *Data Breach Response and Remediation, for VA:* To appropriate agencies, entities and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities or persons is reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize or remedy such harm.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on computers, paper and removable, or external hardware.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name, Social Security Number or other assigned identifiers of the individuals on whom they are maintained.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

In accordance with Records Control Schedule (RCS) 10–1, 6110.4, temporary disposition; approved applications are destroyed 1 year after home withdraws from program, and disapproved applications are destroyed after 5 years.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

1. Access to VA working and storage areas is restricted to VA employees on a ''need-to- know'' basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA file areas are locked after normal duty hours and the facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Access to computer rooms at health care facilities is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. Automated Data Processing peripheral devices are placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information in VistA may be accessed by authorized VA employees. Access to file information is controlled at two levels; the systems recognize authorized employees by series of individually unique passwords/codes as a part of each data message, and the employees are limited to only that information in the file which is needed in the performance of their official duties. Information that is downloaded from VistA and maintained on personal computers is afforded similar storage and access protections as the data that is maintained in the original files. Access to information stored on automated storage media at other VA locations is controlled by individually unique passwords/codes.

3. Access to the AITC is generally restricted to Center employees, custodial personnel, Federal Protective Service, and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other persons gaining access to computer rooms are escorted. Information stored in the computer may be accessed by authorized VA employees at remote locations including VA health care facilities, Information Systems Centers, VA Central Office, and VISNs. Access is controlled by individually unique passwords/codes which must be changed periodically by the employee.

RECORD ACCESS PROCEDURES:

Individuals seeking information on the existence and content of records in this system pertaining to them should contact the system manager in writing as indicated above or write or visit the VA facility location where they normally receive their care. A request for access to records must contain the requester's full name, address and telephone number, be signed by the requester and describe the records sought in sufficient detail to enable VA personnel to locate them with a reasonable amount of effort.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend records in this system pertaining to them should contact the system

manager in writing as indicated above. A request to contest or amend records must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record.

NOTIFICATION PROCEDURES:

Generalized notice is provided by the publication of this notice. For specific notice, see Record Access Procedure, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

76 FR 67561 (November 1, 2011).

VA Appendix 5

Community Residential Care Programs

Birmingham, AL; Tuscaloosa, AL; Tuskegee, AL; Fayetteville, AR; Little Rock, AR; Loma Linda, CA; Long Beach, CA; Los Angeles, CA; San Diego, CA; Washington, DC; Wilmington, DE; Bay Pines, FL; Gainesville, FL; Jacksonville, FL; Pensacola, FL; Tampa, FL; West Palm Beach, FL; Atlanta, GA; Augusta, GA; Chicago- Hines, IL; Danville, IL; Indianapolis, IN; Marion, IN; Des Moines, IA; Iowa City, IA; Topeka, KS; Lexington, KY; Louisville, KY; Alexandria, LA; New Orleans, LA; Shreveport, LA; Augusta, ME; Perry Point, MD; Bedford, MA; Boston, MA; Springfield, MA; Battle Creek, MI; Biloxi, MS; Jackson, MS; St Louis, MO; Lyons, NJ; Salisbury, NC; Montrose, NY; Northport, NY; Chillicothe, OH; Cleveland, OH; Columbus, OH; Dayton, OH; Coatesville, PA; Lebanon, PA; Philadelphia, PA; Pittsburgh, PA; Wilkes Barre, PA; San Juan, PR; Providence, RI; Mountain Home, TN; Murfreesboro, TN; Nashville, TN; Dallas, TX; Houston, TX; San Antonio, TX; Waco, TX; Hampton, VA; Richmond, VA; Salem, VA; Tacoma, WA; Martinsburg, WV; Tomah, WI.

[FR Doc. 2023–16020 Filed 7–27–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Request for Information on the Department of Veterans Affairs Creative Arts Therapists (Music) Standard of Practice

AGENCY: Department of Veterans Affairs.

ACTION: Request for information.

SUMMARY: The Department of Veterans Affairs (VA) is requesting information to assist in developing a national standard of practice for VA Creative Arts Therapists (Music). VA seeks comments on various topics to help inform VA's development of this national standard of practice.

DATES: Comments must be received on or before September 26, 2023.

ADDRESSES: Comments must be submitted through *www.regulations.gov.* Except as provided below, comments received before the close of the comment period will be available at *www.regulations.gov* for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* VA will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm the individual. VA encourages individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in any potential future rulemaking.

FOR FURTHER INFORMATION CONTACT: Ethan Kalett, Office of Regulations, Appeals and Policy (10BRAP), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 202–461–0500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Authority

Chapters 73 and 74 of 38 U.S.C. and 38 U.S.C. 303 authorize the Secretary to regulate the professional activities of VA health care professions to make certain that VA's health care system provides safe and effective health care by qualified health care professionals to ensure the well-being of those Veterans who have borne the battle.

On November 12, 2020, VA published an interim final rule confirming that VA health care professionals may practice their health care profession consistent with the scope and requirements of their VA employment, notwithstanding any state license, registration, certification or other requirements that unduly interfere with their practice. 38 CFR 17.419; 85 FR 71838. Specifically, this rulemaking confirmed VA's current practice of allowing VA health care professionals to deliver health care services in a state other than the health care professional's state of licensure, registration, certification or other state requirement, thereby enhancing beneficiaries' access to critical VA health care services. The rulemaking also confirmed VA's authority to establish national standards of practice for its health care professionals which would standardize a health care professional's practice in all VA medical facilities.

The rulemaking explained that a national standard of practice describes the tasks and duties that a VA health care professional practicing in the health care profession may perform and may be permitted to undertake. Having a national standard of practice means that individuals from the same VA health care profession may provide the same type of tasks and duties regardless of the VA medical facility where they are located or the state license, registration, certification or other state requirement they hold. We emphasized in the rulemaking and reiterate here that VA will determine, on an individual basis, that a health care professional has the necessary education, training and skills to perform the tasks and duties detailed in the national standard of practice and will only be able to perform such tasks and duties after they have been incorporated into the individual's privileges, scope of practice or functional statement. The rulemaking explicitly did not create any such national standards and directed that all national standards of practice would be subsequently created via policy.

Need for National Standards of Practice

As the Nation's largest integrated health care system, it is critical that VA develops national standards of practice to ensure beneficiaries receive the same high-quality care regardless of where they enter the system and to ensure that VA health care professionals can efficiently meet the needs of beneficiaries when practicing within the scope of their VA employment. National standards are designed to increase beneficiaries' access to safe and effective health care, thereby improving health outcomes. The importance of this initiative has been underscored by the Coronavirus Disease 2019 pandemic. With an increased need for mobility in our workforce, including through VA's Disaster Emergency Medical Personnel System, creating a uniform standard of practice better supports VA health care professionals who already frequently practice across state lines. In addition, the development of national standards of practice aligns with VA's long-term deployment of a new electronic health record (EHR). National standards of practice are critical for optimal EHR implementation to enable the specific roles for each health care profession in EHR to be consistent across the Veterans Health Administration (VHA) and to support increased interoperability

between VA and the Department of Defense (DoD). DoD has historically standardized practice for certain health care professionals, and VHA closely partnered with DoD to learn from their experience.

Process To Develop National Standards of Practice

Consistent with 38 CFR 17.419, VA is developing national standards of practice via policy. There will be one overarching national standard of practice directive that will generally describe VHA's policy and have each individual national standard of practice as an appendix to the directive. The directive and all appendices will be accessible on the VHA Publications website at: *https://vaww.va.gov/vhapublications/* (internal) and *https://www.va.gov/vhapublications/* (external) once published.

To develop these national standards, VA is using a robust, interactive process that is consistent with the guidance outlined in Executive Order (E.O.) 13132 to preempt state law. The process includes consultation with internal and external stakeholders, including state licensing boards, VA employees, professional associations, Veterans Service Organizations, labor partners and others. For each identified VA occupation, a workgroup comprised of health care professionals conducts state variance research to identify internal best practices that may not be authorized under every state license, certification or registration, but would enhance the practice and efficiency of the profession throughout the agency. The workgroup is comprised of VA employees who are health care professionals in the identified occupation; they may consult with internal stakeholders at any point throughout the process. If a best practice is identified that is not currently authorized by every state, the workgroup determines what education, training and skills are required to perform such task or duty. The workgroup then drafts a proposed VA national standard of practice using the data gathered during the state variance research and incorporates internal stakeholder feedback to date.

The proposed national standard of practice is internally reviewed, to include by an interdisciplinary workgroup consisting of representatives from Quality Management; Field Chief of Staff; Academic Affiliates; Field Chief Nursing Officer; Ethics; Workforce Management and Consulting; Surgery; Credentialing and Privileging; Field Chief Medical Officer; and EHR Modernization.

Externally, the proposed national standard of practice is provided to our partners in DoD. In addition, VA labor partners are engaged informally as part of a pre-decisional collaboration. Consistent with E.O. 13132, a letter is sent to each state board and certifying organization that includes the proposed national standard and an opportunity to further discuss the national standard with VA. After the states and certifying organization have received notification, the proposed national standard of practice is published to the **Federal Register** for 60 days to obtain feedback from the public, including professional associations and unions. At the same time, the proposed national standard is published on an internal VA site to obtain feedback from VA employees. Feedback from state boards, professional associations, unions, VA employees and any other person or organization who informally provides comments via the **Federal Register** will be reviewed. VA will make appropriate revisions in light of the comments, including those that present evidence-based practice and alternatives that help VA meet our mission and goals, and that are better for Veterans or VA health care professionals. We will publish a collective response to all comments at *https://www.va.gov/standardsofpractice.*

After the national standard of practice is finalized, approved and published in VHA policy, VA will implement the tasks and duties authorized by that national standard of practice. Any tasks or duties included in the national standard will be incorporated into an individual health care professional's privileges, scope of practice or functional statement following any training and education necessary for the health care professional to perform those functions. Implementation of the national standard of practice may be phased in across all medical facilities, with limited exemptions for health care professionals, as needed.

National Standard for Creative Arts Therapists (Music)

The proposed format for national standards of practice when there is a national certification and some states require a license is as follows: The first paragraph provides general information about the profession and what the health care professionals can do. The second paragraph references the education and certification needed to practice this profession at VA. The third paragraph confirms that this profession follows the standard set by the national certifying body. A final statement explains that while VA only requires a national certification, some states also require licensure for this profession. The standard includes information on which states offer an exemption for Federal employees and where VA will preempt state laws, if applicable.

We note that the proposed standards of practice do not contain an exhaustive list of every task and duty that each VA health care professional can perform. Rather, it is designed to highlight whether there are any areas of variance in how this profession can practice across states and how this profession will be able to practice within VA notwithstanding their state license, certification, registration and other requirements.

Music Therapists use an evidence-based clinical practice that uses music and music techniques to target group and individualized goals across the clinical domains. VA qualification standards require Music Therapists to have an active, current, full and unrestricted Music Therapist Board Certification (MT–BC) from the Certification Board for Music Therapists (CBMT). Please note that while VA Handbook 5005, Part II, Appendix G60 refers to this position as Creative Arts Therapists (Music), this position is commonly referred to as Music Therapists, and we will use that terminology throughout. The national certification follows the Standards of Clinical Practice from the American Music Therapy Association (AMTA) and the Scope of Music Therapy Practice which was jointly developed by CBMT and AMTA. VA reviewed whether there are any alternative registrations, certifications or state requirements that could be required for a Music Therapist and found that 11 states require a license to practice as a Music Therapist in that state. Of those, three states exempt Federal employees from state license requirements. The standards set forth in the licensure requirements for all 11 states are consistent with what is permitted by the Standards of Clinical Practice and the Scope of Music Therapy Practice. Therefore, there is no variance in how Music Therapists practice in any state.

VA proposes to adopt a standard of practice consistent with AMTA standards and the Scope of Music Therapy Practice that the CBMT follows. Therefore, VA Music Therapists will continue to follow the standard set by their national certification. AMTA standards can be found here: *https://www.musictherapy.org/about/standards/*. The Scope of Music Therapy Practice developed jointly by CBMT and AMTA can be found here:

https://www.musictherapy.org/about/scope_of_music_therapy_practice/.

Because the practice of Music Therapists is not changing, there will be no impact on the practice of this occupation when this national standard of practice is implemented.

Proposed National Standard of Practice for Music Therapists

1. Music Therapists use an evidence-based clinical practice that uses music and music techniques to target group and individualized goals across the clinical domains. Music interventions can target many goals including enhancement of cognitive processing (*e.g.,* neuroconnectivity, memory, retention), sensory integration, fine and gross motor movement (*e.g.,* initiation, sustaining, inhibiting), communication and support for mental and emotional well-being and recovery.

2. VA Music Therapists possess the education and certification required by VA qualification standards. See VA Handbook 5005, Staffing, Part II, Appendix G60, dated June 7, 2019.

3. VA Music Therapists practice in accordance with the Standards of Clinical Practice from AMTA and the Scope of Music Therapy Practice jointly developed by CBMT and AMTA, available at: *https://www.musictherapy.org/*about/standards/. VA reviewed license and certification requirements for this occupation in June 2023 and confirmed that all VA Music Therapists follow AMTA and CBMT standards.

4. Although VA only requires a certification, 11 states require a state license in order to practice as a Music Therapist in that state: Georgia, Maryland, Nevada, New Jersey, New York, North Dakota, Oklahoma, Oregon, Rhode Island, Utah and Virginia. Of those, the following states exempt Federal employees from its state license requirements: Maryland, Nevada and Oklahoma. VA reviewed license and certification requirements for this occupation in June 2023 and confirmed that there is no variance in how VA Music Therapists practice in any state.

Request for Information

1. Are there any required trainings for the aforementioned practices that we should consider?

2. Are there any factors that would inhibit or delay the implementation of the aforementioned practices for VA health care professionals in any states?

3. Is there any variance in practice that we have not listed?

4. What should we consider when preempting conflicting state laws, regulations, or requirements regarding supervision of individuals working toward obtaining their license or unlicensed personnel?

5. Is there anything else you would like to share with us about this national standard of practice?

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on July 10, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2023–16005 Filed 7–27–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Request for Information on the Department of Veterans Affairs Recreation Therapists Standard of Practice

AGENCY: Department of Veterans Affairs.

ACTION: Request for information.

SUMMARY: The Department of Veterans Affairs (VA) is requesting information to assist in developing a national standard of practice for VA Recreation Therapists. VA seeks comments on various topics to help inform VA's development of this national standard of practice.

DATES: Comments must be received on or before September 26, 2023.

ADDRESSES: Comments must be submitted through *www.regulations.gov.* Except as provided below, comments received before the close of the comment period will be available at *www.regulations.gov* for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* VA will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm the individual. VA encourages individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in any potential future rulemaking.

FOR FURTHER INFORMATION CONTACT: Ethan Kalett, Office of Regulations, Appeals and Policy (10BRAP), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 202–461–0500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Authority

Chapters 73 and 74 of 38 U.S.C. and 38 U.S.C. 303 authorize the Secretary to regulate the professional activities of VA health care professions to make certain that VA's health care system provides safe and effective health care by qualified health care professionals to ensure the well-being of those Veterans who have borne the battle.

On November 12, 2020, VA published an interim final rule confirming that VA health care professionals may practice their health care profession consistent with the scope and requirements of their VA employment, notwithstanding any State license, registration, certification or other requirements that unduly interfere with their practice (38 CFR 17.419; 85 FR 71838). Specifically, this rulemaking confirmed VA's current practice of allowing VA health care professionals to deliver health care services in a State other than the health care professional's State of licensure, registration, certification or other State requirement, thereby enhancing beneficiaries' access to critical VA health care services. The rulemaking also confirmed VA's authority to establish national standards of practice for its health care professionals which would standardize a health care professional's practice in all VA medical facilities.

The rulemaking explained that a national standard of practice describes the tasks and duties that a VA health care professional practicing in the health care profession may perform and may be permitted to undertake. Having a national standard of practice means that individuals from the same VA health care profession may provide the same type of tasks and duties regardless of the VA medical facility where they are located or the State license, registration, certification or other State requirement they hold. We emphasized in the rulemaking and reiterate here that VA will determine, on an individual basis, that a health care professional has the necessary education, training and skills to perform the tasks and duties detailed in the national standard of

practice and will only be able to perform such tasks and duties after they have been incorporated into the individual's privileges, scope of practice or functional statement. The rulemaking explicitly did not create any such national standards and directed that all national standards of practice would be subsequently created via policy.

Need for National Standards of Practice

As the Nation's largest integrated health care system, it is critical that VA develops national standards of practice to ensure beneficiaries receive the same high-quality care regardless of where they enter the system and to ensure that VA health care professionals can efficiently meet the needs of beneficiaries when practicing within the scope of their VA employment. National standards are designed to increase beneficiaries' access to safe and effective health care, thereby improving health outcomes. The importance of this initiative has been underscored by the COVID–19 pandemic. With an increased need for mobility in our workforce, including through VA's Disaster Emergency Medical Personnel System, creating a uniform standard of practice better supports VA health care professionals who already frequently practice across State lines. In addition, the development of national standards of practice aligns with VA's long-term deployment of a new electronic health record (EHR). National standards of practice are critical for optimal EHR implementation to enable the specific roles for each health care profession in EHR to be consistent across the Veterans Health Administration (VHA) and to support increased interoperability between VA and the Department of Defense (DoD). DoD has historically standardized practice for certain health care professionals, and VHA closely partnered with DoD to learn from their experience.

Process To Develop National Standards of Practice

Consistent with 38 CFR 17.419, VA is developing national standards of practice via policy. There will be one overarching national standard of practice directive that will generally describe VHA's policy and have each individual national standard of practice as an appendix to the directive. The directive and all appendices will be accessible on the VHA Publications website at: *https://vaww.va.gov/vhapublications/* (internal) and *https://www.va.gov/vhapublications/* (external) once published.

To develop these national standards, VA is using a robust, interactive process that is consistent with the guidance outlined in Executive Order (E.O.) 13132 to preempt State law. The process includes consultation with internal and external stakeholders, including State licensing boards, VA employees, professional associations, Veterans Service Organizations, labor partners and others. For each identified VA occupation, a workgroup comprised of health care professionals conducts State variance research to identify internal best practices that may not be authorized under every State license, certification or registration, but would enhance the practice and efficiency of the profession throughout the agency. The workgroup is comprised of VA employees who are health care professionals in the identified occupation; they may consult with internal stakeholders at any point throughout the process. If a best practice is identified that is not currently authorized by every State, the workgroup determines what education, training and skills are required to perform such task or duty. The workgroup then drafts a proposed VA national standard of practice using the data gathered during the State variance research and incorporates internal stakeholder feedback to date.

The proposed national standard of practice is internally reviewed, to include by an interdisciplinary workgroup consisting of representatives from Quality Management; Field Chief of Staff; Academic Affiliates; Field Chief Nursing Officer; Ethics; Workforce Management and Consulting; Surgery; Credentialing and Privileging; Field Chief Medical Officer; and EHR Modernization.

Externally, the proposed national standard of practice is provided to our partners in DoD. In addition, VA labor partners are engaged informally as part of a pre-decisional collaboration. Consistent with E.O. 13132, a letter is sent to each State board and certifying organization that includes the proposed national standard and an opportunity to further discuss the national standard with VA. After the States and certifying organization have received notification, the proposed national standard of practice is published to the **Federal Register** for 60 days to obtain feedback from the public, including professional associations and unions. At the same time, the proposed national standard is published on an internal VA site to obtain feedback from VA employees. Feedback from State boards, professional associations, unions, VA employees and any other person or organization who informally provides comments via the **Federal Register** will be reviewed. VA will make appropriate revisions in light of the comments, including those that present evidence-based practice and alternatives that help VA meet our mission and goals and that are better for Veterans or VA health care professionals. We will publish a collective response to all comments at *https://www.va.gov/standardsofpractice.*

After the national standard of practice is finalized, approved and published in VHA policy, VA will implement the tasks and duties authorized by that national standard of practice. Any tasks or duties included in the national standard will be incorporated into an individual health care professional's privileges, scope of practice or functional statement following any training and education necessary for the health care professional to perform those functions. Implementation of the national standard of practice may be phased in across all medical facilities, with limited exemptions for health care professionals as needed.

National Standard for Recreation Therapists

The proposed format for national standards of practice when there is a national certification, and some States require a license is as follows. The first paragraph provides general information about the profession and what the health care professionals can do. The second paragraph references the education and certification needed to practice this profession at VA. The third paragraph confirms that this profession follows the standard set by the national certifying body. A final statement explains that while VA only requires a national certification, some States also require licensure for this profession. The standard includes information on which States offer an exemption for Federal employees and where VA will preempt State laws, if applicable.

We note that the proposed standards of practice do not contain an exhaustive list of every task and duty that each VA health care professional can perform. Rather, it is designed to highlight whether there are any areas of variance in how this profession can practice across States and how this profession will be able to practice within VA notwithstanding their State license, certification, registration and other requirements.

Recreation Therapists systematically use recreation and activity-based interventions for the specific purpose of improving the physical, social, emotional, cognitive and spiritual functioning of individuals; enhancing well-being; and enabling greater quality

of life through recreation participation for individuals with injury, illness or disability. VA qualification standards require Recreation Therapists to have an active, current, full and unrestricted certification as a Certified Therapeutic Recreation Specialist from the National Council for Therapeutic Recreation Certification (NCTRC). Although NCTRC is the certification body for Recreation Therapists, the American Therapeutic Recreation Association (ATRA) has developed the Standards for the Practice of Recreational Therapy, which is followed by all VA Recreation Therapists.

VA reviewed whether there are any alternative registrations, certifications or State requirements that could be required for a Recreation Therapist and found that five States require a license to practice as a Recreation Therapist in that State. Of those, one State exempts Federal employees from its State license requirements. The standards set forth in the licensure requirements for all five States are consistent with what is permitted under the Standards of Practice for Recreational Therapy from the ATRA. Therefore, there is no variance in how any Recreation Therapists practice in any State.

VA proposes to adopt a standard of practice consistent with the ATRA standards. Therefore, VA Recreation Therapists will continue to follow the same standard as set by their national certification. The ATRA standards can be found here: *https://www.atra-online.com/general/custom.asp?page=SOP.*

Because the practice of Recreation Therapists is not changing, there will be no impact on the practice of this occupation when this national standard of practice is implemented.

Proposed National Standard of Practice for Recreation Therapists

1. Recreation Therapists systematically use recreation and activity-based interventions for the specific purpose of improving the physical, social, emotional, cognitive and spiritual functioning of individuals; enhancing wellbeing; and enabling greater quality of life through recreation participation for individuals with injury, illness or disability. Recreation Therapists utilize treatment interventions, leisure education and recreation experiences to improve functional abilities, foster recovery, enhance health and wellness, promote the development and maintenance of a healthy leisure lifestyle and increase independent participation in activities of choice through activity modification, adaptation and facilitation.

2. Recreation Therapists in VA possess the education and certification required by VA qualification standards. See VA Handbook 5005, Staffing, Part II, Appendix G60, dated June 7, 2019.

3. VA Recreation Therapists practice in accordance with the Standards for the Practice of Recreational Therapy from ATRA available at: *https://www.atra-online.com/.* VA reviewed license and certification requirements for this occupation in June 2023 and confirmed that all Recreation Therapists in VA follow the ATRA standards.

4. Although VA only requires a certification, five States require a State license in order to practice as a Recreation Therapist in that State: New Hampshire, New Jersey, North Carolina, Oklahoma and Utah. Of those, the following State exempts Federal employees from its State license requirements: Oklahoma.

VA reviewed license and certification requirements for this occupation in June 2023 and confirmed that there is no variance in how VA Recreation Therapists practice in any State.

Request for Information

1. Are there any required trainings for the aforementioned practices that we should consider?

2. Are there any factors that would inhibit or delay the implementation of the aforementioned practices for VA health care professionals in any States?

3. Is there any variance in practice that we have not listed?

4. What should we consider when preempting conflicting State laws, regulations or requirements regarding supervision of individuals working toward obtaining their license or unlicensed personnel?

5. Is there anything else you would like to share with us about this national standard of practice?

Signing Authority

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

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2023–16007 Filed 7–27–23; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0059]

Agency Information Collection Activity: Statement of Person Claiming To Have Stood in Relation of Parent

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veteran's Benefits Administration (VBA), 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 revision 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 September 26, 2023.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy Kessinger, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0059'' 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. 2900–0059'' 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: 38 U.S.C. 1310, 1315.

Title: Statement of Person Claiming to Have Stood in Relation of Parent (VA Form 21P–524).

OMB Control Number: 2900–0059.

Type of Review: Revision of a currently approved collection.

Abstract: The Department of Veterans Affairs (VA), through its Veterans Benefits Administration (VBA), administers an integrated program of benefits and services, established by law, for veterans, service personnel, and their dependents and/or beneficiaries. Title 38 U.S.C. 5101(a) provides that a specific claim in the form provided by the Secretary must be filed in order for benefits to be paid to any individual under the laws administered by the Secretary. 38 U.S.C 1315 established Dependency Indemnity Compensation to Parents (known as Parents' DIC). Parent's DIC is a monthly benefit payable to the parent(s) of a deceased Veteran. The payable monthly benefit is dependent on the parent's (parents') annual income. Additional funds are payable to the parent(s) if they are in a patient in a nursing home, blind, so nearly blind or significantly disabled as to need or require the regular aid and attendance of another person.

38 CFR 3.59 defines the term parent as ''. . . a natural mother or father (including the mother of an illegitimate child or the father of an illegitimate child if the usual family relationship existed), mother or father through adoption, or a person who for a period of not less than 1 year stood in the relationship of a parent to a Veteran at any time before his or her entry into active service.''

The information collected will be used by VBA to evaluate a claimant's parental relationship to a deceased Veteran when the claimant is not the Veteran's natural mother or father or adopted mother or father.

Affected Public: Individuals and households.

Estimated Annual Burden: 42 hours.

Estimated Average Burden per Respondent: 2 hours (120 minutes).

Frequency of Response: Once.

Estimated Number of Respondents: 21.

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. 2023–16049 Filed 7–27–23; 8:45 am]

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Part II

Commodity Futures Trading Commission

17 CFR Parts 39 and 190

Derivatives Clearing Organizations Recovery and Orderly Wind-Down Plans; Information for Resolution Planning; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 39 and 190

RIN 3038–AF16

Derivatives Clearing Organizations Recovery and Orderly Wind-Down Plans; Information for Resolution Planning

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing amendments to certain regulations applicable to systemically important derivatives clearing organizations (SIDCOs) and derivatives clearing organizations (DCOs) that elect to be subject to the provisions in the Commission's regulations (Subpart C DCOs). These proposed amendments would, among other things, address certain risk management obligations, modify definitions, and codify existing staff guidance. The Commission is also proposing to amend certain regulations to require DCOs that are not designated as systemically important, and which have not elected to be covered by our regulations, to submit orderly Wind-Down plans. In addition, the Commission is proposing to make conforming amendments to certain provisions, revise the Subpart C Election Form and Form DCO, and remove stale provisions.

DATES: Comments must be received by September 26, 2023.

ADDRESSES: You may submit comments, identified by ''Derivatives Clearing Organizations Recovery and Orderly Wind-Down Plans; Information for Resolution Planning'' and RIN 3038–AF16, by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the ''Submit Comments'' link for this rulemaking and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through the CFTC Comments Portal are encouraged. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (FOIA), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Robert Wasserman, Chief Counsel and Senior Advisor, 202–418–5092, *rwasserman@cftc.gov;* Megan Wallace, Senior Special Counsel, 202–418–5150, *mwallace@cftc.gov;* Eric Schmelzer, Special Counsel, *eschmelzer@cftc.gov,* 202–418–5967; Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

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I. Background

A. The CEA, Dodd-Frank Act, and DCO Core Principles

Section 3(b) of the Commodity Exchange Act (CEA) sets forth the purposes of that Act; among these is to ensure the financial integrity of all transactions subject to this act and the avoidance of systemic risk. Section 5b(c)(2) of the CEA, as amended in 2010 by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[2] sets forth eighteen core principles with which a DCO must comply in order to be registered with the Commission and maintain its registration (DCO Core Principles).[3] Together, the DCO Core Principles serve to reduce risk, increase transparency and promote market integrity within the financial system.[4]

Title VII of the Dodd-Frank Act grants the Commission explicit authority to promulgate rules, pursuant to section 8a(5) of the CEA, regarding the DCO Core Principles that govern the activities of all DCOs in clearing and settling swaps and futures.[5] Section 8a(5), in turn, authorizes the Commission to

[1] 17 CFR 145.9. Commission regulations referred to herein are found at 17 CFR chapter I (2020), and are accessible on the Commission's website at *https://www.cftc.gov/LawRegulation/CommodityExchangeAct/index.htm.*

[2] Title VII, Wall Street Transparency and Accountability Act of 2010, Public Law 111–203, 124 Stat. 1376, 1641 (2010).

[3] Section 5b(c)(2) of the CEA, 7 U.S.C. 7a–1(c)(2).

[4] *Derivatives Clearing Organization Gen. Provisions and Core Principles,* 76 FR 69334, 69334 (Nov. 8, 2011); *Customer Clearing Documentation, Timing of Acceptance for Clearing, & Clearing Member Risk Mgmt.,* 77 FR 21278, 21279 (Apr. 9, 2012) (further amending § 39.12).

[5] Section 725(c) of Title VII of the Dodd-Frank Act, 124 Stat. at 1687 (2010), 7 U.S.C. 7a–1(c)(2)(A)(i).

make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

For SIDCOs in particular, Title VIII of the Dodd-Frank Act grants the Commission explicit authority to prescribe risk management standards, taking into consideration relevant international standards and existing prudential requirements governing operations related to payment, clearing and settlement activities and the conduct of designated activities by such financial institutions.[6] Under Title VIII, the objectives and principles for those risk management standards are to (1) promote risk management; (2) promote safety and soundness; (3) reduce systemic risks; and (4) support the stability of the broader financial system.[7] Combined, Titles VII and VIII of the Dodd-Frank Act address one of Dodd-Frank's fundamental goals: to reduce systemic risk through properly regulated central clearing.[8]

DCOs are subject to a number of risks that could threaten their viability and financial strength, including risks from the default of one or more clearing members (including credit and liquidity risk) as well as non-default risk (including general business risk, operational risk, custody risk, investment risk, and legal risk). The realization of these risks has the potential to result in the DCO's financial failure.[9]

In light of the central role DCOs perform in the markets that they serve, the disorderly failure of a DCO would likely cause significant disruption in such markets. In particular, SIDCOs play an essential role in the financial system, and thus the disorderly failure of such a DCO could lead to severe systemic disruptions if it caused the markets it serves to cease to operate effectively. Ensuring that DCOs can continue to provide critical operations and services as expected, even in times of extreme stress, is therefore central to financial stability. Maintaining provision of the critical operations and services that clearing members and others depend upon should allow DCOs to serve as a source of strength and continuity for the financial markets they serve.[10]

Core Principle D requires each DCO to ensure that it possesses the ability to manage the risks associated with discharging its responsibilities through the use of appropriate tools and procedures.[11] Recovery planning is inherently integrated into that risk management, and concerns those aspects of risk management and contingency planning which address the extreme circumstances that could threaten the DCO's viability and financial strength. To manage these risks as required by Core Principle D, a DCO needs to identify in advance, to the extent possible, such extreme circumstances and maintain an effective plan to enable it to continue to provide its critical operations and services if these circumstances were to occur. The recovery plan needs to address circumstances that may give rise to any default loss, including uncovered credit losses, liquidity shortfalls or capital inadequacy, as well as any structural weaknesses that these circumstances reveal. Similarly, the recovery plan needs to address DCOs' potential non-default losses. The recovery plan also needs to address the need to replenish any depleted pre-funded financial resources and liquidity arrangements so that the DCO can remain viable as a going concern and continue to provide its critical operations and services. The existence of the recovery plan further enhances the resilience of the DCO, and will provide market participants with confidence that the DCO will be able to function effectively even in extreme circumstances.[12]

Given the systemic importance of SIDCOs, each SIDCO must have a comprehensive and effective recovery plan designed to permit the SIDCO to continue to provide its critical operations and services. Subpart C DCOs, being held to similar standards as SIDCOs, also need to have such recovery plans. However, where a recovery plan proves, in a particular circumstance, to be ineffective, it is important that the DCO have a plan to wind down in an orderly manner. A plan for an orderly wind-down is not a substitute for having a comprehensive and effective recovery plan.[13]

The purpose of a recovery plan is to provide, with the benefit of thorough planning during business-as-usual operations, such information and procedures that will allow a DCO to effect recovery such that it can continue to provide its critical operations and services when its viability as a going concern is threatened. A recovery plan enables the DCO, its clearing members, their clients, and other relevant stakeholders, to prepare for such extreme circumstances, increases the probability that the most effective tools to deal with a specific stress will be used and reduces the risk that the effectiveness of recovery actions will be hindered by uncertainty about which tools will be used. The recovery plan will also assist the Federal Deposit Insurance Corporation (FDIC) as resolution authority under Dodd-Frank Title II[14] in preparing and executing their resolution plans for a DCO.[15]

While the implementation of the recovery plan is the responsibility of the DCO itself, which accordingly also has to have the power to make decisions and take action in accordance with its rules, under Title II resolution, that responsibility and power will pass to the FDIC as receiver instead. Many recovery tools will also be relevant to a DCO under Title II resolution, not least because FDIC would ''step into the shoes'' of the DCO[16] and accordingly would be able to enforce implementation of contractual loss or liquidity shortfall allocation rules, to the extent that any such rules exist, and have not been exhausted before entry into resolution.[17]

To accomplish these ends, this Notice of Proposed Rulemaking (NPRM) is proposing, among other things: (1) for SIDCOs and Subpart C DCOs, that they should incorporate certain subjects and analyses in their viable plans for recovery and orderly wind-down; and (2) for all other DCOs, that they should maintain viable plans for orderly wind-down that incorporate substantially similar subjects and analyses as the proposed requirements for SIDCOs and Subpart C DCOs.

B. Regulatory Framework for DCOs

Part 39 of the Commission's regulations implements the DCO Core Principles, including Core Principles D

[6] Title VIII, Payment, Clearing, and Settlement Supervision Act of 2010, Section 805, 124 Stat. 1802, 1809, 12 U.S.C. 5464(a)(2)(A), (B).

[7] *Enhanced Risk Management Standards for Systemically Important Derivatives Clearing Organizations,* 78 FR 49663, 49665 (Aug. 15, 2013).

[8] *See Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management,* 77 FR 21278, 21278 (Apr. 9, 2012).

[9] CPMI–IOSCO, Recovery of financial market infrastructures (July 5, 2017) (hereinafter CPMI–IOSCO Recovery Guidance) at ¶ 2.1.1.

[10] *Id.* at ¶ 2.1.2.

[11] 7 U.S.C. 7a–1(c)(2)(D)(i).

[12] CPMI–IOSCO Recovery Guidance, at ¶ 2.2.1.

[13] *Id.* at ¶ 2.2.2.

[14] 12 U.S.C. 5381 *et. seq.* (''Orderly Liquidation Authority''). While orderly wind-down as discussed here proceeds under the authority of the DCO, FDIC would act as receiver in conducting an orderly liquidation under Title II.

[15] CPMI–IOSCO Recovery Guidance at ¶ 2.3.1.

[16] 12 U.S.C. 5390(a)(1)(A)(i) (upon appointment as receiver for a covered financial company, FDIC succeeds to all rights, titles, powers, and privileges of the covered financial company and its assets, and of any stockholder, member, officer, or director of such company).

[17] CPMI–IOSCO Recovery Guidance at ¶ 2.2.3.

and R, which require that the DCO possesses the ability to manage the risks associated with discharging the responsibilities of the DCO through the use of appropriate tools and procedures,[18] and a well-founded, transparent, and enforceable legal framework for each aspect of the DCO.[19] Subpart B of part 39 establishes standards for compliance with the DCO Core Principles for all DCOs.[20] Subpart C of part 39 establishes additional standards for compliance with the DCO Core Principles for SIDCOs,[21] *i.e.,* DCOs designated systemically important by the Financial Stability Oversight Council (FSOC) for which the Commission acts as the Supervisory Agency.[22] The Subpart C regulations also apply to DCOs that elect to be subject to the requirements in Subpart C.[23]

Section 805 of the Dodd-Frank Act directs the Commission to consider relevant international standards and existing prudential requirements when prescribing risk management standards for SIDCOs.[24] In 2013 the Commission determined that, for purposes of meeting the Commission's statutory obligation pursuant to Section 805(a)(2)(A) of the Dodd-Frank Act, the international standards most relevant to the risk management of SIDCOs are the PFMI.[25]

C. Recovery and Orderly Wind-Down for SIDCOs and Subpart C DCOs—§ 39.39

The Commission established regulations for the recovery and wind-down of a SIDCO and Subpart C DCO in 2013 with the promulgation of § 39.39.[26] Regulation 39.39[27] was codified to protect the members of a SIDCO or Subpart C DCO, as well as their customers, and the financial system more broadly, from the consequences of a disorderly failure of a DCO consistent with Principles 3 and 15 of the PFMI.[28] Regulation 39.39 also promotes the concepts in Core Principles B (Financial Resources), D (Risk Management), G (Default Rules and Procedures), I (System Safeguards), L (Public Information), O (Governance Fitness Standards), and R (Legal Risk) of Section 5b(c)(2) of the CEA.[29]

Regulation 39.39(a) defines the terms ''general business risk,'' ''wind-down,'' ''recovery,'' ''operational risk,'' and ''unencumbered liquid financial assets.''[30]

Regulation 39.39(b) requires SIDCOs and Subpart C DCOs to maintain viable plans for (1) recovery or orderly wind-down, necessitated by uncovered credit losses or liquidity shortfalls; and separately, (2) recovery or orderly wind-down necessitated by general business risk, operational risk, or any other risk

[18] Section 5b(c)(2)(D) of the CEA, 7 U.S.C. 7a–1(c)(2)(D) (''Core Principle D—Risk Management'').

[19] Section 5b(c)(2)(R) of the CEA, 7 U.S.C. 7a–1(c)(2)(R) (''Core Principle R—Legal Risk'').

[20] 17 CFR 39.9–39.27.

[21] 17 CFR 39.30–39.42. Subpart C flows from Title VIII of the Dodd-Frank Act, which Congress enacted to mitigate systemic risk in the financial system and to promote financial stability. Section 802(b) of the Dodd-Frank Act.

The term ''systemically important'' means a situation where the failure of or a disruption to the functioning of a financial market utility could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system of the United States. Section 803(9) of the Dodd-Frank Act; *see also* 12 CFR 1320.2 (Definitions—Systemically important and systemic importance). A ''financial market utility'' (FMU) includes any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person. Section 803(6)(A) of the Dodd-Frank Act; *see also* 12 CFR 1320.2 (Definitions—Financial market utility).

Section 804 of the Dodd-Frank Act requires the FSOC to designate those FMUs that FSOC determines are, or are likely to become, systemically important. Three CFTC-registered DCOs, Chicago Mercantile Exchange, Inc. (CME), ICE Clear Credit LLC (ICC), and Options Clearing Corporation (OCC), were designated as systemically important by the FSOC in 2012. Press Release, Financial Stability Oversight Council Makes First Designations in Effort to Protect Against Future Financial Crises (Jul. 18, 2012), *available at https://www.treasury.gov/press-center/press-releases/Pages/tg1645.aspx.* The bases for the designations are available at *https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/fsoc/designations.* The Commission is the Supervisory Agency for CME and ICC; the U.S. Securities and Exchange Commission is the Supervisory Agency for OCC. *See* 12 CFR 1320.2 (Definition of Supervisory Agency).

[22] 17 CFR 39.2.

[23] In the Commission's experience, DCOs based in the United States that have banks as clearing members have elected to be subject to Subpart C in order to achieve status as a qualified central counterparty (QCCP), while U.S.-based DCOs that do not have banks as clearing members have not made that election.

In July 2012, the Basel Committee on Banking Supervision, the international body that sets standards for the regulation of banks, published the ''Capital Requirements for Bank Exposures to Central Counterparties'' (Basel CCP Capital Requirements), which describes standards for capital charges arising from bank exposures to central counterparties (CCPs) related to over-the-counter derivatives, exchange-traded derivatives, and securities financing transactions. (DCOs are referred to as CCPs in international standards and guidance.) The Basel CCP Capital Requirements create financial incentives for banks, including their subsidiaries and affiliates, to clear financial derivatives with CCPs that are prudentially supervised in a jurisdiction where the relevant regulator has adopted rules or regulations that are consistent with the standards set forth in the Principles for Financial Market Infrastructures (PFMI), published in April 2012 by the Bank for International Settlements' (BIS) Committee on Payment and Settlement Systems (renamed the Committee on Payments and Market Infrastructures (CPMI)) and the Technical Committee of the International Organization of Securities Commissions (IOSCO) (collectively referred to as CPMI–IOSCO). The PFMI is available at *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD377.pdf.*

A QCCP is defined as an entity that (i) is licensed to operate as a CCP and is permitted by the appropriate regulator to operate as such, and (ii) is prudentially supervised in a jurisdiction where the relevant regulator has established and publicly indicated that it applies to the CCP, on an ongoing basis, domestic rules and regulations that are consistent with the PFMI. *See* Basel Committee on Banking Supervision, Credit Risk Framework at section 50.3, available at *https://www.bis.org/basel_framework/chapter/CRE/50.htm?inforce=20191215&published=20191215.* The failure of a CCP to achieve QCCP status could result in significant costs to its bank clearing members (or banks that are customers of its clearing members).

The U.S. banking regulators, including the Board of Governors of the Federal Reserve (Federal Reserve), FDIC, and the Office of the Comptroller of the Currency, have adopted capital standards that are consistent with the Basel Committee's standards. For example, under the FDIC's regulations, the capital requirement for a clearing member's prefunded default fund contribution to a qualifying CCP can be as low as 0.16% of that default fund contribution. 12 CFR 324.133(d)(4). By contrast, the capital requirement for a clearing member's prefunded default fund contribution to a non-qualifying CCP is 100% of that default fund contribution. 12 CFR 324.10(a)(1)(iii), (b)(3) (requiring capital of 8% of risk-weighted asset amount), 12 CFR 324.133(d)(2) (setting risk-weighted asset amount for default fund contributions to non-qualifying CCP at 1,250% of the contribution (1,250% * 8% = 100%)). *See also* 12 CFR 324.133(c)(3) (applying a risk weight of 2% to transactions with a QCCP).

The Federal Reserve and Office of the Comptroller of the Currency have similar regulations.

[24] Section 805(a)(2) of the Dodd-Frank Act, 12 U.S.C. 5464(a)(2)(A).

[25] 78 FR 49663 at 49666. The PFMI consist of twenty-four principles addressing the risk management and efficiency of a financial market infrastructure's (FMI's) operations. Subpart C reflects the following PFMI principles: Principle 2 (Governance); Principle 3 (Framework for the comprehensive management of risks); Principle 4 (Credit risk); Principle 6 (Margin); Principle 7 (Liquidity risk); Principle 9 (Money settlements); Principle 14 (Segregation and portability); Principle 15 (General business risk); Principle 16 (Custody and investment risks); Principle 17 (Operational risk); Principle 21 (Efficiency and effectiveness); Principle 22 (Communication procedures and standards); and Principle 23 (Disclosure of rules, key procedures, and market data).

[26] *Derivatives Clearing Organizations and International Standards,* 78 FR 72476, 72494 (Dec. 2, 2013).

[27] 17 CFR 39.39. References in the remainder of this section are to the existing regulations.

[28] *See* 78 FR 72476 at 72494–95. Principle 3 of the PFMI requires an FMI to have a sound risk management framework ''for comprehensively managing legal, credit, liquidity, operational, and other risks.'' PFMI Principle 3, at 32. Principle 15 of the PFMI requires an FMI to ''identify, monitor, and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that it can continue operations and services as a going concern if those losses materialize. Further, liquid net assets should at all times be sufficient to ensure a recovery or orderly wind-down of critical operations and services.'' PFMI Principle 15, at 88.

[29] *See generally* 78 FR 72476.

[30] 17 CFR 39.39(a)(1)–(5).

that threatens the DCO's viability as a going concern.[31]

Regulation 39.39(c)(1) requires a SIDCO or Subpart C DCO to identify scenarios that may potentially prevent it from being able to meet its obligations, provide its critical operations and services as a going concern and assess the effectiveness of a full range of options for recovery and orderly wind-down.[32] Regulation 39.39(c)(1) further requires the plans to include procedures for informing the Commission when the recovery plan is initiated or wind-down is pending.[33]

Regulation 39.39(c)(2) requires a SIDCO or Subpart C DCO to have procedures for providing the Commission and the FDIC with information needed for resolution planning.[34]

Regulation 39.39(d) requires that the recovery and wind-down plans of SIDCOs and Subpart C DCOs be supported by resources sufficient to implement those recovery or wind-down plans. This paragraph is not being amended.[35]

Regulation 39.39(e) requires SIDCOs and Subpart C DCOs to maintain viable plans, approved by the SIDCO's or Subpart C DCO's board of directors and updated regularly, for raising additional financial resources in a scenario in which it is unable to comply with any financial resource requirements set forth in part 39.[36] This paragraph is not being amended.

Regulation 39.39(f) allows the Commission, upon request, to grant a SIDCO and Subpart C DCO up to one year to comply with any provision of § 39.39 or of § 39.35 (default rules and procedures for uncovered credit losses or liquidity shortfalls).[37]

For DCOs that neither have been designated systemically important nor elected to become Subpart C DCOs, no regulation currently requires that they maintain viable recovery plans or orderly wind-down plans. This NPRM is proposing that all DCOs be required to maintain viable orderly wind-down plans.

D. 2014 International Standards and Guidance on Recovery and Resolution of Financial Market Infrastructures

In 2014, CPMI–IOSCO published guidance for financial market infrastructures (FMIs) on the recovery planning process and the content of the recovery plans.[38] The 2014 CPMI–IOSCO Recovery Guidance interpreted the principles and key considerations under the PFMI relevant to recovery and orderly wind-down plans and planning, in particular PFMI Principles 3 and 15. The guidance also provided a menu of recovery tools separated into five categories: tools to allocate uncovered losses caused by participant default; tools to address uncovered liquidity shortfalls; tools to replenish financial resources; tools for a CCP to re-establish a matched book; and tools to allocate losses not related to participant default.[39]

The Financial Stability Board (FSB) had, in 2011, published a set of Key Attributes of Effective Resolution Regimes for Financial Institutions,[40] and enhanced those standards with, as relevant here, an Annex on Resolution of Financial Market Infrastructures, in 2014.[41] The Key Attributes FMI Annex calls for ongoing recovery and resolution planning for systemically important FMIs (a category that includes SIDCOs).[42] The Key Attributes FMI Annex also calls for such FMIs "to maintain information systems and controls that can promptly produce and make available, both in normal times and during resolution, relevant data and information needed by the authorities for the purposes of timely resolution planning and resolution."[43]

E. CFTC Letter No. 16–61

In July 2016, the staff of the Division of Clearing and Risk (DCR) issued an advisory letter, described therein as "guidance," regarding the content of a SIDCO's and Subpart C DCO's recovery and orderly wind-down plans, consistent with Subpart C, in particular § 39.39, and the accompanying rule submissions designed to effectuate those plans.[44] CFTC Letter No. 16–61 highlighted subjects that staff believed these DCOs should analyze in developing a recovery plan and wind-down plan, including: the range of scenarios that may prevent the DCO from being able to meet its obligations and to provide its critical operations and services; recovery tools; wind-down scenarios and options; interconnections and interdependencies; agreements to be maintained during recovery and wind-down; financial resources; governance; notifications; assumptions; updates; and testing.[45] The advisory letter also recommended questions that a DCO should consider, and the analysis of those questions that a DCO should undertake and provide to the Commission, in instances where a DCO concludes that a rule should be changed.[46]

F. Additional International Guidance on Standards

In July 2017, CPMI–IOSCO issued further guidance on the PFMI related to the development of recovery plans for CCPs.[47] The (2017) CPMI–IOSCO

[31] 17 CFR 39.39(b)(1) and (2).

[32] 17 CFR 39.39(c)(1). The identification of scenarios and analysis by the DCO allows the DCO to more effectively and efficiently meet its obligations promptly, and may provide a DCO with a better understanding of its clearing members' obligations, the extent to which the DCO would have to perform its obligations to its clearing members in times of stress, and the ability to better plan for doing so. The scenarios and analysis in the wind-down plan are necessary in the event that recovery is not possible and resolution is not available.

[33] *Id.*

[34] 17 CFR 39.39(c)(2).

[35] 17 CFR 39.39(d).

[36] 17 CFR 39.39(e).

[37] 17 CFR 39.39(f).

[38] CPMI–IOSCO, Recovery of financial market infrastructures (Oct. 15, 2014) (hereinafter 2014 CPMI–IOSCO Recovery Guidance). FMIs as a category include DCOs, CCPs, central securities depositories, payment systems, and trade repositories. SIDCOs are thus systemically important FMIs.

[39] *Id.* at 12–16.

[40] FSB, Key Attributes of Effective Resolution Regimes for Financial Institutions (Oct. 2011).

[41] FSB, Key Attributes of Effective Resolution Regimes for Financial Institutions, Appendix II—Annex I: Resolution of Financial Market Infrastructures (FMIs) and FMI Participants (Oct. 15, 2014) (hereinafter Key Attributes FMI Annex). The Key Attributes FMI Annex is "to be read alongside [the] PFMI which require systemically important FMIs to have a comprehensive and effective recovery plan." *Id.* at 57.

[42] *Id.* ¶ 11.1, at 68 (stating "FMIs that are systemically important should be subject to a requirement for ongoing recovery and resolution planning").

[43] *Id.* ¶ 12.1, at 70 (listing 7 areas of information that should be made available to authorities, including: FMI rules, default fund, and loss allocation rules; stakeholders; data and information for effective and timely risk control during resolution; the status of obligations of participants; links and interoperability arrangements with other FMIs; participant collateral; and netting arrangements).

[44] CFTC Letter No. 16–61, Recovery Plans and Wind-down Plans Maintained by Derivatives Clearing Organizations and Tools for the Recovery and Orderly Wind-down of Derivatives Clearing Organizations, (July 16, 2016) (hereinafter CFTC Letter No. 16–61), available at: *https://www.cftc.gov/csl/16-61/download.* DCR staff was responding to requests from DCOs for guidance and clarification on the types of information and analysis that should be included in the requisite plans. The advisory letter explains staff's expectations following its preliminary reviews of submitted recovery plans, wind-down plans, and proposed rule changes, and issues addressed at a DCR-sponsored public roundtable. The transcript of the roundtable is available at *https://www.cftc.gov/PressRoom/Events/opaevent_cftcstaff031915.*

[45] CFTC Letter No. 16–61, at 4. The guidance was not intended to be an exhaustive checklist of information and analysis, and did not address resolution planning. *Id.* at 3 n.11.

[46] *Id.* at 15–19.

[47] *Supra* fn. 9. The guidance as revised in 2017 is referred to herein as the CPMI–IOSCO Recovery Guidance. CPMI–IOSCO also issued guidance on the resilience of CCPs. CPMI–IOSCO, Resilience of central counterparties: further guidance on the PFMI (July 5, 2017) (providing guidance on

Continued

Recovery Guidance updated the 2014 CPMI–IOSCO Recovery Guidance to provide clarification on the implementation of recovery plans, replenishment of financial resources, non-default related losses, and transparency with respect to recovery tools and their application. Similarly, the FSB issued further guidance on CCP resolution and resolution planning.[48] The 2017 FSB Resolution Guidance sets out recommended powers for resolution authorities to maintain the continuity of critical CCP functions, details on the use of loss allocation tools, and provides steps that resolution authorities should take to implement crisis management groups and develop resolution plans. In August 2022, CPMI–IOSCO published a discussion paper on CCP practices to address non-default losses in which the paper noted positively, among other things, the practice of testing and reviewing a CCP's recovery plan at least annually.[49]

G. Requirement To Submit Recovery and Wind-Down Plans to the Commission—§ 39.19(c)(4)(xxiv)

In 2020, the Commission amended its reporting requirements under § 39.19 to require a DCO that is required to maintain recovery and wind-down plans pursuant to § 39.39(b) to submit its plans to the Commission no later than the date on which it is required to have the plans.[50] The rule also permits a DCO that is not required to maintain recovery and wind-down plans, but which nonetheless maintains such plans, to submit the plans to the Commission.[51] Additionally, if a DCO revises its plans, the DCO must submit the revised plans to the Commission along with a description of the changes and the reason for the changes.[52]

II. Amendments to Regulation 39.39—Recovery and Orderly Wind-Down for SIDCOs and Subpart C DCOs; Information for Resolution Planning

In 2013, the Commission promulgated broad rules for a SIDCO's and Subpart C DCO's recovery and wind-down plans, including a rule that each SIDCO and Subpart C DCO must have procedures for providing the Commission and the FDIC with information needed for purposes of resolution planning.[53] At that time, practice with respect to recovery and wind-down planning was in a nascent state of development, and the relevant global standard-setting bodies, CPMI–IOSCO and the FSB, had not completed work establishing guidance for implementing international standards addressing recovery and resolution for FMIs.[54]

The Commission is proposing to further align the rules under § 39.39 with the international standards and guidance promulgated since 2013,[55] and to codify certain of the related guidance in CFTC Letter No. 16–61. The proposed amendments to § 39.39 include specifying the required elements of a SIDCO's or Subpart C DCO's recovery and orderly wind-down plans, amending the requirement to have procedures to provide information needed for purposes of resolution planning, and specifying the types of information that should be provided to the Commission for resolution planning. Additionally, the Commission proposes to change the title of the regulation, amend and add definitions, and to delete certain provisions.

These proposed revisions and amendments to § 39.39 are consistent with the Commission's obligation under § 805(a) of the Dodd-Frank Act to consider international standards in prescribing risk management standards pursuant to its authority under that provision with respect to SIDCOs.[56] Moreover, the Commission views the relevant international standards under the PFMI, as well as the related guidance, including the CPMI–IOSCO Recovery Guidance, as helpful in informing its approach with respect to other DCOs in the context of recovery and orderly wind-down. These proposed revisions and amendments are reasonably necessary to effectuate Core Principle D[57] (Risk Management) and to accomplish the purposes of the CEA, in particular, to ensure the financial integrity of all transactions subject to [the CEA] and the avoidance of systemic risk.[58] The proposed changes also respond to comments received from SIDCOs and Subpart C DCOs over time.

As set forth in section III, the Commission is additionally proposing to require that all other DCOs maintain and submit to the Commission an orderly wind-down plan that incorporates substantially similar information and procedures. With respect to DCOs broadly, these proposed revisions and amendments should lead to more effective DCO compliance and risk management, provide greater clarity and transparency for registered DCOs and DCO applicants, and increase overall confidence and efficiency in the swaps and futures markets.[59] Among the risks associated with discharging the risk management responsibilities of a DCO[60] is the risk that, due to either default losses or non-default losses, the DCO will be unable to meet its obligations or provide its critical functions and will need to wind down. In such an event, an effective orderly wind-down plan should facilitate timely decision-making and the continuation of critical operations and services so that the orderly wind-down may occur in an orderly and expeditious manner.

A DCO needs to prepare for circumstances—especially those that are sudden, unexpected, and on too large a scale for the DCO to timely recover—for which a DCO may not have the resources to continue as a going concern. A viable orderly wind-down plan promotes the goal of ensuring, at a minimum, that the DCO has sufficient resources, capabilities and legal authority to implement the tools and procedures for orderly wind-down activities. To the extent that the Commission's bankruptcy regulations look to a DCO's orderly wind-down

governance, stress testing for both credit and liquidity exposures, coverage, margin, and a CCP's contribution of its financial resources to losses).

[48] FSB, Guidance on Central Counterparty Resolution and Resolution Planning (July 5, 2017) (hereinafter 2017 FSB Resolution Guidance).

[49] CPMI–IOSCO, A discussion paper on central counterparty practices to address non-default loses (Aug. 4, 2022) (NDL Discussion Paper).

[50] *Derivatives Clearing Organizations General Provisions and Core Principles,* 85 FR 4800, 4822 (Jan. 27, 2020); 17 CFR 39.19(c)(4)(xxiv).

[51] *Id.*

[52] *Id.*

[53] 78 FR 72476, 72494 (codifying § 39.39(c)(2)).

[54] *See, e.g.,* CPMI–IOSCO, Consultative report, Recovery of financial market infrastructures, at ¶ 1.2.1 (Aug. 2013) (distinguishing recovery planning from resolution planning and noting that ''[a]spects of the consultation report concerning FMI resolution have been included in a new draft annex and will be included in an assessment methodology for the [FSB's] Key Attributes''). CPMI–IOSCO, Consultative report, Recovery and resolution of financial market infrastructures, at ¶ 1.4 (July 2012) (outlining the features for effective recovery and resolution regimes for FMIs in accordance with the FSB's ''Key Attributes for Effective Resolution Regimes for Financial Institutions'').

[55] The Commission actively participated in the development of those standards and guidance in its role as a member of the relevant working groups (the CPMI–IOSCO Policy Standing Group and Steering Group and the Financial Stability Board Financial Market Infrastructure Cross-Border Crisis Management Group and Resolution Steering Group), and of the Board of IOSCO, one of the parent committees of CPMI–IOSCO.

[56] *See* Section 805(a) of the Dodd-Frank Act, 12 U.S.C. 5464(a).

[57] Section 5b(c)(2)(D)(i) of the CEA, 7 U.S.C. 7a–1(c)(2)(D)(i).

[58] Section 3(b) of the CEA, 7 U.S.C. 5(b).

[59] *See* 76 FR at 69334–35 (a legally enforceable regulatory framework ''provides assurance to market participants and the public that DCOs are meeting minimum risk standards'' which ''can serve to increase market confidence,'' free up resources that market participants might otherwise hold,'' and ''reduce search costs that market participants would otherwise incur).

[60] *See* Core Principle D(i), Section 5b(c)(2)(D)(i) of the CEA, 7 U.S.C. 7a–1(c)(2)(D)(i).

plan,[61] an effective orderly wind-down plan will allow for the efficient management of events.

To advance the DCO Core Principles' aims of, among other things, strengthening the risk management practices of DCOs, enhancing legal certainty for DCOs, clearing members and market participants, and safeguarding the public, the Commission is proposing to require that all DCOs maintain and submit orderly wind-down plans with the subjects and analyses included herein. Additionally, the Commission is proposing revised subjects and analyses for the recovery plans that SIDCOs and Subpart C DCOs must maintain.

A. Definitions—§ 39.39(a), § 39.2

Currently, the definitions relevant to recovery and orderly wind-down planning are contained in § 39.39(a). The Commission is proposing to move two of those definitions, ''wind-down'' and ''recovery,'' to § 39.2, as orderly wind-down will apply to all DCOs, and recovery is thematically linked to orderly wind-down. Because these definitions would apply to all DCOs, the Commission is proposing technical corrections to eliminate the references to SIDCOs and Subpart C DCOs in both.

The Commission is changing the term ''wind-down'' to ''orderly wind-down'' [62] and is defining it as a DCO's actions to effect the permanent cessation, sale, or transfer, of one or more of its critical operations or services, in a manner that would not increase the risk of significant liquidity, credit, or operational problems spreading among financial institutions or markets and thereby threaten the stability of the U.S. financial system.[63] The Commission intends the amended definition to focus the attention of DCOs on issues of financial stability in planning for and executing an orderly wind-down.[64] Given the financial crisis that preceded and informed Dodd-Frank's passage, and the purpose of the CEA to ensure the avoidance of systemic risk, the Commission believes an important goal of an orderly wind-down should be to avoid an increased risk of significant liquidity, credit, or operational problems spreading among financial institutions or markets.

The Commission is also proposing to amend the definition of ''recovery'' by replacing the reference to ''capital inadequacy'' with ''inadequacy of financial resources'' in order to tie the definition of ''recovery'' more closely to the framework of Part 39,[65] and to move that definition, as revised, to § 39.2, in alphabetical order. Neither the recovery plan nor the orderly wind-down plan may assume government intervention or support.

The Commission is proposing to delete the definitions of ''general business risk'' and ''operational risk,'' and instead to import those definitions, as modified, as part of the definition of the term ''non-default losses.'' The Commission is also proposing to add a definition of the term ''default losses.'' Recovery plans and orderly wind-down plans are required to address both default losses and non-default losses.

The Commission is proposing to define default losses to include both uncovered credit losses or liquidity shortfalls created by the default of a clearing member in respect of its obligations with respect to cleared transactions. In this context, uncovered credit losses arise from the DCO's holding an insufficient value of resources to meet its obligations. For example, the DCO is obligated to pay, today, variation margin of $10 billion in U.S. dollar cash, but only has $8 billion of resources available. Similarly, in this context, a liquidity shortfalls arise from the DCO holding resources that are not in the correct form to meet its obligations. For example, the DCO is obligated to pay, today, variation margin of $10 billion in U.S. dollar cash, but only has $8 billion of U.S. dollar cash available, even though it may additionally have more than $2 billion (worth, at present market value) of securities that it is unable to convert promptly into U.S. dollar cash.[66] The definition also focuses on the clearing member's obligations with respect to cleared transactions. Thus, if the clearing member defaults on its obligations for facilities rental, or in its obligations in its role as a service provider to the DCO, those would not be ''default losses'' for this purpose.

The Commission is proposing to define non-default losses to mean losses from any cause, other than default losses, that may threaten the DCO's viability as a going concern. This portion of the definition is derived from former § 39.39(b)(2), which required SIDCOs and Subpart C DCOs to ''maintain viable plans for'' (1) Recovery or orderly wind-down necessitated by'' the risks that are currently proposed to be included in ''default losses'' (*i.e.,* uncovered credit losses or liquidity shortfalls as well as (2) Recovery or orderly wind-down necessitated by general business risk, operational risk, or *any other risk that threatens the DCO's viability as a going concern* (emphasis added).

The former definition specifically included, as potential sources of loss, ''general business risk'' and ''operational risk.'' The definitions in § 39.39 will now apply to all DCOs, and thus are being moved to § 39.2. In order to ensure that DCOs consider, as part of their planning process, the full set of potential non-default losses, the definition of non-default losses is proposed to explicitly include, though not be limited to, losses arising from risks often referred to as (1) general business risk, (2) custody risk, (3) investment risk, (4) legal risk, and (5) operational risk.[67] To avoid unnecessary questions of taxonomy, however, these terms are not proposed to be separately defined, rather, the substance of these definitions are being included as instances of non-default losses.

Under the first group, losses arising from general business risk, the Commission proposes to import the previous definition of ''general business

[61] *See, e.g.,* 17 CFR 190.15(c) (In administering a proceeding under this subpart, the trustee shall, in consultation with the Commission, take actions in accordance with any recovery and wind-down plans maintained by the debtor and filed with the Commission pursuant to § 39.39 of this chapter, to the extent reasonable and practicable, and consistent with the protection of customers.)

[62] The definition also provides for the use of the term ''wind-down'' as a shorter form of ''orderly wind-down.''

[63] This definition of ''orderly wind-down'' would align more closely with the corresponding definition in the Federal Reserve's Regulation HH (Designated Financial Market Utilities), 12 CFR 234.2(g), but would additionally address operational problems spreading among financial institutions or markets, consistent with the U.S. Securities and Exchange Commission's recent rule proposal. Covered Clearing Agency Resilience and Recovery and Wind-Down Plans, 88 FR 34708, 34717 (May 30, 2023).

[64] DCOs must already consider issues of financial stability in their governance arrangements. 17 CFR 39.24(a)(1)(iv) (requiring that a DCO's governance arrangements explicitly support the stability of the broader financial system and other relevant public interest considerations).

[65] *See, e.g.,* § 39.11 (enumerating the requirements for financial resources a DCO must maintain to discharge its responsibilities); § 39.39(d) (enumerating the requirements for financial resources a SIDCO and Subpart C DCO must maintain to support its recovery plan and wind-down plan).

[66] Another example of a liquidity shortfall is a currency mismatch. For example, assume that the U.S. dollar to Euro exchange rate is $1.10/€1.00. The DCO has a variation margin obligation, today, of €1 billion, and only has resources available for the purpose of making payment of $1.1 billion. That would also be a liquidity shortfall.

[67] *See* NDL Discussion Paper section 2.1 (''Generally, CCPs consider a range of NDL scenarios that may arise from risks relevant to their business activities, including general business risk, operational risk, investment risk, custody risk and legal risk.''). *See also* Guidance on Financial Resources to Support CCP Resolution and on the Treatment of CCP Equity in Resolution (FSB 2020) at section 1.2 (''Hypothetical non-default loss scenarios'').

risk'' in § 39.39(a)(1), deleting references to SIDCOs or subpart C DCOs as surplusage. This results in (1) any potential impairment of a derivatives clearing organization's financial position, as a business concern, as a consequence of a decline in its revenues or an increase in its expenses, such that expenses exceed revenues and result in a loss that the derivatives clearing organization must charge against capital.

Under the second group, losses arising from custody risk, the Commission proposes to adopt substantially the discussion of custody risk in the CPMI–IOSCO Recovery Guidance.[68] This results in (2) losses incurred by the derivatives clearing organization on assets held in custody or on deposit in the event of a custodian's (or sub-custodian's or depository's) insolvency, negligence, fraud, poor administration or inadequate record-keeping.

Under the third group, losses arising from investment risk, the Commission proposes to adapt the discussion of investment risk in the CPMI–IOSCO Recovery Guidance.[69] This adaptation results in (3) losses incurred by the derivatives clearing organization from diminution of the value of investments of its own or its participants' resources, including cash or other collateral.

Under the fourth group, losses arising from legal risk, the international guidance is less helpful. The CPMI–IOSCO Recovery Guidance does not define ''legal risk;'' the FSB guidance simply notes that ''legal, regulatory or contractual penalties could lead to significant losses or uncertainty for the CCP and can take a long time to materialise fully.'' Losses from legal risk can arise from causes other than ''penalties'': For example, in the realm of contract or tort, a DCO may be responsible for compensating a plaintiff for the DCO's breach of contract, or for the plaintiff's damages caused by, *e.g.,* the DCO's negligence. In the realm of regulatory litigation, there may be remedies other than penalties, including, *e.g.,* restitution or disgorgement. Accordingly, the Commission is proposing to broadly include (4) losses from adverse judgments, or other losses, arising from legal, regulatory, or contractual obligations, including damages or penalties, and the possibility that contracts that the derivatives clearing organization relies upon are wholly or partly unenforceable.

Finally, under the fifth group, losses arising from operational risk, the Commission is proposing to draw from the prior definition of operational risk, adding a few additional important categories. Specifically, the Commission is proposing to add references to (1) the actions of malicious actors and (2) the possibility of disruption from internal events. Cyber risk is increasing, and organizations' operations are exposed to risk from malicious (threat) actors, who might include employees and third-party providers, criminals, terrorists, and nation-states. Thus, the Commission proposes to recognize explicitly the peril from what has been described as malicious action by third parties intent on creating systemic harm or disruption, with concomitant financial losses.[70] Including a reference to ''malicious actions (whether by internal or external threat actors)'' should help protect market participants and the public by potentially improving the DCO's ability to identify vulnerabilities from malicious actors, safeguard its systems from such actors, and address possible losses that might occur if, despite the DCO's system safeguards, malicious actors detect and act upon any cyber vulnerabilities.

The Commission is also proposing to add a reference to the possibility of disruption from internal events (the current definition of operational risk refers only to ''disruptions from external events''). Examples of these internal events include fire as well as flooding (due to, *e.g.,* malfunctions of sprinkler systems). This expansion to the definition should also help protect market participants and the public, by potentially improving the DCO's ability to identify vulnerabilities to its systems and operations from internal events, mitigate those vulnerabilities, and address possible losses that might occur if, despite the DCO's efforts, such vulnerabilities disrupt its systems or operations.

Accordingly, the Commission is proposing to refer specifically to non-default losses (5) as occasioned by deficiencies in information systems or internal processes, human errors, management failures, malicious actions (whether by internal or external threat actors), disruptions to services provided by third parties, or disruptions from internal or external events that result in the reduction, deterioration, or breakdown of services provided by the derivatives clearing organization.

B. Recovery Plan and Orderly Wind-Down Plan—§ 39.39(b)

Regulation 39.39(b) currently requires each SIDCO and Subpart C DCO to maintain viable plans for (1) recovery or orderly wind-down, necessitated by uncovered credit losses or liquidity shortfalls; and, separately, (2) recovery or orderly wind-down necessitated by general business risk, operational risk, or any other risk that threatens the DCO's viability as a going concern.[71] Regulation 39.19(c)(4)(xxiv) currently requires a SIDCO or Subpart C DCO that is required to maintain recovery and wind-down plans pursuant to § 39.39(b) to submit those plans to the Commission no later than the date on which the DCO is required to have the plans.[72] The Commission is proposing amendments to these provisions as set forth below.

The Commission is maintaining existing § 39.39(d) and (e).[73] Accordingly, the recovery and orderly wind-down plans of SIDCOs and Subpart C DCOs must continue to include evidence and analysis to support the conclusion that they have sufficient financial resources—as set forth in § 39.39(d)(2)—to implement their recovery and wind-down plans. Should this proposed rulemaking be adopted, that analysis would be informed by the analyses SIDCOs and Subpart C DCOs would be required to engage in under proposed § 39.39(c). Consistent with § 39.39(e), moreover, SIDCOs and Subpart C DCOs must continue to maintain viable plans for

[68] *See* CPMI–IOSCO Recovery Guidance ¶ 3.2.5 (''[A]n FMI can be exposed to custody risk and could suffer losses on assets held in custody in the event of a custodian's (or subcustodian's) insolvency, negligence, fraud, poor administration or inadequate record-keeping.'')

[69] *See id.* (''Investment risk is the financial risk faced by an FMI when it invests its own or its participants' resources, such as cash or other collateral.'')

[70] CPMI, Cyber resilience in financial market infrastructures, at 7 (Nov. 2014); *see also* CPMI–IOSCO, Guidance on cyber resilience for financial market infrastructures (June 2016). *See generally* Executive Order No. 14028, Improving the Nation's Cybersecurity, 86 FR 26633 (May 12, 2021), available at: *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/12/executive-order-on-improving-the-nations-cybersecurity/.*

[71] 17 CFR 39.39(b)(1) and (2).

[72] 17 CFR 39.19(c)(4)(xxiv).

[73] Regulation 39.39(d)(2) provides, in part that each SIDCO and Subpart C DCO shall maintain sufficient unencumbered liquid financial assets, funded by the equity of its owners, to implement its recovery or wind-down plans. The SIDCO or Subpart C DCO shall analyze its particular circumstances and risks and maintain any additional resources that may be necessary to implement the plans. The plan shall include evidence and analysis to support the conclusion that the amount considered necessary is, in fact, sufficient to implement the plans.

Regulation 39.39(e) provides, in part that all SIDCOs and Subpart C DCOs shall maintain viable plans for raising additional financial resources, including, where appropriate, capital, in a scenario in which the SIDCO or Subpart C DCO is unable, or virtually unable, to comply with any financial resources requirements set forth in this part.

raising additional financial resources where they are unable to comply with any financial resources requirements provided in Part 39.

1. Submission of Plans for Recovery and Orderly Wind-Down—§ 39.39(b)(1)

The Commission is proposing to amend § 39.39(b)(1) and (2) by combining the paragraphs into one paragraph, § 39.39(b)(1), and cross-referencing the reporting requirement in § 39.19(c)(4)(xxiv). Proposed § 39.39(b)(1) would require each SIDCO and Subpart C DCO to maintain and, consistent with § 39.19(c)(4)(xxiv), submit to the Commission, viable plans for recovery and orderly wind-down, and supporting information, due to, in each case, default losses and non-default losses.[74] The Commission is not proposing to require that the recovery plan and orderly wind-down plan be submitted as separate documents. However, the analysis for the recovery portion and wind-down portion must be set forth clearly.

The Commission requests comment on these proposed revisions.

2. Notice of Initiation of the Recovery Plan and of Pending Orderly Wind-Down—§ 39.39(b)(2), § 39.13(k)(1), and § 39.19(c)(4)(xxv)

Current § 39.39(c)(1) includes, in part, the requirement that recovery plans and wind-down plans include procedures for informing the Commission, as soon as practicable, when the recovery plan is initiated or wind-down is pending.[75] The Commission proposes to move this requirement to § 39.39(b)(2) and to amend the requirement to state explicitly that in addition to having procedures in place for informing the Commission that the recovery plan is initiated or that orderly wind-down is pending, the SIDCO or Subpart C DCO must notify the Commission, as soon as practicable, when the recovery plan is initiated or orderly wind-down is pending. This is not a substantive change since the requirement to have procedures in place to provide notice necessarily implies that such notice to the Commission will occur; however, the Commission believes that explicitly stating this requirement will ensure that the SIDCO or Subpart C DCO understands this requirement.

Additionally, the Commission proposes to require that these DCOs' notice that the recovery plan is initiated or orderly wind-down is pending also be provided to clearing members.[76] Timely notification of events to clearing members is essential to enable them to prepare for a transition by the DCO into recovery or orderly wind-down. The Commission proposes that each SIDCO and Subpart C DCO that files a recovery plan and orderly wind-down plan under this section must notify clearing members (in addition to the Commission) that recovery is initiated or that orderly wind-down is pending as soon as practicable. As discussed below in Section III, the Commission proposes that DCOs that are neither SIDCOs nor Subpart C DCOs notify the Commission and clearing members as soon as practicable when recovery[77] is initiated or orderly wind-down is pending.

The Commission proposes to add new § 39.19(c)(4)(xxv) to require that each DCO notify the Commission and clearing members as soon as practicable when the DCO has initiated its recovery plan or orderly wind-down is pending.

The Commission requests comment on these proposed changes.

3. Establishment of Time To File Recovery Plan and Orderly Wind-Down Plan—§ 39.39(b)(3)

The Commission is proposing to establish the timing of the filing of recovery plans and orderly wind-down plans. In 2013, the Commission acknowledged commenters' concerns that additional time may be required to comply with § 39.39 because relevant global standards were still in the consultative phase. The Commission promulgated § 39.39(f) to allow a SIDCO or Subpart C DCO to apply for up to one year to comply with § 39.39. Regulation 39.39(f) therefore created various dates for SIDCOs and Subpart C DCOs to file the plans required by § 39.39(b).

Commenters again requested a specific date to submit recovery plans and wind-down plans in response to the May 2019 notice of proposed rulemaking codifying § 39.19(c)(4)(xxiv).[78] In the January 2020 final rule, the Commission noted the date by which a SIDCO or new Subpart C DCO is required to maintain a recovery plan and wind-down plan depends upon when the DCO is designated as systemically important or elects Subpart C status, whether it requests relief under § 39.39(f), and whether the Commission grants such relief.[79] The Commission determined that § 39.39(f) prevented the establishment of a date certain for submitting plans to the Commission.[80] This proposal will, if adopted and finalized by the Commission, codify the elements of a recovery plan and wind-down plan required under paragraph (b) of § 39.39, and remove the uncertainty concerning the filing deadline. The need to request an extension of time for up to one year to comply with the requirements of § 39.39 (and § 39.35) will be obviated by the fixed deadline for newly designated SIDCOs to develop and maintain a recovery plan and a wind-down plan.[81] The Commission is proposing to require a DCO to submit a recovery plan and orderly wind-down plan and supporting information (to the extent it has not already done so) as required by proposed § 39.39(b) within six months of the date the DCO is designated as a SIDCO, or as part of its election to become subject to the provisions of Subpart C set forth in § 39.31, and annually thereafter.[82]

The Commission has preliminarily determined to require that a newly designated SIDCO should file a complete recovery plan and (to the extent it has not already done so) orderly wind-down plan consistent with part 39 within six months of the date of designation for the following reasons. First, in order to be designated as a SIDCO, the DCO must be a DCO registered with the CFTC. All DCOs must comply with, and demonstrate compliance as requested by the Commission, applicable provisions of the CEA and the Commission's regulations, including Subparts A and B

[74] In Section IV below, discussing the reporting requirement in § 39.19(c)(4)(xxiv), the Commission explains the reason for adding the term ''and supporting information.''

[75] 17 CFR 39.39(c)(1).

[76] CFTC Letter No. 16–61, at 14 (referencing § 39.21, ''Public information,'' which requires a DCO to make information concerning the rules and the operating and default procedures governing the clearing and settlement systems of the DCO available to market participants).

[77] While, under the proposal, a DCO that is neither a SIDCO nor a subpart C DCO is not required to have a recovery plan, if such a DCO does initiate recovery, it will be required to notify the Commission and clearing members.

[78] *See, e.g.,* Comment letter filed by the Futures Industry Association and the International Swaps and Derivatives Association (ISDA), at 21 (Sept. 13, 2019), available at *https://comments.cftc.gov/PublicComments/CommentList.aspx?id=2985&ctl00_ctl00_cphContentMain_MainContent_gvCommentListChangePage=2.*

[79] 85 FR at 4822.

[80] *Id.*

[81] Regulation 39.35 covers the default rules and procedures for uncovered credit losses or liquidity shortfalls (recovery) for SIDCOs and Subpart C DCOs.

[82] As discussed in section III below, it is being proposed that all DCOs will be required to maintain orderly wind-down plans on and after the effective date of this rule with respect to that requirement. As discussed further below, it is proposed that the effective date of that orderly wind-down plan requirement will be six months after this rule may be finalized. To address the possibility that a DCO may be designated a SIDCO or may elect Subpart C status during that intervening period, such a DCO will be required to maintain and file an orderly wind-down plan to the extent it has not already done so.

of part 39, in order be registered. Second, the Commission expects that most of the larger DCOs for which future designation may be forthcoming have elected to be subject to Subpart C, and therefore, have recovery plans in place. Among those DCOs that are not currently subject to Subpart C, most are foreign-based DCOs that are subject to standards in their home jurisdictions that are consistent with the PFMI, and thus such foreign-based DCOs are required to have both recovery and orderly wind-down plans.[83] Third, upon notification that the FSOC is considering whether to designate a DCO systemically important, the DCO will be aware of the enhanced regulatory requirements for SIDCOs included in subpart C of part 39 of the Commission's regulations.[84] Finally, staff issued CFTC Letter No. 16–61 and its non-binding guidance in 2016. DCOs registered with the Commission and the clearing industry in general are likely familiar with the staff letter and have probably been following developments related to this proposal; hence, the Commission has preliminarily determined not to require a longer delay.

The Commission is clarifying that a DCO that elects to be subject to Subpart C of the Commission's regulations must file a recovery plan and (in the event it has not already done so) an orderly wind-down plan, and supporting information, as part of its election to be subject to the provisions of Subpart C.[85] The Commission continues to expect that a DCO will not elect status as a Subpart C DCO before it is in full compliance with the regulations in Subpart C.

The Commission is proposing § 39.39(b)(3) to require a SIDCO to file a recovery plan, and supporting information, within six months of its designation as systemically important by the FSOC. The Commission is also proposing to require that a DCO that elects to be subject to the provisions of Subpart C must file a recovery plan and (to the extent it has not already done so) an orderly wind-down plan, and supporting information for these plans, as part of the DCO's election to be subject to the provisions of Subpart C. The Commission is proposing that such plans be updated thereafter on an annual basis.

The Commission requests comment on this aspect of the proposal.

C. Recovery Plan and Orderly Wind-Down Plan: Required Elements—§ 39.39(c)

Regulation 39.39(c)(1) currently requires that a SIDCO and Subpart C DCO develop a recovery plan and orderly wind-down plan that includes scenarios that may potentially prevent it from being able to meet its obligations, provide its critical operations and services as a going concern, and assess the effectiveness of a full range of options for recovery or orderly wind-down. At the time the Commission was promulgating current § 39.39(c)(1), commenters had requested specificity regarding the required elements of a recovery plan.[86] The Commission declined to provide that specificity because the international guidance relevant to such plans was not final when § 39.39 was adopted in 2013. After the international guidance was finalized, staff issued CFTC Letter No. 16–61, which provides informal guidance from DCR concerning those elements. Supervisory experience shows that the recovery plans and orderly wind-down plans of SIDCOs and Subpart C DCOs are generally consistent with the staff guidance in Letter No. 16–61; thus, most, if not all, of the requirements described below are already incorporated into the plans submitted by the DCOs currently subject to § 39.39. The Commission has preliminarily determined to codify the staff guidance into the Commission's part 39 regulations. The Commission has preliminarily determined to specify the required elements that a SIDCO or Subpart C DCO must include in its recovery plan and orderly wind-down plan at this time.

The Commission proposes to replace § 39.39(c) in its entirety. Proposed § 39.39(c) would reflect, to the extent the Commission considers appropriate, the guidance on international standards related to recovery plans and orderly wind-down plans adopted by the global standard-setting bodies since 2013,[87] and certain of the DCR staff guidance set forth in CFTC Letter No. 16–61.[88]

As a general matter, the Commission believes that a DCO's recovery plan and orderly wind-down plan required by § 39.39(b) should include summaries that provide an overview of the plans, and descriptions of how the plans will be implemented, in order to enhance both the understanding of the persons who need to use the plans and the Commission's ability to evaluate the plans as part of its supervisory program. Proposed § 39.39(c) would also require that the description of each plan include the identification and description of the DCO's critical operations and services, interconnections and interdependencies, resilient staffing arrangements, obstacles to success, stress scenario analyses, potential triggers for recovery and orderly wind-down, available recovery and orderly wind-down tools, analysis of the effect of any tools identified, lists of agreements to be maintained during recovery and orderly wind-down, descriptions of governance arrangements, and testing. These proposed plan requirements are necessary for the plan to be viable, *i.e.,* capable of working successfully, are consistent with the international guidance discussed above, and should be considered the minimum that a SIDCO or Subpart C DCO must include in its recovery plan and orderly wind-down plan. The Commission proposes to add these requirements as new proposed § 39.39(c). For clarity and completeness, specific requirements will be set forth in paragraphs (c)(1) through (c)(8), as discussed below.

The Commission requests comment on this approach, and on each of the proposed specific requirements.

1. Critical Operations and Services, Interconnections and Interdependencies, and Resilient Staffing—§ 39.39(c)(1)

The Commission is proposing to add new § 39.39(c)(1) requiring recovery plans and orderly wind-down plans to identify and describe the SIDCO's and Subpart C DCO's critical operations and services, including internal and external service providers; ancillary services providers; financial and operational interconnections and interdependencies; aggregate cost estimates for the continuation of services; plans for resilient staffing arrangements for continuity of operations into recovery or orderly wind-down; plans to address the risks that the failure of each critical operation and service poses to the DCO, and a description of how such failures would be addressed; and a description of how the SIDCO and Subpart C DCO will

[83] *See* text accompanying fn. 207, *infra.*

[84] 12 CFR 1320.11(a), 1320.12(a); *Authority to Designate Financial Market Utilities as Systemically Important,* 76 FR 44763 (Jul. 27, 2011).

[85] The Commission is proposing to amend Exhibit F–1 to the Subpart C election form to require the submission of the recovery and orderly wind-down plans, and supporting information, as well as a demonstration of how those plans comply with the requirements of Subpart C.

[86] *See, e.g.,* Comment letter of ISDA at 2–3 (Sept. 16, 2013), filed in response to the Notice of Proposed Rulemaking, *Derivatives Clearing Organizations and International Standards,* 78 FR 50260 (Aug. 16, 2013), available at *https://comments.cftc.gov/PublicComments/CommentList.aspx?id=1391.*

[87] *E.g.,* CPMI–IOSCO Recovery Guidance.

[88] *See* 17 CFR 39.39(c)(1).

ensure that the services continue through recovery and orderly wind-down.

In developing a viable plan, both the CPMI–IOSCO Recovery Guidance and CFTC Letter No. 16–61 stress the importance of identifying the critical operations and services that the DCO provides, and the financial and operational interconnections and interdependencies among the DCO and its relevant affiliates, internal and external service providers, and other relevant stakeholders.[89] The Commission agrees that each recovery plan and orderly wind-down plan should identify and describe the critical operations and services that the DCO provides to clearing members and other financial market participants. As CPMI–IOSCO stated in its guidance, ''[t]he purpose of identifying critical services is to focus the recovery plan on the FMI's ability to continue to provide these services on an ongoing basis, even when it comes under extreme stress.'' [90] The Commission agrees that for purposes of recovery planning in § 39.39, when determining whether a service is ''critical,'' the DCO must consider ''the importance of the service to the [DCO]'s participants and other FMIs, and to the smooth functioning of the markets the [DCO] serves and, in particular, the maintenance of financial stability.'' [91]

The Commission anticipates that the DCO's ability to provide critical services may also be affected by issues relating to certain services that are ancillary to the critical service, and thus issues relating to these ancillary services should be included in the recovery and orderly wind-down plan. The Commission agrees with the analysis in the CPMI–IOSCO Recovery Guidance that, ''even if a specific service is judged not to be critical, a systemically important FMI needs to take account of the possibility that losses or liquidity shortfalls relating to the provision of that noncritical service could threaten its viability and thus necessitate implementation of its recovery plan so that it can continue to provide those services that are judged to be critical. An FMI needs to have a recovery plan that covers all the scenarios that could threaten its viability.'' [92]

The Commission believes that a DCO's recovery plan and orderly wind-down plan should identify and analyze a DCO's financial and operational interconnections and interdependencies. Such an analysis is important to foster, and to provide transparency into, the ability of the DCO to implement each of its recovery plan and orderly wind-down plan. For instance, the recovery plan should account for the possibility that an affiliated entity in the financial sector may fail, resulting in a cascade of failures and resultant defaults on all obligations to the DCO, including with respect to services that the DCO depends upon to complete its operations. A DCO's recovery plan and orderly wind-down plan should also identify the DCO's critical internal and external service providers, the risks that the failure of each provider poses to the DCO, how such failures would be addressed, and how the DCO would ensure that the services would continue into recovery and orderly wind-down.[93] Similarly, the DCO should consider the impact of any disruption in services or operations it provides to clearing members and financial market participants. In this regard, CFTC Letter No. 16–61 recommended that a DCO's recovery plan include the identification and analysis of ''the financial and operational interconnections and interdependencies among the DCO and its relevant affiliates, internal and external service providers and other relevant stakeholders.'' [94]

In considering and analyzing the magnitude of the costs that it needs to plan for associated with recovery or orderly wind-down, the DCO should consider the likely increase in certain of its expenses compared to its business-as-usual operating budget, including, for example, legal fees, accounting fees, financial advisor fees, the costs associated with employee retention programs, and other incentives in order to maintain critical staff. Other costs, such as marketing or those associated with the development of new products, may decrease. For purposes of orderly wind-down planning in particular, the DCO shall proceed under the conservative assumption that any resources consumed during recovery will not be available to fund critical operations and services in wind-down.

The DCO's analysis of its critical operations and services should also describe the impact of the multiple roles and relationships that a single financial entity may have with respect to the DCO including affiliated entities and external entities.[95] For instance, a single external entity (including a set of affiliated entities) may act as a clearing member, a settlement bank, custodian or depository bank, liquidity provider or counterparty. If such a single external entity defaults in one of its roles *e.g.,* as a clearing member, it will likely default in all of them.[96] An entity affiliated with the DCO may be relied upon for a variety of services, such as those related to information technology, human resources, or facilities. In order to support the viability of its recovery or orderly wind-down plan, the DCO should address the contingency that its affiliate may not be able to perform those services.

Consistent with the CPMI–IOSCO Recovery Guidance, the Commission believes that a DCO's recovery plan should consider how its design and implementation may affect another FMI, and coordinate the relevant aspects of their plans.[97] Given the interconnected nature of the financial services ecosystem, supporting financial stability requires the recovery plan and orderly wind-down plan of each DCO to identify and address contingencies and consequences.

Recovery and orderly wind-down planning must also identify potential risks that may arise in recovery and orderly wind-down if financial weakness or failure in one of the DCO's business lines or affiliated legal entities spreads to others. The recovery and orderly wind-down plans must describe how the DCO has planned for resilient staffing arrangements for continuity of operations since it is not feasible to maintain a critical service without the concomitant personnel. As part of planning for recovery, each SIDCO and Subpart C DCO should also explain how the DCO will retain, and address the potential loss of, the services of personnel filling mission-critical roles during extreme stress. The DCO may additionally be vulnerable to key person risk; accordingly, plans for resilient staffing arrangements should identify, to the extent applicable, key person risk within the DCO or (as relevant) affiliated legal entities that the DCO relies upon to provide its critical

[89] CPMI–IOSCO Recovery Guidance, at section 2.4; CFTC Letter No. 16–61, at 10–11.

[90] CPMI–IOSCO Recovery Guidance, at section 2.4.2.

[91] *Id.*

[92] *Id.* at section 2.4.4. n.13.

[93] *Id.*

[94] CFTC Letter No. 16–61, at 10.

[95] *Id.*

[96] A financial conglomerate/bank holding company structure may operate through a set of legal entities (*e.g.,* a broker-dealer/futures commission merchant separate from a bank separate from an information technology service provider), each of which has different relationships with the DCO. Based on past experience with insolvencies of financial firms (*e.g.,* Refco, Lehman, MF Global), once one of these affiliates fails, the others are likely to follow it into bankruptcy or receivership proceedings quickly.

[97] CPMI–IOSCO Recovery Guidance, at section 2.4.14.

operations and services, and how the DCO has planned for this risk.

The Commission requests comment on this aspect of the proposal.

2. Recovery Scenarios and Analysis—§ 39.39(c)(2)

The Commission is proposing to add new § 39.39(c)(2) to specify scenarios that must be addressed in the SIDCO's or Subpart C DCO's recovery plan, to the extent, in each case, that such scenario is possible. The Commission believes that the current requirement that a SIDCO or Subpart C DCO shall identify scenarios that may potentially prevent it from being able to meet its obligations is too broad and allows for planning gaps.

To support a systematic planning process that will foster these DCOs' ability to recover effectively from situations of unprecedented stress, the Commission is proposing to adopt portions of CFTC Letter No. 16–61 describing the analysis that should take place for each scenario considered in the recovery plan; namely: (1) a description of the scenario; (2) the events that are likely to trigger the scenario; (3) the DCO's process for monitoring events triggering the scenario; (4) the market conditions, operational and financial difficulties and other relevant circumstances that are likely to result from the scenario; (5) the potential financial and operational impact of the scenario on the DCO and on its clearing members, internal and external service providers and relevant affiliated companies, both in an orderly market and in a disorderly market; and (6) the specific steps the DCO would anticipate taking when the scenario occurs or appears likely to occur including, without limitation, any governance or other procedures in order to implement the relevant recovery tools and to ensure that such implementation occurs in sufficient time for the recovery tools to achieve their intended effect.[98] The Commission believes that this six-part analysis is integral to viability of a SIDCO's and Subpart C DCO's recovery plan and orderly wind-down plan. The Commission expects that each of these DCOs will undertake such analysis for each scenario described in its recovery plan and its orderly wind-down plan. The Commission is proposing in § 39.39(c)(2) that each recovery plan and orderly wind-down plan contain the described analysis.

In order to promote the comprehensiveness of these DCOs' recovery plans, the Commission is also proposing to require that each recovery plan describe certain ''commonly applicable scenarios,'' most of which are described in CFTC Letter No. 16–61, to the extent such scenarios are possible in light of the DCO's activities.[99] Those scenarios include: (1) settlement bank failure; (2) custodian or depository bank failure; (3) scenarios resulting from investment risk; (4) poor business results; (5) the financial effects from cybersecurity events; (6) fraud (internal, external, and/or actions of criminals or of public enemies); (7) legal liabilities, including liabilities related to the DCO's obligations with respect to cleared transactions and those not specific to its business as a DCO (*e.g.,* tort liability); (8) losses resulting from interconnections and interdependencies among the DCO and its parent, affiliates, and/or internal or external service providers (*e.g.,* the financial effects of the inability of a service provider to provide key systems or services);[100] and (9) any other risks relevant to the DCO's activities. In addition to these scenarios, the Commission is proposing to require SIDCOs and Subpart C DCOs to include in their recovery plan the following additional scenarios: (1) credit losses or liquidity shortfalls created by single and multiple clearing member defaults in excess of prefunded resources required by law; (2) liquidity shortfall created by a combination of clearing member default and a failure of a liquidity provider to perform; (3) depository bank failure; and (4) losses resulting from interconnections and interdependencies with other CCPs (whether or not those CCPs are registered with the Commission as DCOs). For any of those scenarios enumerated above that the DCO determines are not possible in light of its activities, the DCO should provide its reasoning for not considering it. Finally, the Commission is proposing that a DCO must include at least two scenarios involving multiple failures (*e.g.,* a member default occurring simultaneously, or nearly so, with a failure of a service provider) that, in the judgment of the DCO, are particularly relevant to the DCO's business.[101] The Commission believes that a DCO should describe how it is prepared for these additional exigencies in order to demonstrate to the market and its clearing members that it is prepared to meet the demands of possible market stresses.

The Commission requests comment on this aspect of the proposal.

3. Recovery and Orderly Wind-Down Triggers—§ 39.39(c)(3)

Thorough planning also requires that a SIDCO or Subpart C DCO be prepared to determine when recovery or orderly wind-down is necessary, that is, when the recovery plan or orderly wind-down plan should be ''triggered.'' Some triggers might be automatic (*e.g.,* because the DCO *is* insolvent) while others may not be obvious, and many will necessarily involve the exercise of judgment and discretion (*e.g.,* the DCO is suffering ongoing business losses that appear likely to lead to insolvency, or an adverse legal judgment that involves large financial liability appears likely).

The CPMI–IOSCO Recovery Guidance and CFTC Letter No. 16–61 each advise that a SIDCO's and Subpart C DCO's recovery plan and wind-down plan should define the criteria, both quantitative and qualitative, that they would use to determine, or to guide its discretion in determining, when to implement the recovery plan and the wind-down plan, *i.e.,* the trigger(s).[102] The Commission believes that defining those criteria (including conducting the

[98] CFTC Letter No. 16–61, at 6–7.

[99] *Id.* at 5–6. These scenarios are described as ''commonly applicable'' because, in the Commission's judgment, all DCOs will plausibly be vulnerable to most of these scenarios occurring, that is, most scenarios will be possible and, if such a scenario occurs, it may damage the DCO's financial position sufficiently to require recovery or orderly wind-down.

The reference to scenarios that are ''possible'' should not be confused with a reference to scenarios that are ''likely.'' Thus, if a DCO deposits all relevant funds as cash with a federally regulated and insured depository institution, and in no circumstances invests them, then a scenario of losses resulting from *investment* risk would not be possible. On the other hand, while regulation of depository institutions and FDIC insurance makes a loss due to failure of such a depository bank extraordinarily unlikely, it is not impossible, and thus is a scenario that should be addressed in the recovery and orderly wind-down plans. *See, e.g.,* NDL Discussion Paper at section 2.1 (''[L]ow risk is not zero risk, and consequently, CCPs should have a plan to address [non-default losses (NDL)] from these scenarios should they materialize. Some CCPs, however, do not include certain types of NDL scenario[s] in their planning because these CCPs seem to assume that regulated financial institutions or central securities depositories pose zero custody [or depository] risk, or that legal risk cannot cause an NDL (because Principle 1 of the PFMI requires a legal basis with 'a high degree of certainty'). These approaches appear to be inconsistent with the standards set forth in the PFMI.'')

[100] For loss scenarios resulting from interconnections and interdependencies among the DCO and its parent or affiliates, the DCO should consider, to the extent applicable, how its organizational structure may impact the specific steps it would anticipate taking.

[101] The term ''in the judgment of the DCO, are particularly relevant'' is being used rather than ''are most relevant'' to avoid the implication that it would be necessary to conduct an analysis ranking with precision the relevance of different combinations. Rather, staff of the DCO should exercise their professional judgement in selecting at least two particularly relevant combination scenarios. It is highly unlikely that no such combinations (or only one) would be possible.

[102] *See* CPMI–IOSCO Recovery Guidance, at sections 2.4.6–2.4.8; CFTC Letter No. 16–61, at 7.

analysis necessary to do so) would materially aid these DCOs both in developing effective plans, and in preparing to address events that lead to such triggers. While the CPMI–IOSCO Recovery Guidance references only recovery plans, the Commission believes that a similar analysis should apply to planning for consideration of orderly wind-down. The Commission also believes that the identification of possible triggers would project confidence to the public that these DCOs will continue to function in extreme circumstances (such as recovery), and convey that these DCOs have a plan to consider wind-down in an orderly manner if recovery is ineffective.

The CPMI–IOSCO Recovery Guidance states that there may be some triggers that ''should lead to a pre-determined information-sharing and escalation process within the FMI's senior management and its board of directors and to careful consideration of what action should be taken.'' [103] The Commission agrees that planning for such an information-sharing and escalation process as part of the DCO's governance is an important part of ensuring that the DCO is prepared to deal with contingencies. Accordingly, the Commission is proposing new § 39.39(c)(3)(i) to require that a SIDCO's or Subpart C DCO's recovery plan discuss the criteria that may trigger both implementation and consideration of implementation of the recovery plan, and the process that these DCOs have in place for monitoring for events that are likely to trigger the recovery plan. With respect to the orderly wind-down plan, the DCO must discuss the criteria that may trigger *consideration of* implementation of the plan, realizing the importance of discretion in determining whether to *implement* orderly wind-down (in contrast to recovery, a terminal process), and the process that the DCO has in place for monitoring for events that may trigger consideration of implementation of the orderly wind-down plan.

For similar reasons, the Commission is proposing § 39.39(c)(3)(ii) to require the recovery plan and orderly wind-down plan each to include a description of the information-sharing and escalation process within the SIDCO's and Subpart C DCO's senior management and the board of directors. These DCOs must have a defined process that will include the factors the DCO considers most important in guiding the board of directors' exercise of judgment and discretion with respect to recovery and orderly wind-down plans in light of the relevant triggers and that process.

The Commission requests comment on this aspect of the proposal.

4. Recovery Tools—§ 39.39(c)(4)

By the end of 2013, CPMI–IOSCO had not completed their consultative work establishing guidance for use in implementing the PFMI. Their final guidance was published in October 2014 and amended in July 2017. The CPMI–IOSCO Recovery Guidance does not advise authorities to prescribe specific recovery tools; rather the guidance ''provides an overview of some of the tools that an FMI may include in its recovery plan, including a discussion of scenarios that may trigger the use of recovery tools and characteristics of appropriate recovery tools in the context of such scenarios.'' [104] CFTC Letter No. 16–61 adopts a similar approach in that it does not prescribe the tools that a DCO should use during recovery. Rather, the letter sets forth a detailed analysis that staff expects a DCO should undertake in its recovery plan to meet its obligations or provide its critical operations and services as a going concern.[105]

The Commission declines to prescribe specific tools that SIDCOs and Subpart C DCOs must include in their recovery plans. Each DCO is different, and a variety of tools may be available to a particular DCO in each specific scenario. Rather, these DCOs should have discretion to decide on which tools to include, so long as the set of tools chosen meets standards designed to protect indirect participants (*e.g.,* clients, end users), direct participants (*i.e.,* clearing members), the DCO itself, and other relevant stakeholders (including, in the case of SIDCOs, the financial system more broadly): (1) the set of tools should comprehensively address how the DCO would continue to provide critical operations and services in all relevant scenarios; (2) each tool should be reliable, timely, and have a strong legal basis; (3) the tools should be transparent and designed to allow those who would bear losses and liquidity shortfalls to measure, manage and control their exposure to losses and liquidity shortfalls; (4) the tools should create appropriate incentives for the DCO's owners, direct and indirect participants, and other relevant stakeholders; and (5) the tools should be designed to minimize the negative impact on direct and indirect participants and the financial system more broadly.[106]

The Commission expects that each SIDCO and Subpart C DCO will consider in its planning process tools that meet the full scope of financial deficits that the DCO may need to remediate: (1) tools to allocate uncovered losses by a clearing member default: *e.g.,* the DCO's own capital (sometimes referred to as ''skin-in-the-game''), cash calls (sometimes referred to as assessments), and gains-based haircutting (sometimes referred to as variation margin gains haircutting); (2) tools to address uncovered liquidity shortfalls: *e.g.,* liquidity from third-party institutions and non-defaulting [107] clearing members; (3) tools to replenish financial resources: *e.g.,* cash calls and recapitalization; [108] (4) tools to establish a matched book: *e.g.,* auctions and tear-ups; and (5) tools to allocate losses not covered by a clearing member default: *e.g.,* capital, recapitalization, and insurance.

To provide these DCOs with some flexibility, the Commission is proposing to require that each DCO's recovery plan include a complete description and analysis of the tools it proposes to use to cover shortfalls from the stress scenarios identified by the DCO that are not covered by pre-funded financial resources, or where the DCO does not have sufficient liquid resources or liquidity arrangements to meet its obligations in the correct form and in a timely manner. Additionally, the Commission expects each DCO will be prepared to implement tools to deal with other losses or liquidity shortfalls, including those from non-default risks that may materialize more slowly, and tools to increase the DCO's financial resources where necessary in order to implement its plans. Finally, to support the planning process, the description of recovery tools in the recovery plan should include, at a minimum, any discretion the DCO has in the use of the tool, whether the tool is mandatory or voluntary, and the governance processes and arrangements for determining which tools to use, and to what extent.

Accordingly, the Commission is proposing § 39.39(c)(4) to require a SIDCO or Subpart C DCO to have a

[103] CPMI–IOSCO Recovery Guidance, at section 2.4.8.

[104] *Id.* at 1; *see also id. at* section 4.1 (summarizing specific recovery tools).

[105] CFTC Letter No. 16–61, at 7–8.

[106] *See* CPMI–IOSCO Recovery Guidance, at section 3.3.1.

[107] In the context of default losses, the defaulting participants cannot be relied upon to provide any resources. In the context of non-default losses, all participants are, at least in the first instance, non-defaulting participants.

[108] *Cf. id.* at section 2.4.9. While the CPMI–IOSCO Recovery Guidance refers to capital, section 39.11(b) recognizes that financial resources include, but are not limited to, capital.

recovery plan that includes the following: (i) a description of the tools that the DCO would expect to use in each scenario required by proposed paragraph (b) of this section that comprehensively addresses how the DCO would continue to provide critical operations and services; (ii) the order in which each such tool would be expected to be used; (iii) the time frame within which each such tool would be expected to be used; (iv) a description of the governance and approval processes and arrangements within the DCO for the use of each tool available, including the exercise of any available discretion; (v) the processes to obtain any approvals external to the DCO (including any regulatory approvals) that would be necessary to use each of the tools available, and the steps that might be taken if such approval is not obtained;[109] (vi) the steps necessary to implement each such tool; (vii) a description of the roles and responsibilities of all parties, including non-defaulting clearing members, in the use of each such tool; (viii) whether the tool is mandatory or voluntary; (ix) an assessment of the likelihood that the tools, individually and taken together, would result in recovery; and (x) an assessment of the associated risks from the use of each such tool to non-defaulting clearing members and those clearing members' customers with respect to transactions cleared on the DCO, linked financial market infrastructures, and the financial system more broadly. For those scenarios involving non-default losses, all clearing members are non-defaulting.

The Commission requests comment on this aspect of the proposal. With respect to the types of recovery tools in particular, the Commission welcomes comment on whether DCOs use, or would anticipate using, any tools not identified above in order to meet the full scope of financial deficits a DCO in recovery may need to remediate.

5. Orderly Wind-Down Scenarios and Tools—§ 39.39(c)(5)

As discussed further below, planning for orderly wind-down overlaps significantly, though not totally, with planning for recovery. There may be circumstances where the SIDCO or Subpart C DCO attempts to recover but fails, upon which it should have a plan, as well as sufficient capital, to transition to and execute an orderly wind-down. SIDCOs and Subpart C DCOs must therefore plan for both recovery and orderly wind-down.

Proposed § 39.39(c)(5) would require a SIDCO's or a Subpart C DCO's orderly wind-down plan to identify scenarios that could prevent it from being able to meet its obligations, and to identify tools which may be used in the orderly wind-down of the DCO. CFTC Letter No. 16–61 states that a DCO's analysis of its wind-down options ''should contain many of the elements of a DCO's analysis of its recovery tools.'' [110] The letter calls for the wind-down plan to identify and analyze in detail, with respect to each scenario, nine required elements as well as ''the manner in which liquidity requirements would be managed during service closure'' and how essential support services would be maintained during the wind-down period.[111] The letter also calls for the wind-down plan to address obstacles to each option, and the viability of the options in light of the obstacles.

The Commission recognizes that, to plan effectively for orderly wind-down, considering the scenarios and recovery tools described in the DCO's recovery plan must precede the DCO's analysis of the events that would trigger consideration of implementation of the orderly wind-down plan, and the use of the DCO's orderly wind-down options.[112] A DCO's orderly wind-down plan should therefore include a description of the point or points in the recovery plan, for each scenario, where recovery efforts would likely be deemed to have failed and consideration of implementing the orderly wind-down plan would be triggered. The orderly wind-down plan should then describe at what point the DCO will no longer be able to meet its obligations or provide its critical services as a going concern. Once these scenarios are identified, the plan should describe the tools available to the DCO to effectuate an orderly wind-down. The DCO should, therefore, explain in its wind-down plan how it would plan to accomplish an orderly wind-down, taking into account the time it anticipates it would take to implement the plan. The orderly wind-down plan should include a complete analysis of the wind-down tools the DCO would anticipate using, both individually and together. In order to support a thorough planning process that is consistent with the international standards, the Commission has preliminarily determined that for each wind-down tool, the DCO should describe any discretion it has in the use or sequencing of the wind-down tool for each scenario, any obstacles to the use of a particular tool, the governance and approval processes for the tools available, and how the DCO is planning for the viability of the tools in light of any identified obstacles.

To support a systematic planning process that will foster the DCO's ability to wind-down in an orderly manner in situations of unprecedented stress, where recovery is infeasible, proposed § 39.39(c)(5) incorporates certain of the staff guidance included in CFTC Letter No. 16–61, as well as international standards and guidance issued since the 2013 rulemaking. Proposed § 39.39(c)(5) would require each SIDCO and Subpart C DCO to identify scenarios that may prevent it from meeting its obligations or providing its critical services as a going concern, describe the tools that it would expect to use in an orderly wind-down that comprehensively address how the DCO would continue to provide critical operations and services, describe the order in which each such tool would be expected to be used,[113] establish the time frame within which each such tool would be expected to be used, describe the governance and approval processes and arrangements within the DCO for the use of each of the tools available, including the exercise of any available discretion, describe the processes to obtain any approvals external to the DCO (including any regulatory approvals) that would be necessary to use each of the tools available, and the steps that might be taken if such approval is not obtained, set forth the steps necessary to implement each such tool, describe the roles and responsibilities of all parties, including non-defaulting clearing members, in the use of each such tool, provide an assessment of the likelihood that the tools, individually and taken together, would result in orderly wind-down, and provide an assessment of the associated risks to non-defaulting clearing members and those clearing members' customers with respect to transactions cleared on the DCO, linked financial market infrastructures, and the financial system more broadly.

The Commission requests comment on this aspect of the proposal. The Commission specifically requests comment on whether the scope of clearing member customers that are focused upon (*i.e.,* ''those clearing members' customers with respect to transactions cleared on the'' DCO) is

[109] Thus, while (iv) focuses on internal governance and approval processes such as among DCO officers and committees, (v) focuses on external approval processes, if any, such as approvals by a regulator with the legal authority or practical power to require approval of the use of a tool.

[110] CFTC Letter No. 16–61, at 9.

[111] *Id.* at 10.

[112] *See id.* at 9.

[113] It may be the case that certain tools may be used concurrently.

appropriately broad, and appropriately framed.

6. Agreements To Be Maintained During Recovery and Orderly Wind-Down—§ 39.39(c)(6)

A DCO has a variety of contractual arrangements that must be maintained during business as usual, in times of stress, and recovery and orderly wind-down, such as those with clearing members, affiliates, linked central counterparties, counterparties, external service providers, and other third parties.[114] These contractual arrangements include the DCO's rules and procedures, agreements to provide operational, administrative and staffing services, intercompany loan agreements, mutual offset agreements or cross-margining agreements, and credit agreements.[115] Also, a DCO's recovery plan and orderly wind-down plan should identify and analyze the implications of the various contractual arrangements that the DCO maintains and describe the actions that the DCO has taken to ensure that its operations can continue during recovery and orderly wind-down despite the termination or alteration of relevant contracts.[116]

Contracts may contain covenants, material adverse change clauses, or other provisions that could subject such contracts to alteration or termination as a result of the implementation of the recovery plan or orderly wind-down plan, and thus render the continuation of the DCO's critical operations and services difficult or impracticable. Therefore, the Commission believes that each DCO's recovery plan and orderly wind-down plan should be supported by the DCO's review and analysis of the DCO's contracts associated with the provision of those critical operations or services to determine if those contracts contain such provisions. Where such contractual provisions are present and enforceable against the DCO, it will need to have alternative methods to continue those critical operations and services. The DCO's recovery plan and orderly wind-down plan should describe the actions that the DCO has taken to ensure that its operations can continue during recovery and orderly wind-down despite these contractual provisions. The orderly wind-down plan should also consider whether the contractual relationships the DCO relies upon to perform its critical operations and services would transfer to a new entity in the event of the creation of a new entity or the sale or transfer of the business to another entity in an orderly wind-down. Furthermore, the Commission believes that a requirement that a DCO have plans in place to ensure that its critical operations and services will continue into recovery and orderly wind-down is consistent with the PFMI and is crucial to providing ''a high degree of confidence'' that the DCO will continue its operations and ''serve as a source of financial stability even in extreme market conditions.'' [117]

The DCO's recovery plan and orderly wind-down plan must also identify and describe any licenses, and contracts in which the DCO is the licensee, upon which the DCO may rely to provide its critical operations and services. Such licenses should be included in the DCO's analysis of its contractual arrangements that must continue into recovery and wind-down.

The Commission is proposing § 39.39(c)(6) to provide that a SIDCO or Subpart C DCO must determine which of its contracts, arrangements, agreements, and licenses associated with the provision of its critical operations and services as a DCO are subject to alteration or termination as a result of implementation of the recovery plan or orderly wind-down plan. The recovery plan and orderly wind-down plan must describe the actions that the DCO has taken to ensure that its critical operations and services will continue during recovery and wind-down despite such alteration or termination.

The Commission requests comments on this aspect of the proposal.

7. Governance—§ 39.39(c)(7)

While current § 39.39 does not explicitly address the need for a DCO to have an effective governance structure to implement its recovery or orderly wind-down plans, the Commission has preliminarily determined to require an effective governance structure in order to enable the DCO to implement such plans effectively. The CPMI–IOSCO Recovery Guidance supports the Commission's determination, and recommends that the DCO's board of directors or equivalent governing body formally endorse the recovery plan.[118] In addition, the guidance calls for ''an effective governance structure and sufficient resources to support the recovery planning process and implementation of its recovery plan, including any decision-making processes.'' [119] According to the CPMI–IOSCO Recovery Guidance, an ''effective governance structure'' includes ''clearly defining the responsibilities of board members, senior executives and business units, and identifying a senior executive responsible for ensuring that the FMI observes recovery planning requirements and that recovery planning is integrated into the FMI's overall governance process.'' [120] The guidance also states that the FMI's board should consider the interests of all stakeholders who are likely to be affected by the recovery plan when developing and implementing it, and the FMI ''should have clear processes for identifying and appropriately managing the diversity of stakeholder views and any conflicts of interest between stakeholders and the FMI.'' [121]

CFTC Letter No. 16–61 provided guidance to align the regulation promulgated in 2013 with the 2014 CPMI–IOSCO Recovery Guidance. CFTC Letter No. 16–61 advised that a DCO's recovery plan and wind-down plan should set forth all relevant governance arrangements and recommends that a DCO's recovery plan and wind-down plan: (1) Identify the persons responsible for the development, review, approval, and ongoing monitoring and updating of the DCO's recovery plan and wind-down plan; (2) describe the involvement of the DCO's clearing members in the development, review, and updating of the recovery plan and wind-down plan, and in assessing the effects of the recovery plan on clearing members; (3) describe how the costs and benefits of various recovery tools are taken into account during the decision-making process; (4) describe the recovery plan and wind-down plan approval and amendment process; (5) describe the specific roles and responsibilities of the DCO's Board of Directors, relevant committees, and other employees and clearing members in activating the recovery plan and wind-down plan and in implementing various aspects thereof including, without limitation, the use of recovery tools and wind-down options; and (6) the discretion of such persons and entities in activating the recovery plan and wind-down plan, the parameters for exercise of such discretion, where such discretion may be exercised, and the

[114] *Id.* at 11.

[115] *Id.*

[116] *Id.* Note that CFTC Letter No. 16–61 calls for the same, *i.e.,* determine whether any contractual arrangements include covenants, material adverse change clauses or other provisions that would permit a counterparty to alter or terminate the agreement as a result of the implementation of the DCO's recovery plan or wind-down plan.

[117] PFMI at 36 (section on credit and liquidity risk management).

[118] CPMI–IOSCO Recovery Guidance, at section 2.3.3.

[119] *Id.*

[120] *Id.*

[121] *Id.* at section 2.3.4.

governance processes for the exercise of such discretion.[122]

The Commission believes that, in order to develop thorough plans, and to be prepared to implement those plans effectively, a SIDCO or Subpart C DCO must implement and maintain transparent governance arrangements related to recovery and wind-down that are consistent with the above standards and that recognize ''one size does not fit all.'' DCOs are required to have governance rules and arrangements in place both for business-as-usual operations and in times of extreme stress in order to meet DCO Core Principle O.[123] DCO Core Principle O requires a DCO to establish governance arrangements that are transparent to fulfill public interest requirements and to permit the consideration of the views of owners and participants.[124]

In furtherance of Core Principle O, and to support the effectiveness of these plans and ensure their formal review, the Commission is proposing new § 39.39(c)(7) to require each SIDCO's and Subpart C DCO's recovery plan and orderly wind-down plan to be annually reviewed and formally approved by the board of directors, and to describe an effective governance structure that clearly defines the responsibilities of the board of directors, board members, senior executives, and business units. Each plan must also describe the processes that the DCO will use to guide its discretionary decision-making relevant to each plan, including those processes for identifying and managing the diversity of stakeholder views and any conflict of interest between stakeholders and the DCO.

The Commission requests comment on this aspect of the proposal.

8. Testing—§ 39.39(c)(8)

In CFTC Letter No.16–61, staff recommended that SIDCOs and Subpart C DCOs include in their recovery and wind-down plans procedures for regularly testing the viability of such plans and that testing, where applicable, be conducted with the participation of clearing members.[125] Additionally, the recovery plan and wind-down plan should identify the types of testing that will be performed, the frequency with which the plans will be tested, to whom the findings will be reported, and the procedures for updating the recovery plan and wind-down plan in light of the testings' findings.[126] Likewise, the CPMI–IOSCO Recovery Guidance provides that FMIs should, for the purpose of ''ensur[ing] that the recovery plan can be implemented effectively,'' test and review the recovery plan at least annually as well as following changes materially affecting the recovery plan.[127] As an example, it states that testing may be conducted through periodic simulation and scenario exercises.[128] The CPMI–IOSCO Recovery Guidance also states that an ''FMI should update its recovery plan as needed following the completion of each test and review.'' [129]

In 2022, CPMI–IOSCO issued a discussion paper building on PFMI Principles 3 (Framework for the Comprehensive Management of Risks) and 15 (General Business Risk), the purpose of which was ''to facilitate the sharing of existing practices to advance industry efforts and foster dialogue on [CCPs'] management of potential losses arising from non-default events . . . in particular in the context of recovery or orderly wind-down.'' [130] Summarizing the responses of CCPs, the discussion paper observes, ''In general, responding CCPs perform annual reviews of their recovery plans'' and ''[a]lmost all responding CCPs conduct crisis management drills.'' [131] The responding CCPs also informed CPMI–IOSCO that they ''use crisis management drills to improve their decision-making capabilities and their capacity to address potential [non-default losses] by improving their understanding of scenarios and tools, and testing assumptions about the effectiveness of specific tools.'' [132] The discussion paper quotes one CCP's response in particular explaining that crisis management exercises helped improve its operational readiness and identify the need for higher insurance coverage.[133]

In addition, the discussion paper highlights that CCPs engage in discussion-based exercises involving the internal governance structure and external partners and stakeholders, which ''appears to facilitate a better understanding of roles and responsibilities before a crisis occurs'' and ''serve[s] to reduce the likelihood of purely ad hoc decision-making on the allocation of [non-default losses] in a crisis, while still giving decision-makers the flexibility to respond to the unique circumstances of any particular crisis.'' [134] The responding CCPs reported that testing typically involves a wide range of internal stakeholders and, in some cases, external stakeholders as well.[135] This greater involvement in testing ''enhances the quality of such exercises by strengthening the tie between the exercise and reality of how stakeholders will react.'' [136]

According to the discussion paper, testing ''may permit CCPs to enhance the tools and resources for identifying, measuring, monitoring and managing [non-default loss] risks'' and has ''the potential to increase participants' understanding of the types of scenario[s] that could generate [non-default losses], the range of magnitudes of such losses and their roles and responsibilities in addressing [nondefault losses],'' [137] which could result in an ''increase [in] the operational effectiveness'' of the CCPs' plans.[138]

The Commission believes that the testing and reviewing practices described in the foregoing paragraphs will materially contribute to the effectiveness of recovery and orderly wind-down plans. Although the CPMI–IOSCO discussion paper focused on existing practices with respect to non-default losses, the reasoning will also apply to default losses. Periodic testing has the potential to demonstrate whether a SIDCO's or Subpart C DCO's tools and resources will sufficiently cover financial losses resulting both from participant defaults and non-default losses and whether these DCOs' rules, procedures, and governance facilitate a viable recovery or orderly wind-down. Further, testing the DCO's infrastructure is an effective means of revealing deficiencies or weaknesses which could hamper recovery or wind-down efforts, and providing an opportunity to remediate them in advance.

Thus, the Commission is proposing new § 39.39(c)(8) to require that the recovery plan and orderly wind-down plan of each SIDCO and Subpart C DCO include procedures for testing the viability of the plans, including testing of the DCO's ability to implement the tools that each plan relies upon. The recovery plan and the orderly wind-down plan must include the types of testing that will be performed, to whom the findings of such tests are reported, and the procedures for updating the recovery plan and orderly wind-down plan in light of the findings resulting

[122] CFTC Letter No. 16–61, at 13.

[123] Section 5b(c)(2)(O)(i) of the CEA, 7 U.S.C. 7a–1(c)(2)(O).

[124] *Id.*

[125] CFTC Letter No. 16–61, at 15.

[126] *Id.*

[127] CPMI–IOSCO Recovery Guidance, at ¶ 2.3.8.

[128] *Id.*

[129] *Id.*

[130] NDL Discussion Paper, at 2 (Executive Summary).

[131] *Id.* at section 4.

[132] *Id.*

[133] *Id.*

[134] *Id.*

[135] *Id.*

[136] *Id.*

[137] *Id.*

[138] *Id.*

from such tests. The testing must be conducted with the participation of clearing members, where the plan depends on their participation, and the DCO must consider including external stakeholders that the plan relies upon, such as service providers, to the extent practicable and appropriate.

Testing must occur following any material change to the recovery plan or orderly wind-down plan, but in any event not less than once annually. The plans shall be updated in light of the findings of such tests.

The Commission requests comment on this aspect of the proposal. The Commission specifically requests comment as to whether the rule should require that the SIDCO or Subpart C DCO include (rather than simply consider including) external stakeholders that the plan relies upon in the testing. The Commission also specifically requests comment on the proposed requirement that tests be conducted not less than annually: would a different minimum frequency be more appropriate?

D. Information for Resolution Planning—§ 39.39(f)

As discussed above,[139] when the Commission adopted regulations for recovery and wind-down plans in 2013, CPMI–IOSCO and the FSB were in the initial phase of drafting guidance for resolution planning consistent with PFMI Principle 3, Key Consideration 4, which states that ''an FMI should also provide relevant authorities with the information needed for purposes of resolution planning.'' [140] Consistent with that standard, current § 39.39(c)(2) requires a SIDCO or Subpart C DCO to have procedures for providing the Commission and the FDIC with information needed for purposes of resolution planning.[141]

The Commission proposes to update its regulations to align § 39.39(c)(2), as new § 39.39(f), with the additional standards and guidance applicable to resolution planning for systemically important FMIs adopted since 2013.[142] As stated in the 2017 FSB Resolution Guidance, ''[a]uthorities should ensure that CCPs have in place adequate processes and information management systems to provide the authorities with the necessary data and information required for undertaking'' an assessment of the financial resources and tools that the resolution authority can reasonably expect to be available under the resolution regime).[143] In the United States, upon the completion of the statutory appointment process set forth in Title II of the Dodd-Frank Act, the FDIC would be appointed the receiver of a failing SIDCO (or other covered financial company) [144] The supervision of a DCO rests with the Commission under the CEA, and, in particular, the supervision of a SIDCO rests with the Commission as the supervisory agency under Title VIII of the Dodd-Frank Act.[145] The statutory bifurcation of responsibilities between the FDIC and the Commission creates important challenges. Under Title II of the Dodd-Frank Act, it is the role of the FDIC to act as receiver for a failed covered financial company if the requirements of Title II have been met. The FDIC's ability to carry out its responsibilities as receiver would benefit from advance preparation to ensure that, in the unlikely event that resolution becomes necessary, there will be an effective and efficient transition of the SIDCO to the FDIC receivership, thereby fostering the success of a Title II resolution.[146]

Pursuant to section 8a(5) of the CEA,[147] the Commission has authority to make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the CEA. One of those purposes is the avoidance of systemic risk.[148] As further described in the following paragraphs, it would appear that a reporting requirement that would enable the Commission to aid the FDIC in its preparations for the resolution under Title II of a DCO—where placing the DCO into resolution requires a finding by the Secretary of the Treasury, in consultation with the President, that, *inter alia,* the failure of the DCO and its resolution under otherwise applicable Federal or State law would have serious adverse effects on financial stability in the United States [149]—is reasonably necessary to foster the avoidance of systemic risk.

Moreover, under Title VIII of the Dodd-Frank Act, the Commission may, in consultation with the FSOC and the Board of Governors of the Federal Reserve, prescribe regulations containing risk management standards, taking into consideration relevant international standards and existing prudential requirements, for SIDCOs governing: (i) the operations related to payment, clearing, and settlement activities of SIDCOs; and (ii) the conduct of designated activities by SIDCOs.[150] Under Section 805(b) of the Dodd-Frank Act, the objectives and principles for such risk management standards shall be to: (1) promote robust risk management; (2) promote safety and soundness; (3) reduce systemic risks, and (4) support the stability of the broader financial system.[151] Additionally, Section 805(c) of the Dodd-Frank Act states that the standards prescribed may address areas such as: (1) risk management policies and procedures; (2) margin and collateral requirements; (3) participant or counterparty default policies and procedures; (4) the ability to complete timely clearing and settlement of financial transactions; (5) capital and financial resources requirements for the SIDCO; and (6) other areas that are necessary to achieve the objectives and principles in Section 805(b).[152]

Similar to the context of recovery and orderly wind-down planning, thorough preparation *ex ante* is crucial for successfully managing, on an inherently abbreviated timeline, matters relating to resolution, in aid of mitigating serious adverse effects on financial stability in the United States. This thorough preparation for resolution is also crucial for establishing market confidence, and the confidence of foreign counterparts to the United States agencies. While the Commission remains persuaded that the likelihood of a SIDCO requiring

[139] *See* text accompanying fn. 54, *supra.*

[140] PFMI Principle 3, Key Consideration 4, at 32. The Commission notes that resolution is distinct from orderly wind-down in that the latter rests within the control of the DCO.

[141] 17 CFR 39.39(c)(2).

[142] *See, e.g.,* 2017 FSB Resolution Guidance, at section 6.4 (noting that ''[a]uthorities should ensure that CCPs have in place adequate processes and information management systems to provide the authorities with the necessary data and information required for undertaking'' an assessment of the financial resources and tools that the resolution authority can reasonably expect to be available under the resolution regime).

[143] 2017 FSB Resolution Guidance, at section 6.4.

[144] Section 202(a) of the Dodd-Frank Act; 12 U.S.C. 5382(a).

[145] Sections 803(8)(A)(ii) and 807(a) of the Dodd-Frank Act, 12 U.S.C. 5462(8)(A)(ii) and 5466(a); *see also* Section 2(12)(C) of the Dodd-Frank Act, 12 U.S.C. 5301(12)(C).

[146] This involves coordinated planning and information sharing to enable a smooth transition into resolution. As the supervisory agency for SIDCOs, the Commission provides information for resolution planning to the FDIC under the auspices of a Memorandum of Understanding (MOU). The current MOU is the ''Memorandum of Understanding Between The Federal Deposit Insurance Corporation And The Commodity Futures Trading Commission Concerning The Sharing Of Information In Connection With Resolution Planning For Derivatives Clearing Organizations,'' dated June 26, 2015.

[147] 7 U.S.C. 12a(5).

[148] Section 3(b) of the CEA, 7 U.S.C. 5(b).

[149] Section 203(b)(2) of the Dodd-Frank Act, 12 U.S.C. 5383(b)(2).

[150] Section 805(a)(2)(A) of the Dodd-Frank Act, 12 U.S.C. 5464(a)(2)(A).

[151] 12 U.S.C. 5464(b).

[152] 12 U.S.C. 5464(c).

resolution under Title II of the Dodd-Frank Act is ''extraordinarily unlikely,'' [153] thorough planning for such an exigency is essential.[154]

While less likely, it remains possible that similar information may also be required from Subpart C DCOs in times of extreme market stress, if it appears at the time that the failure of such a DCO might meet the requirements set forth in section 203(b) of the Dodd-Frank Act.[155] Thus, while the Commission anticipates that the intensity of resolution planning for Subpart C DCOs will be significantly less than that for SIDCOs, in order to promote the goal of assuring that Subpart C DCOs will, if necessary, remain capable of effectively being resolved under Title II, including during times of extreme stress, § 39.39(f) would apply equally to SIDCOs and Subpart C DCOs.[156]

The Commission's DCR staff has been working with FDIC staff on resolution planning for the two SIDCOs. This joint work has revealed that the Commission does not receive certain information from the SIDCOs that the FDIC may need to plan for resolution. The Commission therefore has determined to update its reporting requirements for SIDCOs and Subpart C DCOs to reflect additional information that may be used for resolution planning consistent with the international standards set forth in the PFMI and related guidance.[157]

Most of the global standards and guidance relating to planning for resolution (including for CCPs) apply to resolution authorities, in cooperation with supervisory authorities (where the resolution authority is separate from the supervisory authority).[158] Because of the nature of principle-based regulation for DCOs, there may be information in the possession of a DCO that is required for resolution planning but may not ordinarily be reported to the Commission and may not be available publicly. Moreover, while the recovery and orderly wind-down plans described above should be comprehensive in themselves, there may be additional information that the Commission may require to plan for the resolution of a SIDCO or Subpart C DCO. The Commission therefore proposes to specify the types of information a SIDCO or Subpart C DCO may be required to provide for resolution planning in light of international standards and guidance established since 2013.

1. Planning for Resolution Under Title II of the Dodd-Frank Act—§ 39.39(f)

Current § 39.39(c)(2) requires SIDCOs and Subpart C DCOs to have procedures in place to provide the Commission and the FDIC with information for purposes of resolution planning. This rule is consistent with the Key Attributes FMI Annex: ''In order to facilitate the implementation of resolution measures, FMIs should be required to maintain information systems and controls that can promptly produce and make available, both in normal times and during resolution, relevant data and information needed by the authorities for purposes of timely resolution planning and resolution . . . .'' [159] The Commission is proposing in new § 39.39(f) to clarify that the requirement that a DCO have procedures in place to provide information directly to the Commission and the FDIC for resolution planning purposes means that the DCO must provide such information to the Commission. The Commission would no longer be requiring DCOs to provide information related to resolution planning directly to the FDIC. The Commission provides such information related to resolution planning to the FDIC under the MOU.

The Commission is also proposing, consistent with the Key Attributes FMI Annex, to require that SIDCOs and Subpart C DCOs maintain information systems and controls that can promptly produce and make available data and information requested by the Commission for purposes of resolution planning and resolution in the form and manner specified by the Commission. The Commission expects that the form and manner would be designed to facilitate the Commission's ability to share the information with the FDIC. Such systems and controls are, for the most part, already in place during business as usual between each DCO and the Commission. The explicit requirement that a SIDCO and Subpart C DCO ensure that its systems will continue to be able to provide information to the Commission during resolution is sound public policy, as it will ensure the Commission receives critical information during this transitional period. The requirements of the CEA apply to any DCO as long as it is doing business, and the affirmation that a DCO's systems will be designed to be able to continue to function should help to provide assurances to stakeholders and market participants that clearing services will continue through all potential exigencies.

Accordingly, the Commission is proposing new § 39.39(f) to require that a SIDCO or Subpart C DCO maintain information systems and controls to provide to the Commission any data and information requested for purposes of resolution planning and resolution, and that each must supply such information and data electronically, in the form and manner specified by the Commission.

2. Required Information—§ 39.39(f)(1)–(7)

It is sound regulatory policy for the Commission to be transparent about the types of information that a SIDCO or Subpart C DCO might anticipate providing to the Commission, upon request, in order to enable the Commission to aid the FDIC in planning for resolution under Title II of the Dodd-Frank Act. This transparency is sound public policy because it would help assure stakeholders that, in the extraordinarily unlikely event that resolution of a SIDCO or Subpart C DCO under Title II becomes necessary, there will be an effective and efficient transition of the DCO to the FDIC receivership, and a successful resolution under Title II would be forthcoming. Thorough preparation is also helpful in supporting market confidence, and the

[153] *See Bankruptcy Regulations,* 86 FR 19324, 19386 (Apr. 13, 2021).

[154] Key Attributes ¶ 11.1, FSB CCP Resolution Planning Guidance at section 7.

[155] 12 U.S.C. 5383(b). While the determination under Title II is made at the time when the entity (here a DCO) is under stress (*see* 12 U.S.C. 5383(b)(1) (determination that the financial company *is* in default or in danger of default, emphasis added), the determination under Title VIII is made during business as usual, after a detailed process including notice to the proposed systemically important financial market utility, and the standards for the determination are different than those for the designation. *See generally* Section 804 of the Dodd-Frank Act, 12 U.S.C. 5463; 12 CFR Part 1320 (Designation of Financial Market Utilities). Thus, an entity not designated in advance under Title VIII may nonetheless in particular circumstances be determined to meet the standards for resolution under Title II, similarly, an entity designated in advance under Title VIII may not, even in the event of its failure, be determined to meet the standards under Title II.

Nonetheless, it would appear that the failure of a DCO that has been determined during business as usual to have met the criteria for designation pursuant to 12 U.S.C. 5463 is more likely to have such adverse effects on financial stability than the failure of a DCO that has not been determined to have met those criteria.

[156] The Commission does not at this time believe that it is likely that the failure of a U.S.-based DCO that is neither a SIDCO nor a Subpart C DCO would meet the requirements set forth in Section 203(b) of the Dodd-Frank Act, 12 U.S.C. 5383(b), given the generally smaller size of such DCOs and the fact that such DCOs do not have banks as clearing members (*see supra* fn. 23). For foreign-based DCOs, the relevant resolution authority would be the resolution authority in the home jurisdiction. Accordingly, the Commission is not proposing to extend this requirement to DCOs that are neither SIDCOs nor Subpart C DCOs.

[157] *See* Sections 805(a)(1)(A)–(B) of the Dodd-Frank Act, 12 U.S.C. 5464(a)(1)(A)–(B).

[158] *E.g.,* FSB CCP Resolution Planning Guidance at section 7.

[159] Key Attributes FMI Annex, at section 12.1.

confidence of foreign counterparts to the United States agencies.[160]

Resolution planning necessarily involves assessing a number of types of information: information that is publicly available, information that is otherwise reported to the Commission under part 39, and information that is in the possession of the DCOs but that is not otherwise reported to the Commission.

Over past years, Commission staff has worked with staff from the FDIC and the SIDCOs to identify and obtain information for the purpose of planning for the highly unlikely event of a SIDCO entering into resolution.[161] Global guidance on standards for resolution planning developed since 2013 have informed these information requests.

Under Core Principle J, the Commission may request any information from a DCO that the Commission determines to be necessary to conduct oversight of the DCO.[162] The Commission believes that certain information for resolution planning that goes beyond the information usually obtained during business as usual under the Core Principles and associated Part 39 regulations should be available when a DCO is systemically important to the financial system, may be approaching such systemic importance, or has opted into Subpart C.[163] As noted above, the FDIC must be ready to step in as receiver of a failing DCO on very short notice and work to achieve a resolution that mitigates risks to financial stability created by the DCO's failure, including by restoring market confidence and preventing contagion. The information proposed to be requested will assist in planning for resolution, thereby helping the FDIC to fulfill its role and accomplish its objectives, which in turn helps accomplish one of the purposes of the CEA, the avoidance of systemic risk.

Proposed subparts (1) through (7) describe seven types of information that are relevant to planning for resolution under Title II of the Dodd-Frank Act. The frequency with which information may be requested may vary over time, with some information requested only once, while other information may be requested multiple times (*e.g.,* annually, or upon significant changes to the structure of the DCO's business arrangements). The Commission expects that, in the latter case, the frequency of the requests may change over time, as the Commission gains more knowledge.

i. Structure and Activities—§ 39.39(f)(1)

As part of planning for resolution, the FDIC develops resolution options that are underpinned by an understanding of the structure of the SIDCO or Subpart C DCO. Proposed § 39.39(f)(1) would cover information related to the SIDCO's and Subpart C DCO's structure and activities and would include, among other things, documents and information about the SIDCO's and Subpart C DCO's legal structure and hierarchy. The Commission anticipates that this information would include current comprehensive organizational charts (including all direct and indirect subsidiaries where the SIDCO directly or indirectly owns more than a fifty percent controlling interest), governing documents and arrangements, rights and powers of shareholders, and current organizational documents (including by-laws, articles of incorporation or association/organization, and committees). The Commission acknowledges that some of this information may be publicly available on a SIDCO's website, may be included in recovery plans, or may otherwise be reported to the Commission under part 39. In the event that information is required that is not readily available through the ordinary course of regulatory oversight, a SIDCO and Subpart C DCO must be prepared to provide current information under the umbrella of ''structure and activities'' upon request.[164]

Proposed § 39.39(f)(1) would request information related to the SIDCO's or Subpart C DCO's organizational structure and corporate structure, activities, governing documents and arrangements, rights and powers of shareholders, committee members and responsibilities.

The Commission requests comment on this aspect of the proposal.

ii. Information About Clearing Members—§ 39.39(f)(2)

Another aspect of resolution planning is developing an understanding of the risks that may trigger consideration of orderly wind-down and the implications for resolution should that orderly wind-down fail. In order to understand these risks, certain information about a SIDCO's or Subpart C DCO's clearing members may be instructive. Generalized or anonymized information about clearing members such as types and amounts of collateral posted (for both house and customer accounts), variation margin, and contributions to default and guaranty funds may be instructive, both for *ex ante* planning and in the runway to resolution. Such information may provide insight into the risks that clearing members and the markets would be exposed to in the event of a systemic failure, and of the potential interplay between those risks.

The information requested in the category may also include general information regarding exposures or other measures of business risk with respect to all or a subset of clearing members. This type of information may assist in the planning for potential triggers for resolution and for understanding potential challenges in executing a resolution. The Commission recognizes that this type of information changes over time; accordingly, the Commission anticipates that it may request such information on an annual basis or more frequently in the run-up to resolution. Proposed § 39.39(f)(2) would permit requests for information on clearing members generally, including (for both house and customer accounts) information regarding collateral, variation margin, and contributions to default and guaranty funds.

The Commission requests comment on this aspect of the proposal.

iii. Arrangements With Other Clearing Entities—§ 39.39(f)(3)

In order to plan for continuity of operations in resolution, the Commission and FDIC must understand how the SIDCO or Subpart C DCO interacts with the operations of other DCOs and financial market infrastructures.[165] In particular, the Commission and FDIC must understand the SIDCO's or Subpart C DCO's cross-margining or mutual offset arrangements. These agreements and arrangements may require additional handling in resolution, both because of the exposures and obligations the SIDCO may be subject to, as well as the resources and tools they may provide.

The Commission proposes to require that SIDCOs and Subpart C DCOs provide to the Commission upon request copies of the most current versions of mutual offsetting

[160] To date, the Commission has requested information for resolution planning only from SIDCOs.

[161] This is consistent with section 6.4 of the 2017 FSB Resolution Guidance.

[162] Section 5b(c)(2)(J) of the CEA, 7 U.S.C. 7a–1(c)(2)(J). *See also* 17 CFR 39.19(c)(5)(i) (a DCO shall provide upon request any information related to its business as a clearing organization.)

[164] In some cases, the response may include cross-references to specific places where the information is already available, or has previously been provided, and assurance that the information remains current.

[165] For example, these relationships may be between DCOs registered with the Commission, *e.g.,* Chicago Mercantile Exchange (CME) and Options Clearing Corporation, or between a DCO registered with the Commission and another CCP supervised by an agency other than the CFTC, *e.g.,* CME and the Fixed Income Clearing Corporation.

arrangements or agreements for cross-margining arrangements with external entities. Additionally, for each such arrangement or agreement, the SIDCO or Subpart C DCO should be prepared to provide data concerning the recent scope of the relationship, such as information related to amounts of daily initial margin. The Commission proposes to require that SIDCOs and Subpart C DCOs update such information upon request by the Commission.

Proposed § 39.39(f)(3) would request information on arrangements and agreements with other clearing entities relating to clearing operations, including offset and cross-margin arrangements.

The Commission requests comment on this aspect of the proposal.

iv. Financial Schedules and Supporting Details—§ 39.39(f)(4)

In order to prepare for receivership operations in resolution, and to develop resolution strategy options, there needs to be a clear understanding of the SIDCO's or Subpart C DCO's financial position and capital structure, which may include some combination of assets, liabilities, revenues and expenses, in advance of an extreme event. A DCO's financial statements and exhibits reported to the Commission contain relevant information that will assist the Commission and FDIC in forming a detailed understanding of the potential resources and financial exposures of the SIDCO or Subpart C DCO that would be important to the success of a Title II receivership. To prepare for resolution, the Commission and FDIC require a detailed understanding of the potential supports for and impediments to potential resolution strategies, including sources and uses of funds in resolution.

In order to form this understanding, it would be useful for the DCO to identify potential creditor claims and the potential resources available to satisfy such claims. There may be information in possession of the DCO that may not be available in public filings, on a DCO's website, or in financial reports and schedules required to be filed under other provisions of part 39, including off-balance sheet obligations or contingent liabilities.

The type of information requested under proposed § 39.39(f)(4) would include requests for information on off-balance sheet obligations or contingent liabilities, and obligations to creditors, shareholders, or affiliates not otherwise reported under Part 39.

The Commission requests comment on this aspect of the proposal.

v. Interconnections and Interdependencies With Internal and External Service Providers—§ 39.39(f)(5)

The evaluation of possible obstacles to the continuation of essential services provided by internal and external service providers (including affiliates and other third parties), and the use of software, information, and other tools provided under license, is integral to resolution planning. While the recovery plans required under § 39.39(b) should include much of this information, effective planning for receivership may include the need for a more detailed understanding of the requirements to continue making use of identified services (and thus understanding of the steps to meet such requirements).

Each SIDCO or Subpart C DCO must provide the Commission, upon request, copies of external or inter-affiliate contracts or agreements that permit the SIDCO or Subpart C DCO to perform its critical functions (including third-party or affiliate service agreements, building or equipment leases, etc.). In the case of inter-affiliate arrangements, the DCO should identify which entity in the group is the contracting party and, where relevant, whether there are any inter-affiliate service agreements that address provision of services. This type of information should inform the resolution plan by revealing any dependencies on affiliates for essential support functions provided to the SIDCO or Subpart C DCO. It may also foster planning for alternatives where required. The Commission may also request copies of inter-affiliate contracts or agreements, where the SIDCO or Subpart C DCO provides essential support to other affiliates.

Additionally, where some of the contracts and agreements for services would grant the service provider the option to terminate the contract in the event of assignment to a bridge financial company (*i.e.,* may not be ''resolution resilient''), the resolution plan may need to identify alternatives. Thus, providing CFTC (and, ultimately, FDIC) with information that could help identify those contracts and agreements for services that are not resolution resilient would assist planning in advance of entry into resolution.

Further, because application of the FDIC's authority under Title II with respect to continuation of pre-receivership contracts [166] in the case of a non-U.S. contracting party may be less straightforward than with respect to a U.S.-based contracting party, the Commission may request that a SIDCO or Subpart C DCO provide a list of critical interconnections or interdependencies that are subject to material contracts/agreements governed in whole or in part by non-U.S. law.

Lastly, the resolution plan may need to maintain important tools and capabilities provided under license arrangements. For instance, the resolution plan may need to cover the transfer of licenses to the bridge financial company for products or indices underlying the contracts cleared by the SIDCO or Subpart C DCO. To accomplish this, the Commission may request that a SIDCO or Subpart C DCO provide a copy of such licenses and licensing agreements.

The Commission anticipates that the type of information described above would be requested on a one-time basis, with updates to be provided upon significant changes to the structure of the DCO's business arrangements (including change to the agreements), or when new agreements are executed. Proposed § 39.39(f)(5) would require SIDCOs and Subpart C DCOs to provide information regarding interconnections and interdependencies with internal and external service providers, licensors, and licensees, including information regarding services provided by or to affiliates and other third parties and related agreements, upon request by the Commission.

The Commission requests comment on this aspect of the proposal.

vi. Information Concerning Critical Personnel—§ 39.39(f)(6)

While the recovery and orderly wind-down plans contain information related to critical positions and resilient staffing, in order to plan for resolution, a DCO may have to take steps to ensure that those positions remain filled. This includes steps to ensure that there is an adequate pool of financial resources readily available to ensure that during times of stress, there is staff in place. During times of extreme stress, people in critical positions may have terminated (or may terminate) their association with the DCO, or their association may have been terminated (or may be terminated). Proposed § 39.39(f)(6) would require a SIDCO or Subpart C DCO to provide information for all critical positions described in the recovery and orderly wind-down plans.[167] The Commission believes that this information is essential if the FDIC is to succeed in a Title II receivership,

[166] *See* Section 210(c)(13) of the Dodd-Frank Act (''Authority to Enforce Contracts''), 12 U.S.C. 5390(c)(13).

[167] As in all cases, such information would be provided and obtained under security arrangements appropriate to the sensitivity of the information.

as they will need qualified personnel to fill these positions in order to manage and operate the entity.

The Commission requests comment on this aspect of the proposal.

vii. Other Required Information—§ 39.39(f)(7)

Proposed § 39.39(f)(7) would recognize that resolution planning is a complex, ongoing, and developing process, and that information requirements may change over time as the Commission and the FDIC gain experience with resolution planning for DCOs, and as information needs and business models change. Thus, certain information requirements may not be covered by the specific items listed in proposed § 39.39(f)(1)–(6). In that regard, proposed § 39.39(f)(7) would include a broad provision to encompass information which the Commission requires for this purpose, but not covered by the specific categories of information in proposed § 39.39(f)(1)–(6).

The Commission requests comment on this aspect of the proposal.

3. Requested Reporting—§ 39.19(c)(5)(iii)

The Commission proposes to add a new requested reporting requirement to § 39.19 to reflect updates to the information requested in proposed § 39.39(f)(1)–(7). Proposed § 39.19(c)(5)(iii) would require a SIDCO or Subpart C DCO that submits information pursuant to § 39.39(f) to update the information upon request by the Commission. The Commission needs timely and an accurate information to monitor a SIDCO or Subpart C DCO, especially during stressful times. Depending upon the nature of the change and the information previously submitted, the response may be a confirmation that the information previously submitted remains accurate.

The Commission requests comment on this aspect of the proposal.

D. Renaming § 39.39

When codified in 2013, § 39.39 covered the Commission's expectations regarding a SIDCO's or Subpart C DCO's obligations with regard to recovery and orderly wind-down plans. The Commission proposes to change the title of § 39.39 to reflect that the proposed regulations, if adopted by the Commission, will encompass recovery and orderly wind-down planning for SIDCOs and Subpart C DCOs, as well as information required to plan for resolution.

The Commission requests comment on this aspect of the proposal.

III. Orderly Wind-Down Plans for DCOs That Are Not SIDCOs or Subpart C DCOs

The Commission is proposing, as reasonably necessary to effectuate Core Principle D(i),[168] to require DCOs that are neither SIDCOs nor Subpart C DCOs to maintain and submit to the Commission plans for orderly wind-down, with requirements that are substantially similar to the proposed requirements for the orderly wind-down plans to be submitted by SIDCOs and Subpart C DCOs.[169] Given that the failure of one of these DCOs is much less likely to have serious adverse effects on financial stability in the United States,[170] the Commission is not proposing to require these DCOs to maintain recovery plans.[171]

A. Requirement To Maintain and Submit an Orderly Wind-Down Plan—§ 39.13(k)(1)(i)

The Commission is proposing to require that a DCO that is neither a SIDCO nor a Subpart C DCO must nevertheless maintain and submit to the Commission viable plans for orderly wind-down necessitated by default losses and non-default losses. The possibility that such losses may render the DCO unable to meet its obligations or to continue its critical functions to the point it must wind down is inherently one of the risks associated with the discharging of the DCO's responsibilities.[172] Additionally, the point at which a DCO must wind down may arise suddenly, in a manner that does not allow for time to plan. Wind-down plans are essential to help facilitate an orderly and expeditious wind-down; moreover, planning for an orderly wind-down—including, for example, considering the circumstances that may trigger a wind-down, the tools the DCO would implement to help ensure an orderly wind-down (along with the likely effects on clearing members and the financial markets from implementing such tools), and the governance arrangements to guide decision-making during an orderly wind-down—can strengthen the risk management practices of the DCO (including by identifying vulnerabilities that can be mitigated), enhance legal certainty for the DCO, its clearing members and market participants, and increase market confidence, three pillars of the DCO Core Principles' aims. As discussed below, the subjects and analyses the Commission is proposing for inclusion in a DCO's orderly wind-down plan overlap with many of the analyses DCOs must otherwise undertake to ensure compliance with the DCO Core Principles.

In order to facilitate accomplishment of these goals, the Commission proposes to add new § 39.13(k)(1)(i) to require that a DCO that is not a SIDCO or Subpart C DCO maintain and, consistent with the proposed revisions to § 39.19(c)(4)(xxiv), submit to the Commission, a viable plan for orderly wind down necessitated by default losses and non-default losses, and supporting information.[173] In additional support of these goals, and as discussed further below, the Commission is proposing to add other provisions under § 39.13(k).

The Commission requests comment on the proposed changes. In particular, the Commission requests comment on the extent to which the proposed requirements concerning orderly wind-down plans for DCOs that are neither SIDCOs nor Subpart C DCOs appropriately balance seeking to ensure that such DCOs are prepared to wind-down in an orderly manner and mitigating the costs of preparing plans for such a wind-down. To the extent a better balance can be achieved, please discuss both the requirements that should be deleted or modified and the basis for the conclusion that the regulatory goal of orderly wind-down would reliably be achieved in light of such changes.

B. Notice of the Initiation of Pending Wind-Down—§ 39.13(k)(1)(ii)

Along the same lines—and consistent with the requirement for SIDCOs and

[168] Section 5b(c)(2)(D)(i) of the CEA, 7 U.S.C. 7a–1(c)(2)(D)(i); *see* Section 8a(5) of the CEA, 7 U.S.C. 12a(5).

[169] For orderly wind-down planning involving insolvency or default of a DCO member or participant, the Commission also grounds this proposed rulemaking in Core Principle G(i), which requires that a DCO have ''rules and procedures designed for the efficient, fair, and safe management of events'' during such scenarios. Section 5b(c)(2)(G)(i) of the CEA, 7 U.S.C. 7a–1(c)(2)(G)(i).

[170] Section 203(b)(2) of the Dodd-Frank Act, 12 U.S.C. 5383(b)(2).

[171] For U.S.-based DCOs that are neither SIDCOs nor Subpart C DCOs, see discussion at *supra* fn. 156. Separately, foreign-based central counterparties registered with the Commission as DCOs are required to maintain recovery and wind-down plans by their home-country regulators. *See infra* fn. 207 and accompanying text. Thus, even if one of these were in future to be designated as systemically important under Title VIII, they would already maintain a recovery plan.

[172] Section 5b(c)(2)(D)(i) of the CEA, 7 U.S.C. 7a–1(c)(2)(D)(i).

[173] In Section IV below, discussing the reporting requirement in § 39.19(c)(4)(xxiv), the Commission explains the reason for including the term ''and supporting information.''

Subpart C DCOs—the Commission is proposing to require that a DCO have procedures in place to notify the Commission and clearing members, as soon as practicable, when orderly wind-down is pending, and to provide such notification in such circumstances. Timely notification of events is essential for helping the Commission and clearing members effectively to address the issues raised by the DCO's transition into wind-down and that having the proper procedures in place beforehand will facilitate such timely notification.

The requirement that DCOs notify the Commission and clearing members of a pending orderly wind-down is reasonably necessary to effectuate Core Principle J, under which a DCO shall provide to the Commission all information that the Commission determines to be necessary to conduct oversight of the DCO,[174] and Core Principle L, under which a DCO shall provide to market participants sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services of the DCO and disclose publicly and to the Commission information concerning any other matter relevant to participation in the settlement and clearing activities of the DCO.[175]

Accordingly, the Commission proposes to add new § 39.13(k)(1)(ii) to require that each DCO shall have procedures for informing the Commission and clearing members, as soon as practicable, when orderly wind-down is pending, and shall notify the Commission and clearing members consistent with proposed § 39.19(c)(4)(xxv).

The Commission requests comment on these proposed changes.

C. Orderly Wind-Down Plan: Required Elements—§ 39.13(k)(2)–(6)

As is the case for SIDCOs and Subpart C DCOs, the Commission believes, as a general matter, that the orderly wind-down plan of a DCO that is not a SIDCO or a Subpart C DCO should include a summary providing an overview of the plan followed by a detailed description of how the DCO will implement the plan. The description of how the DCO will implement its plans shall include an identification and description of the critical operations and services the DCO provides to clearing members and financial market participants, the service providers upon which the DCO relies to provide these critical operations and services, interconnections and interdependencies, and staffing arrangements (including how they are resilient), obstacles to success of the orderly wind-down plan, aggregate cost estimates for the continuation of services during orderly wind-down, and how the DCO will ensure that its services continue through orderly wind-down. The plan shall also include a stress scenario analysis addressing the failure of each critical operation and service, a description of the criteria the DCO would consider in determining whether and when to trigger orderly wind-down and the process for monitoring for events that may trigger the wind-down; a description of the information-sharing and escalation processes within the DCO's senior management and board of directors following an event triggering consideration of orderly wind-down and identification of the factors the board of directors would consider in exercising judgment or discretion with respect to any decision-making during wind down; an identification of scenarios that may trigger orderly wind-down and analysis of the tools the DCO would use following the occurrence of each scenario; an identification and review of agreements to be maintained during orderly wind-down; a description of the DCO's governance with respect to planning for orderly wind-down and during the orderly wind-down; and testing. The Commission believes these subjects and analyses are the minimum elements that DCOs should incorporate in their orderly wind-down plans pursuant to their obligation to manage the risks associated with discharging their responsibilities under Core Principle D.[176]

Accordingly, the Commission is proposing new § 39.13(k)(2) to require a DCO to include in its orderly wind-down plans a summary providing an overview of the plan followed by a detailed description of how the DCO will implement the plan.

The Commission requests comment on this aspect of the proposal. Each required element of the orderly wind-down plan is discussed in more detail below.

1. Critical Operations and Services, Interconnections and Interdependencies, and Resilient Staffing—§ 39.13(k)(2)(i)

In Section II, the Commission highlighted the importance of incorporating into recovery and orderly wind-down plans an identification and description of the critical operations and services that the SIDCO or Subpart C DCO provides to clearing members and financial market participants, the service providers upon which the DCO relies upon to provide these critical operations and services, financial and operational interconnections and interdependencies, and resilient staffing arrangements. As set forth below, the same is true for the orderly wind-down plans for DCOs that are not SIDCOs or Subpart C DCOs.

i. Critical Operations and Services Provided by and to DCOs

Limiting the operational disruption and financial harm to a DCO's clearing members and other financial market participants during an orderly wind-down, turns on the DCO's understanding of the critical operations and services that the DCO performs for clearing members and other financial market participants, and, in turn, operations and services performed by others that are critical to the DCO performing those critical functions. Thus, the Commission is proposing to require that a DCO's orderly wind-down plan include an identification and description of the critical operations and services that the DCO provides to clearing members and other financial market participants. For any critical (to the DCO) operations or services that the DCO relies upon that are performed by internal or external service providers, the plan should identify those providers and describe the critical operations or services they perform. Likewise, to the extent the DCO's ability to discharge its functions may be affected by the performance of ancillary service providers, the plan should identify those ancillary service providers and describe the operations or services they perform. By requiring the identification and description of the DCO's critical operations and services, including those performed by internal or external service providers, and any ancillary service providers, the Commission seeks to ensure, to the extent practicable, that the DCO's ability to perform the critical operations and services that others depend upon continues during the orderly wind-down process.

In the same vein, the Commission is proposing to require that a DCO's

[174] Section 5b(c)(2)(J) of the CEA, 7 U.S.C. 7a–1(c)(2)(J).

[175] Section 5b(c)(2)(L) of the CEA, 7 U.S.C. 7a–1(c)(2)(L).

[176] To the extent foreign CCPs are subject to home jurisdiction regulation with different requirements for the subjects and analyses that must be included in their wind-down plans, the Commission welcomes comments describing those requirements, and including suggestions on how to achieve the goals of this regulation in a manner that appropriately addresses possible inefficiencies.

orderly wind-down plan identify and describe the obstacles to success of the plan, and the DCO's plan to address the risks associated with the failure of each such critical operation and service. A stress scenario analysis (or similar undertaking) addressing the failure of each critical operation and service while the DCO is still a going concern should highlight whether and how the operation or service can continue in orderly wind-down. The Commission expects the DCO's orderly wind-down plan to address the full range of options in order to ensure that operations and services critical to the DCO continue in the orderly wind-down process. In considering and analyzing the magnitude of the costs associated with an orderly wind-down, certain of the DCO's expenses will likely increase, including, for example, legal fees, accounting fees, financial advisor fees, the costs associated with employee retention programs, and other incentives that may be necessary to maintain critical staff. Other costs, such as marketing or those for developing new products, may decrease as a result of wind-down. Further, a DCO shall proceed under the conservative assumption that any resources it may have consumed as part of its recovery efforts, if any, will not be available to fund critical operations and services in an orderly wind-down.

ii. Interconnections and Interdependencies

The Commission is additionally proposing to require that the orderly wind-down plan identify and describe the DCO's financial and operational interconnections and interdependencies. Given the web of relationships that may exist among the DCO and its relevant affiliates, internal and external service providers, and other relevant stakeholders, identifying and describing the interconnections and interdependencies could provide much-needed transparency and clarity for purposes of developing and implementing an orderly wind-down plan. For instance, the financial resources available to a DCO during wind-down may be limited when one financial entity serves multiple roles and relationships with respect to the DCO or when multiple affiliates of the DCO depend upon the same intercompany loan agreement or insurance policy with group coverage limits. Interconnections and interdependencies may also adversely impact the value of the DCO's assets, which can be crucial in wind-down where a DCO is trying to meet costs associated with preserving critical operations and services and meeting liquidity needs. Accordingly, a DCO's orderly wind-down plan should identify and describe any interconnections and interdependencies and address the effect such relationships may have on the DCO's ability to continue performing its functions during the wind-down process.

iii. Resilient Staffing and Support Services Arrangements

As noted in section II, a DCO in wind-down cannot maintain critical operations and services without both essential personnel and support services. Accordingly, the Commission is proposing to require that the orderly wind-down plan identify and describe plans for resilient staffing arrangements under which personnel essential for critical operations and services would be maintained and services supporting the DCO's critical operations and services would continue. To the extent the DCO relies upon contractors as personnel providing critical operations and services, the DCO should have staffing arrangements and agreements in place for such contracting work to continue in wind-down. Similarly, to the extent the DCO relies upon third-party service providers to provide critical operations and services, including facilities, utilities, and communication technologies, the DCO should have arrangements and agreements in place for such third-party services to continue in wind-down. Further, to promote its ability to ensure the success of the plan, the DCO should identify obstacles to that success. Additionally, as part of the DCO's responsibility to maintain critical operations and services, the Commission is proposing to require that the orderly wind-down plan include aggregate cost estimates for essential personnel and support services, and address the manner in which the DCO will meet the associated costs. Just as the case may be for SIDCOs and Subpart C DCOs, other DCOs may be vulnerable to key person risk; accordingly, plans for resilient staffing arrangements should identify, to the extent applicable, key person risk within the DCO or (as relevant) affiliated legal entities that the DCO relies upon to provide its critical operations and services, and how the DCO has planned to address such risk.

Accordingly, the Commission is proposing new § 39.13(k)(2)(i) to require that the DCO's orderly wind-down plan include the identification and description of the DCO's critical operations and services, interconnections and interdependencies, and resilient staffing arrangements, obstacles to success of the orderly wind-down plan, as well as a stress scenario analysis addressing the failure of each identified critical operation or service. Additionally, the orderly wind-down plan must include aggregate cost estimates for the continuation of critical operations and services and a description of how the DCO will ensure that such operations and services continue through orderly wind-down.

The Commission requests comment on this aspect of the proposal.

2. Triggers for Consideration of Orderly Wind-Down and Processes for Information-Sharing and Decision-Making—§ 39.13(k)(2)(ii)–(iii)

The Commission is proposing to require that orderly wind-down plans for DCOs include a description of the criteria that would guide the DCO in considering whether and when to implement wind-down, and the process for monitoring for events that may trigger consideration of orderly wind-down. As noted in section II, any viable orderly wind-down plan must establish and define criteria (which may be in the alternative) that the DCO would consider in triggering consideration of wind-down. The criteria may be quantitative, such as the case where the DCO does not have the financial resources to continue as a going concern, or qualitative, such as the case where judgment may be needed (for instance, in circumstances involving litigation that is proceeding in a manner that suggests that a large, adverse finding is likely). Predefined criteria should help avoid undue delays in deciding whether to wind-down, which, in turn, should help increase the opportunity for an orderly wind-down. By monitoring for events that may trigger the consideration of wind-down, moreover, a DCO will be better situated to make a timely decision regarding wind-down. Further, predefined criteria will provide confidence to market participants and the public that the DCO has proper plans in place to monitor for and manage situations that may require an orderly wind-down.

Additionally, the Commission is proposing to require that the orderly wind-down plan include a description of the information-sharing and escalation processes within the DCO's senior management and board of directors following an event triggering consideration of an orderly wind-down. By establishing automatic procedures under which the relevant decision-makers may obtain the necessary information, the DCO may avoid undue

delays in ultimately deciding whether to wind-down.

Similarly, the Commission is proposing to require that orderly wind-down plans include the factors that the board of directors anticipates that it would consider in any decision-making regarding wind-down where judgment or discretion is required. The Commission believes that the factors enumerated in the orderly wind-down plan should be those that the DCO considers most important in guiding the discretion of the board of directors. A predefined framework within which the board may exercise judgment and discretion should facilitate a timely decision regarding wind-down.

Accordingly, the Commission is proposing new § 39.13(k)(2)(ii)–(iii) to require that the DCO's orderly wind-down plan include a description of the criteria that the DCO would consider in determining whether to implement wind-down and, relatedly, the process for monitoring for events that may trigger consideration of an orderly wind-down; a description of the information-sharing and escalation processes within the DCO's senior management and board of directors following an event triggering consideration of an orderly wind-down; and the identification of the factors that the DCO considers most important in guiding the board of directors' judgment or discretion with respect to any decision-making during the wind-down.

The Commission requests comment on this aspect of the proposal.

3. Orderly Wind-Down Scenarios and Tools—§ 39.13(k)(3)

The Commission is proposing to require that a DCO's orderly wind-down plan (i) identify the scenarios that may lead to an orderly wind-down, *i.e.,* those scenarios that may prevent the DCO from meeting its obligations or providing its critical operations and services as a going concern, and (ii) analyze the tools the DCO would use following the occurrence of each scenario. Specifically, the Commission is proposing to require that the analysis describe the tools the DCO would expect to use in an orderly wind-down that comprehensively address how the derivatives clearing organization would continue to provide critical operations and services; describe the order in which the DCO would expect to implement any identified tools; describe the governance and approval processes and arrangements that will guide the exercise of any available discretion in the use of each tool; describe the processes to obtain any approvals external to derivatives clearing organization (including any regulatory approvals) that would be necessary to use each of the tools available, and the steps that might be taken if such approval is not obtained; establish the time frame within which the DCO may use each tool; set out the steps necessary to implement each tool; describe the roles and responsibilities of all parties in the use of each tool; provide an assessment of the likelihood that the tools, individually and taken together, would result in orderly wind-down; and provide an assessment of the associated risks to non-defaulting clearing members and those clearing members' customers with respect to transactions cleared on the DCO, and linked financial market infrastructures.

As may be the case for SIDCOs and Subpart C DCOs, the scenarios that may trigger consideration for wind-down are typically those where recovery efforts (if any) are deemed to have failed. At that point, the DCO will no longer be able to meet its obligations or provide its critical operations and services as a going concern. For each scenario where the DCO may reach such a point, the Commission is proposing to require that the orderly wind-down plan analyze the tools available to effectuate an orderly wind-down.

The DCO's tools—*i.e.,* the wind-down options available to the DCO in each particular scenario—comprise those actions it may take to effect, in an orderly manner, the sale or transfer, or if necessary in extreme circumstances, permanent cessation, of its clearing and other services. The Commission intends that the proposed analysis will require the DCO to assess the effectiveness of a full range of actions for orderly wind-down.

Among other things, an effective set of wind-down tools enables the DCO to manage liquidity requirements in a manner in which critical operations and services would be maintained during the orderly wind-down period. Various factors may prevent an action from being effective, including, for instance, the number of steps required to implement the action (*e.g.,* disclosure, risk reduction, trade reduction, transfer or close-out of positions, and liquidation of investments), the time required to complete each step (*e.g.,* contract termination and other relevant requirements following disclosure), the discretion of various parties affecting the use or sequence of the action (including non-defaulting parties), and any legal limits regarding the action (*e.g.,* the relevant DCO rules or rule amendments necessary to support the use of the action and the roles, obligations and responsibilities of the various parties in the use of the action).

Additionally, any action involving a proposed transfer may turn out to be difficult to achieve due to the financial and operational capacity that would be required of a transferee or the status of the DCO as a distressed seller. Further, the action may have adverse consequences on clearing members or other financial market participants. The Commission proposes to require this analysis in order to assist the DCO in determining which actions may effectuate an orderly wind-down where critical operations and services would be maintained throughout the orderly wind-down period while minimizing public harm.

Accordingly, the Commission is proposing new § 39.13(k)(3) to require that a DCO's orderly wind-down plan include, following a thorough analysis, the set of scenarios that may trigger consideration of orderly wind-down and an analysis of the tools the DCO would use in each scenario. The Commission is proposing to require that the analysis describe the tools the DCO would expect to use in an orderly wind-down; describe the order in which the DCO would expect to implement any identified tools; describe the governance, approval processes and arrangements that will guide the exercise of any available discretion in the use of each tool; establish the time frame within which the DCO may use each tool; set out the steps necessary to implement each tool; describe the roles and responsibilities of all parties in the use of each tool; provide an assessment of the likelihood that the tool would result in orderly wind-down; and provide an assessment of the associated risks to non-defaulting clearing members and their customers, linked financial market infrastructures, and the financial system more broadly, from the use of each tool.

The Commission requests comment on this aspect of the proposal.

4. Agreements To Be Maintained During Orderly Wind-Down—§ 39.13(k)(4)

The Commission is proposing to require that a DCO's orderly wind-down plan identify any agreements associated with the provision of its critical services and operations that are subject to alteration or termination as a result of winding down and describe the actions the DCO has taken to ensure such operations and services will continue during wind-down. Similar to SIDCOs and Subpart C DCOs, the DCO may have a variety of contractual agreements with clearing members, affiliates, linked central counterparties, counterparties,

external service providers, and other third parties. The contractual agreements may take the form of contracts, arrangements, agreements, and licenses associated with the provision of its services as a DCO, and may cover the DCO's rules and procedures, agreements for the provision of operational, administrative and staffing services, intercompany loan agreements, mutual offset agreements or cross-margining agreements, and credit agreements. Under the Commission's proposed requirement, the DCO's orderly wind-down plan must review and analyze its agreements to determine if they contain covenants, material adverse change clauses, or other provisions that may render the continuation of the DCO's critical operations and services difficult or impracticable upon implementation of the orderly wind-down plan. The Commission is proposing to require that the DCO take proactive steps to ensure that its critical operations and services would continue in an orderly wind-down, notwithstanding any contractual provision to the contrary.

As is the case for SIDCOs and Subpart C DCOs, a requirement ensuring that the DCO's agreements do not hinder its ability to continue critical operations and services in an orderly wind-down, or, if they do, that the orderly wind-down plan provides viable strategies to address the situation, is important to an orderly wind-down. Additionally, this requirement will aid in providing a higher degree of confidence with respect to this group of DCOs in the public markets even in extreme market conditions with the potential to trigger the consideration of implementation of orderly wind-down plans. In addition to Core Principle D(i), this proposed requirement is supported by Core Principle R, requiring that the DCO have an enforceable legal framework for each aspect of its activities.[177] To the extent any agreement prohibits the DCO from continuing its critical operations and services in an orderly wind-down, a DCO may not have an enforceable legal framework within which to carry out all of its activities, specifically those associated with an orderly wind-down.

Accordingly, the Commission is proposing new § 39.13(k)(4) to require that a DCO's orderly wind-down plan identify any contracts, arrangements, agreements, and licenses associated with the provision of its critical services and operations that are subject to alteration or termination as a result of the implementation of the orderly wind-down plan. The orderly wind-down plan shall describe the actions the DCO has taken to ensure such operations and services can continue during orderly wind-down, despite such potential alteration or termination.

5. Governance—§ 39.13(k)(5)

The Commission is proposing to require that a DCO's orderly wind-down plan include predefined governance arrangements with respect to wind-down planning and orderly wind-down that set forth the responsibilities of the board of directors, board members, senior executives and business units, describe the processes that the DCO will use to guide its discretionary decision-making relevant to the orderly wind-down plan, and describe the DCO's process for identifying and managing the diversity of stakeholder views and any conflict of interest between stakeholders and the DCO. Additionally, the Commission is proposing to require that the DCO's board of directors formally approve and annually review the orderly wind-down plan.

An effective governance arrangement will assist DCOs in reacting quickly to adverse scenarios, provide transparency to the orderly wind-down process, and help ensure that DCOs properly vet wind-down decisions with consideration of the interests of all relevant parties. Further, the proposed requirements with respect to governance are supported by Core Principle O, which requires that DCOs establish transparent governance arrangements to fulfill public interest requirements and permit the consideration of the views of owners and participants,[178] and Core Principle P, which requires that DCOs establish both rules to minimize conflicts of interest in the decision making-process and a process for resolving conflicts of interest.[179]

Accordingly, the Commission is proposing new § 39.13(k)(5) to require that a DCO's orderly wind-down plan describe an effective governance structure that clearly defines the responsibilities of the board of directors, board members, senior executives and business units, describe the processes that the DCO will use to guide its discretionary decision-making relevant to the orderly wind-down plan, and describe the DCO's process for identifying and managing the diversity of stakeholder views and any conflict of interest between stakeholders and the DCO. Additionally, the Commission is proposing to require that a DCO's board of directors formally approve and annually review the orderly wind-down plan.

The Commission requests comment on this aspect of the proposal.

6. Testing—§ 39.13(k)(6)

For DCOs that are neither SIDCOs nor Subpart C DCOs, the Commission is proposing a testing requirement as part of the orderly wind-down plan that is similar, but not identical, to proposed new § 39.39(c)(8). Specifically, the Commission is proposing new § 39.13(k)(6) to require that the orderly wind-down plan for these DCOs include procedures for testing the DCO's ability to implement the tools upon which the orderly wind-down plan relies. The orderly wind-down plan must include the types of testing that will be performed, to whom the findings of such tests will be reported, and the procedures for updating the plan in light of the findings resulting from such tests. Such testing must occur following any material change to the orderly wind-down plan, but in any event not less frequently than once annually.

The testing requirement for DCOs that are neither SIDCOs nor Subpart C DCOs should emphasize the reliable operability of the tools that potentially would be implemented in a wind-down; as such, the Commission is not proposing to require these DCOs to conduct crisis management drills or similar exercises as part of the testing requirement. Moreover, because of the wide range of possible types of clearing members, the Commission is not proposing to require these DCOs to conduct testing with the participation of clearing members.[180] Nonetheless, where the plan relies upon the performance of clearing members and other internal stakeholders, or external stakeholders such as service providers, such DCOs should consider whether involving such parties is practical.

As discussed above, however, testing the orderly wind-down plan—through assessing the operation and sufficiency of tools and resources to address losses—and updating the plan accordingly is a critical part of a DCO's risk management practice. Testing can reveal deficiencies in the effectiveness of specific tools. It can also enhance the tools and resources for identifying, measuring, monitoring, and managing risk in general. Periodic testing, moreover may reveal any deficiencies or

[177] Section 5b(c)(2)(R) of the CEA, 7 U.S.C. 7a–1(c)(2)(R).

[178] Section 5b(c)(2)(O) of the CEA, 7 U.S.C. 7a–1(c)(2)(O).

[179] Section 5b(c)(2)(P) of the CEA, 7 U.S.C. 7a–1(c)(2)(P).

[180] Such DCOs that are subject to regulation by other authorities may be subject to more stringent requirements with respect to testing by those authorities.

weaknesses in a DCO's infrastructure which may hamper wind-down efforts.

The Commission requests comment on this aspect of the proposal. The Commission specifically requests comment on the proposed requirement that tests be conducted not less than annually: would a different minimum frequency be more appropriate for DCOs other than SIDCOs or Subpart C DCOs?

D. Conforming Changes to Bankruptcy Provisions—Part 190

The Commission is proposing several conforming changes to Part 190's bankruptcy provisions that follow from the proposed requirement that all DCOs maintain viable plans for orderly wind-down. First, current § 190.12(b)(1) requires that a DCO in a Chapter 7 proceeding provide to the trustee copies of, among other things, the wind-down plan it must maintain pursuant to § 39.39(b).[181] The Commission is proposing that the regulation be amended to include orderly wind-down plans that DCOs must maintain pursuant to proposed new § 39.13(k) in addition to § 39.39(b).

Second, current § 190.15(a) requires that the trustee not avoid or prohibit certain actions taken by the DCO either reasonably within the scope of, or provided for in, any wind-down plan maintained by the DCO and filed with the Commission pursuant to § 39.39.[182] The Commission is proposing that the regulation be amended to include orderly wind-downs plans maintained by DCOs and filed with the Commission pursuant to proposed new § 39.13(k) in addition to § 39.39.

Third, current § 190.15(c) requires that the trustee act in accordance with any wind-down plan maintained by the debtor and filed with the Commission pursuant to § 39.39 in administering the bankruptcy proceeding.[183] The Commission is proposing that the regulation be amended to include orderly wind-downs plans maintained by DCOs and filed with the Commission pursuant to proposed new § 39.13(k) in addition to § 39.39.

Last, current § 190.19(b)(1) requires that a shortfall in certain funds be supplemented in accordance with the wind-down plan maintained by the DCO pursuant to § 39.39 and submitted pursuant to § 39.19.[184] The Commission is proposing that the paragraph be amended to include orderly wind-downs plans maintained by DCOs pursuant to proposed new § 39.13(k) in addition to § 39.39.

The Commission requests comment on this aspect of the proposal.

IV. Establishment of Time To File Orderly Wind-Down Plan—§ 39.19(c)(4)(xxiv)

In light of the proposed requirement that all DCOs maintain and submit to the Commission viable plans for orderly wind down and supporting information, the Commission is proposing to establish the timing for submitting orderly wind-down plans and supporting information for DCOs currently registered with the Commission. As the Commission is proposing to amend § 39.19(c)(4)(xxiv) to establish the time for SIDCOs and Subpart C DCOs to file a recovery plan and an orderly wind-down plan, the Commission proposes to amend the same section to establish a fixed deadline for DCOs currently registered with the Commission to file orderly wind-down plans. Under the proposed rule, DCOs currently registered with the Commission must complete and submit orderly wind-down plans and supporting information within six months from the effective date of the rule (if it is adopted). Pursuant to Core Principle D(i), all DCOs must already ensure they possess the ability to manage the risks associated with discharging their responsibilities through the use of appropriate tools and procedures. A potential wind down, due either to default or non-default losses, is always a latent risk for any DCO engaged in clearing and settlement activities; accordingly, DCOs should already have some plans in place for implementing tools and procedures to manage an orderly wind-down.

The Commission proposes to require that any DCO that submits an application for registration with the Commission six months or more after the effective date of this rulemaking (if it is adopted), must submit its orderly wind-down plans and supporting information at the time it submits an application for registration with the Commission under § 39.3.[185] The Commission is also requiring that all DCOs, upon revising their plans, but in any event no less frequently than annually, submit the current plan(s) and supporting information to the Commission, along with a description of any changes and the reason(s) for such changes.[186]

In § 39.19(c)(4)(xxiv), as well as in § 39.13(k) and § 39.39(b), the Commission is proposing to add the words ''and supporting information'' to references to submitting recovery and/or orderly wind-down plans. DCOs may, in some instances, include supporting information within their plans, or may organize the documentation with supporting information kept separately, *e.g.,* as an appendix or annex. To avoid confusion as to whether such separately kept information is required to be submitted to the Commission, and to ensure that the Commission has timely access to such supporting information, the Commission is proposing to amend §§ 39.19(c)(4)(xxiv), 39.13(k) and 39.39(b) to require its submission explicitly.

Accordingly, the Commission proposes to amend § 39.19(c)(4)(xxiv). Specifically, the Commission proposes to require that any DCO not currently registered with the Commission submit its viable plans for orderly wind-down and supporting information at the time it files its application for registration with the Commission under § 39.3. Because the Commission is proposing to require that all DCOs must maintain and submit plans for orderly-wind down and supporting information, the Commission proposes to remove the current language from § 39.19(c)(4)(xxiv) suggesting or providing that DCOs that are not SIDCOs or Subpart C DCOs *may* maintain and submit orderly wind-down plans to the Commission. For DCOs that are currently registered with the Commission and are not SIDCOs or Subpart C DCOs, the Commission is proposing to require that they submit their viable plans for orderly wind-down and supporting information no later than six months after this rulemaking, if finalized, is published. Upon revising their plans, moreover, but in any event no less frequently than annually, all DCOs shall submit the current plan(s) and supporting information to the Commission, along with a description of any changes and the reason(s) for such changes.

The Commission requests comment on this aspect of the proposal. The Commission specifically requests comment concerning whether a DCO should additionally be required to update its recovery and orderly wind-

[181] 17 CFR 190.12(b)(1).

[182] 17 CFR 190.15(a).

[183] 17 CFR 190.15(c).

[184] 17 CFR 190.19(b)(1).

[185] For any DCO that submits (or has submitted) an application for registration with the Commission before the date that is six months after the effective date of this rulemaking, if it is adopted, the Commission is proposing to require that the DCO have until the date that is six months after the effective date of this rulemaking to submit its orderly wind-down plan and supporting information.

[186] *See* Section 5b(c)(2)(J) of the CEA, 7 U.S.C. 7a–1(c)(2)(J) (''Core Principle J—Reporting'') (requiring that DCOs provide to the Commission all information that the Commission determines to be necessary to conduct oversight of the DCO).

down plans upon changes to the DCO's business model, operations, or the environment in which it operates, to the extent such changes significantly affect the viability or execution of the recovery and orderly wind-down plans. The Commission also specifically requests comment concerning whether six months is sufficient time to develop these plans, or if a longer time (*e.g.,* one year) would be more appropriate.

V. Amendment to § 39.34(d)

As discussed in the context of recovery plans and orderly wind-down plans, the Commission proposes to discontinue the process by which the Commission could grant, upon request of a SIDCO or DCO that is electing to become subject to subpart C, up to one year to comply with §§ 39.39 and 39.35.[187] The Commission is proposing to remove a similar provision in § 39.34(d) wherein a SIDCO or Subpart C DCO could request, and the Commission may grant, up to one year to comply with any provision of § 39.34 (System safeguards for SIDCOs and Subpart C DCOs) because granting such requests would be inconsistent with the system safeguard rules for SIDCOs and Subpart C DCOs that have been in effect for years.[188] The Commission is therefore proposing to remove § 39.34(d) in its entirety.

The Commission requests comment on this aspect of the proposal.

VI. Amendments to Appendix B to Part 39—Subpart C Election Form

The Commission is proposing to amend the Subpart C Election Form to reflect the above proposed changes to Part 39. One of these amendments will reflect the elimination of the request for an extension of up to one year to comply with any of the provisions of §§ 39.34, 39.35, or 39.39. The ''General Instructions'' and ''Elections and Certifications'' portions of the Subpart C Election Form are proposed to be amended to delete the references to requests for relief of up to one year for those sections of part 39. Another amendment will modify Exhibit F–1 to include the DCO's recovery plan, orderly wind-down plan, supporting information for these plans, and a demonstration that the plans comply with the requirements of § 39.39(c).

The Commission requests comment on this aspect of the proposal.

VII. Amendments to Appendix A to Part 39—Form DCO

The Commission is proposing to amend Form DCO, in particular, Exhibit D—Risk Management to reflect the above proposed changes to Part 39. The amendment will add an Exhibit D–5 to include the DCO's orderly wind-down plan, and a demonstration that the plan complies with the requirements of proposed § 39.13(k).

The Commission requests comment on this aspect of the proposal.

VIII. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that agencies consider whether the regulations they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis on the impact.[189] The regulations proposed by the Commission will affect only DCOs. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.[190] The Commission has previously determined that DCOs are not small entities for the purposes of the RFA.[191] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed regulations will not have a significant impact on a substantial number of small entities.

B. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of the CEA, in issuing any order or adopting any Commission rule or regulation.[192]

The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission requests comment on whether the proposed rules implicate any other specific public interest to be protected by the antitrust laws.

The Commission has considered the proposed rulemaking to determine whether it is anticompetitive and has identified no anticompetitive effects. The Commission requests comment on whether the proposed rulemaking is anticompetitive and, if it is, what the anticompetitive effects are.

Because the Commission has preliminarily determined that the proposed rules are not anticompetitive and have no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA. The Commission requests comment on whether there are less anticompetitive means of achieving the relevant purposes of the CEA that would otherwise be served by adopting the proposed rules.

C. Paperwork Reduction Act

The Paperwork Reduction Act (PRA)[193] provides that Federal agencies, including the Commission, may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number from the Officer of Management and Budget (OMB). The PRA is intended, in part, to minimize the paperwork burden created for individuals, businesses, and other persons as a result of the collection of information by federal agencies, and to ensure the greatest possible benefit and utility of information created, collected, maintained, used, shared, and disseminated by or for the Federal Government.[194] The PRA applies to all information, regardless of form or format, whenever the Federal Government is obtaining, causing to be obtained, or soliciting information, and includes required disclosure to third parties or the public, of facts or opinion, when the information collection calls for answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons.[195] This proposed rulemaking contains reporting and recordkeeping requirements that are collections of information within the meaning of the PRA. This section addresses the impact of the proposal on existing information collection requirements associated with part 39 of the Commission's regulations. Changes to the existing information requirements as a result of this proposal are set forth below. OMB has assigned Control No 3038–006, ''Requirements for Derivatives Clearing Organizations,'' to the information collections associated

[187] *See* 17 CFR 39.39(f).

[188] *See System Safeguards Testing Requirements for Derivatives Clearing Organizations,* 81 FR 64322 (Sept. 19, 2016).

[189] 5 U.S.C. 601–612.

[190] *Policy Statement and Establishment of Definitions of ''Small Entities'' for Purposes of the Regulatory Flexibility Act,* 47 FR 18618 (Apr. 30, 1982).

[191] *See A New Regulatory Framework for Clearing Organizations,* 66 FR 45604, 45609 (Aug. 29, 2001).

[192] Section 15(b) of the CEA, 7 U.S.C. 19(b).

[193] 44 U.S.C. 3501 *et seq.*

[194] 44 U.S.C. 3501.

[195] 44 U.S.C. 3502(3).

with these regulations.[196] The Commission is revising its total burden estimates for this clearance to reflect the proposed amendments.

The Commission therefore is submitting this proposal to the OMB for its review in accordance with the PRA.[197] Responses to this collection of information would be mandatory. The Commission will protect any proprietary information according to the Freedom of Information Act and part 145 of the Commission's regulations.[198] In addition, section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, from making public any ''data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.'' [199] Finally, the Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974.[200]

1. Event-Specific Reporting—§ 39.19(c)(4)

Proposed § 39.39(b) would require a SIDCO or Subpart C DCO to submit written recovery plans and orderly wind-down plans within six months of designation as a SIDCO or upon a DCO's election as a Subpart C DCO (in each case, if this happens subsequent to the effective date), consistent with current § 39.19(c)(4)(xxiv). This reporting requirement is already included in the information collection burden associated with the collection of information titled ''Requirements for Derivatives Clearing Organizations, OMB Control No. 3038–0076.'' The Commission has previously estimated that this requirement entails an estimated 4,320 burden hours for all covered DCOs along with an associated annual cost burden of $341,280.[201] While the timing for this reporting requirement has changed, there is no change in frequency, and the Commission does not anticipate any other change to this reporting requirement caused by this change to the timing for the report to be submitted. However, because of enhancements to the requirements for these plans, the Commission anticipates an increase in the reporting burden from the proposed subjects and analyses that SIDCOs and Subpart C DCOs would be required to include in their recovery and orderly wind-down plans from 480 hours to 600 hours. The Commission will use a blended rate of 50% financial examiners ($237/hour) and 50% lawyers ($499/hour) resulting in $368/hour.[202]

The Commission specifically invites public comment on the accuracy of its estimates that the proposed regulations will not impose a new reporting burden but increase the reporting burden estimate to 600 hours.

The Commission's burden estimate for § 39.19(b), including drafting or updating, approving, and testing the wind-plan, is as follows:

Estimated number of respondents: 6.

Estimated number of reports per respondent: 1.

Average number of hours per report: 600.

Estimated annual hours burden: 3,600.

Estimated gross annual reporting burden: $1,324,800.

Proposed § 39.13(k)(1)(i) would require a DCO that is neither a SIDCO nor a Subpart C DCO to submit, pursuant to § 39.19(c)(4)(xxiv), a written orderly wind-down plan. Given the similarities between the recovery plan and orderly wind-down plan, and the consequent efficiencies in preparing both plans, the Commission estimates that the orderly wind-down plan would require 400 hours to develop for non-SIDCO and non-Subpart C DCOs and 100 hours/year to update. The estimated 400 hours represents a reduction of one-third the amount of time that the Commission estimates is required for SIDCOs and Subpart C DCOs to develop both the recovery plan and orderly wind-down plan. This proposed amendment, if adopted, would increase the existing annual burden for this clearance by 3,600 hours.[203] The Commission will use the same blended rate of $368/hour. The Commission specifically invites public comment on the accuracy of its estimates.

The Commission's burden estimate for § 39.19(c)(4)(xxiv), including drafting or updating, approving, and testing the wind-plan, is as follows:

Estimated number of respondents: 9.

Estimated number of reports per respondent: 1.

Average number of hours per report: 400.

Estimated annual hours burden: 3,600.

Estimated gross annual reporting burden: $1,324,800.

The Commission is proposing to add new § 39.19(c)(4)(xxv) to require that each SIDCO or Subpart C DCO that is required to have a procedure for informing the Commission when the recovery plan is initiated or that orderly wind-down is pending pursuant to either § 39.39(b)(2) or § 39.13(k)(1) shall notify the Commission and clearing members as soon as practicable when the DCO has initiated its recovery plan or that orderly wind-down is pending. SIDCOs and Subpart C DCOs are currently required under § 39.39(c)(1) to have procedures in place to notify the Commission when a recovery plan or orderly wind-down was initiated and the Commission is now proposing to codify this as a formal notification requirement, thus, the Commission does not view this aspect of the proposed regulation as a new reporting requirement under OMB Control No. 3038–0076. However, the requirement to notify clearing members was set out in CFTC Letter No. 16–61 but was not codified, and may therefore be considered a new event-specific reporting requirement. The Commission anticipates that, if adopted, the notification to the Commission and to clearing members will be drafted by a lawyer (and thus involve a cost/hour of $308) and will be an electronic notification. The current regulation requires procedures be in place to notify the Commission, and the proposed regulation requires that the notification be sent to the Commission and to clearing members. The Commission anticipates that proposed §§ 39.39(b)(2), 39.13(k)(1)(ii), and 39.19(c)(4)(xxv)

[196] For the previously approved estimates, see ICR Reference No. 202303–3038–001, available at *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202303-3038-001.*

[197] 44 U.S.C. 3507(d); 5 CFR 1320.11.

[198] 5 U.S.C. 552; 17 CFR part 145 (Commission Records and Information).

[199] 7 U.S.C. 12(a)(1).

[200] 5 U.S.C. 552a.

[201] This is based on the Commission's estimate that nine covered DCOs will be required to submit one written recovery plan and wind-down plan annually. The Commission had estimated that covered DCOs will require 480 hours on average to draft the required plans at a previously estimated $79 per hour.

[202] According to the May 2021 National Occupational Employment and Wage Estimates Report produced by the U.S. Bureau of Labor Statistics, available at *https://www.bls.gov/oes/current/oes_nat.htm,* the mean salary for category 23–1011, ''Lawyers,'' is $198,900. This number is (a) divided by 1800 work hours in a year to account for sick leave and vacations, (b) multiplied by 4.0 to account for retirement, health, and other benefits or compensation, as well as for office space, computer equipment support, and human resources support, and (c) in light of recent high inflation, further multiplied by 1.1294 to account for the change in the Consumer Price Index for Urban Wage-Earners and Clerical Workers from 263.612 in May of 2021 to 297.730 in April of 2023, all of which yields an hourly rate of $499. Using a similar analysis, category 13–2061, ''Financial Examiners,'' under business and financial services occupations, has a mean annual salary of $94,270, yielding an hourly rate of $237.

[203] In an effort to adequately estimate the potential burden, the Commission will ignore the fact that, as discussed elsewhere in this NPRM, some DCOs have developed, and regularly update, their orderly wind-down plans pursuant to regulations imposed by non-U.S. regulators.

would increase the event-specific reporting burden estimate marginally.

Since notifications of this type are accomplished by electronic means, the existing procedure will have to be updated to include notice to the DCO's clearing members. Since this can be accomplished using methods and tools that the DCO currently uses to provide notices to members of, *e.g.,* changes in DCO rules or procedures, it is unlikely that the DCO will need to design and implement new tools.

While no DCO (and no CFTC-regulated clearinghouse prior to the amendments to the CEA that provided for regulation of DCOs) has ever initiated recovery, several have (due to a paucity of business) made the decision to wind-down operations. The Commission conservatively estimates that one notification (total) under § 39.19(c)(4)(xxv) would occur every four years.

The Commission's burden estimate for § 39.19(c)(4)(xxv) is as follows:

Estimated number of respondents: 1.

Estimated number of reports per respondent: 0.25.

Average number of hours per report: 1.

Estimated annual hours burden: 0.25.

Estimated gross annual reporting burden: $125.

2. Requested Reporting—§ 39.19(c)(5)

The Commission is proposing to add a new requested reporting requirement for SIDCOs and Subpart C DCOs that submit information to the Commission pursuant to § 39.39(f)(2). Proposed § 39.19(c)(5)(iii) would require a SIDCO or Subpart C DCO that submits information for resolution planning purposes to update the information upon request of the Commission. The Commission believes this is a new requested reporting requirement, which will be performed by lawyers at a cost of $499/hour. This proposed amendment, if adopted, would increase the existing annual burden for this clearance by an estimated 600 hours. The Commission's burden estimate for this new reporting requirement under § 39.39(c)(5) is as follows:

Estimated number of respondents: 6.

Estimated number of reports per respondent: 1.

Average number of hours per report: 100.

Estimated annual hours burden: 600.

Estimated gross annual reporting burden: $299,400.

These proposed information collection requirements would result in an incremental increase in the annual hours burden associated with OMB Clearance No. 3038–0076. The Commission estimates the proposed amendments, if adopted, would yield the following incremental totals:

Estimated number of annual responses for all respondents: 15.25.

Estimated total annual burden hours for all respondents: 4,920.25.

Estimated gross annual reporting burden: $1,889,285.

Request for comment

The Commission invites the public and other Federal agencies to comment on any aspect of the proposed information collection requirements discussion above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission will consider public comments on this proposed collection of information in:

(1) Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

(2) Evaluating the accuracy of the estimated burden of the proposed collection of information, including the degree to which the methodology and the assumptions that the Commission employed were valid;

(3) Enhancing the quality, utility, and clarity of the information proposed to be collected; and

(4) Minimizing the burden of the proposed information collection requirements on registered entities, including through the use of appropriate automated, electronic, mechanical, or other technological information collection techniques, *e.g.,* permitting electronic submission of responses.

Organizations and individuals desiring to submit comments on the proposed information collection requirements should send those comments to:

- The Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer of the Commodity Futures Trading Commission;
- (202)395–6566 (fax); or
- *OIRAsubmissions@omb.eop.gov* (email).

Please provide the Commission with a copy of submitted comments so that, if the Commission determined to promulgate a final rule, all comments can be summarized and addressed in the final rule preamble. Please refer to the **ADDRESSES** section of this rulemaking for instructions on submitting comments to the Commission. A copy of the supporting statements for the collections of information discussed above may be obtained by vising RegInfo.gov. OMB is required to make a decision concerning the proposed information collection requirements between thirty (30) and sixty (60) days after the publication of the Notice of Proposed Rulemaking in the **Federal Register**. Therefore, a comment to OMB is best assured of receiving full consideration if OMB receives it within 30 calendar days of publication of this NPRM. Nothing in the foregoing affects the deadline enumerated above for public comments to the Commission on the proposed rules.

D. Cost-Benefit Considerations

1. Introduction

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.[204] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five specific considerations identified in section 15(a) of the CEA (collectively referred to as section 15(a) factors) addressed below.

The Commission recognizes that the proposed amendments may impose costs. The Commission has endeavored to assess the expected costs and benefits of the proposed amendments in quantitative terms, including PRA-related costs, where possible. In situations where the Commission is unable to quantify the costs and benefits, the Commission identifies and considers the costs and benefits of the applicable proposed amendments in qualitative terms. The lack of data and information to estimate those costs is attributable in part to the nature of the proposed amendments, in that they will require DCOs to undertake analyses that are specific to the characteristics of each DCO, including the specifics of the DCO's business model, services and operations provided by the DCO to clearing members and other financial market participants, products cleared (and the DCO's role in the financial sector), services and operations provided by others that the DCO relies upon to provide its services and operations to others, infrastructure, and governance arrangements. Both the initial costs, and any initial and recurring compliance costs, will also depend on the size, existing infrastructure, practices, and cost structure of each DCO.

The Commission generally requests comment on all aspects of its cost-benefit considerations, including the identification and assessment of any

[204] Section 15(a) of the CEA, 7 U.S.C. 19(a).

costs and benefits not discussed herein; data and any other information to assist or otherwise inform the Commission's ability to quantify or qualitatively describe the costs and benefits of the proposed amendments; and substantiating data, statistics, and any other information to support positions posited by commenters with respect to the Commission's discussion. The Commission welcomes comment on such costs, particularly from existing SIDCOs and Subpart C DCOs that can provide quantitative cost data based on their respective experiences. Commenters may also suggest other alternatives to the proposed approach.

2. Baseline

The baseline for the Commission's consideration of the costs and benefits of this proposed rulemaking are: (1) the DCO Core Principles set forth in section 5b(c)(2) of the CEA; (2) the Commission's regulations in Subpart C of part 39, which establish additional standards for compliance with the core principles for those DCOs that are designated as SIDCOs or have elected to opt-in to the Subpart C requirements in order to achieve status as a QCCP; and (3) the subpart C Election Form in appendix B to part 39.

Some of the proposed revisions and amendments to § 39.39 would codify staff guidance and international standards. To the extent that market participants have relied upon the staff guidance that is proposed to be codified, the actual costs and benefits of the proposed rules, as discussed in this section of the proposal, may not be as significant. Additionally, the proposed changes to § 39.39 would not apply to all fifteen DCOs currently registered with the Commission. Rather, the proposed amendments to § 39.39 apply to SIDCOs and Subpart C DCOs. There are currently two SIDCOs,[205] and four Subpart C DCOs.[206] All SIDCOs and Subpart C DCOs have recovery plans and orderly wind-down plans on file with the Commission which may generally be consistent with the staff guidance issued in CFTC Letter No. 16–61 and current § 39.39(b). Additionally, the SIDCOs have already provided information related to resolution planning which may fulfill requests for information under current § 39.39(c)(2), which is proposed to be revised as § 39.39(f).

As discussed further below, the Commission is proposing to require that DCOs that are neither SIDCOs nor electors into Subpart C to develop and maintain plans for orderly wind-down. This would be a new requirement. However, of the nine such DCOs that are currently registered, five are based in jurisdictions that implement regulatory requirements that are consistent with the PFMI.[207] These include standards that require both recovery and orderly wind-down plans. Accordingly, to the extent that these five DCOs have already designed and maintain plans for orderly wind-down that are consistent with the proposed rules, the actual costs and benefits of the proposed rules, as discussed in this section of the proposal, may be reduced.[208] These standards will be new, however, for the remaining four non-Subpart C DCOs (and for any new DCOs that are similarly situated).[209]

The Commission's analysis below compares the proposed amendments to the regulations in effect today; however, it then takes into account current industry practices that may mitigate some of the costs and benefits set out in each section. The Commission seeks comment on all aspects of the baseline.

3. Recovery Plan and Orderly Wind-Down Plan—§ 39.39(b)

The Commission is clarifying that each SIDCO and Subpart C DCO must submit its recovery plan and orderly wind-down plan to the Commission consistent with existing § 39.19(c)(4)(xxiv). The Commission is further proposing in § 39.39(b)(2) to require that a SIDCO or Subpart C DCO notify the Commission and clearing members when the recovery plan is initiated or orderly wind-down is pending, and to add a corresponding event-specific reporting requirement in § 39.19(c)(4)(xxv). Proposed § 39.39(b)(3) would also establish that a SIDCO must file its recovery plan and (to the extent it has not already filed one) orderly wind-down plan within six months of designation as a SIDCO, and a DCO electing to be subject to Subpart C of the Commission's regulations must file its recovery plan and (to the extent it has not already filed one) orderly wind-down plan on the effective date of its election.

i. Benefits

Proposed § 39.39(b)(1) explicitly requires that a SIDCO and a Subpart C DCO must have plans for recovery and orderly wind-down, and that these plans must each cover both default losses and non-default losses. This has the benefit of enhancing the resilience of these DCOs, and reducing the risk that they pose to clearing members and other financial market participants (and, in some cases, to the financial system), by requiring these plans to cover the full range of risks.

Proposed § 39.39(b)(2) requires that SIDCOs and Subpart C DCOs have procedures to notify the Commission and clearing members that recovery is initiated or orderly wind-down is pending as soon as practicable, and that such notice is provided to the Commission and clearing members. The requirement to notify the Commission is not a new requirement, and the requirement to notify clearing members, which was explicit in the staff guidance, will aid clearing members in protecting their interests.

Finally, establishing a date for the filing of recovery plans and orderly wind-down plans in proposed § 39.39(b)(3),[210] is responsive to commenters' requests made over time for date certainty, and choosing six months as that certain date takes into account both resilience and practicality. Requiring that a newly-designated SIDCO submit its plans no later than six months after designation and that a DCO submit its plans at the time of making the election to become subject to Subpart C (if it has not already done so) fosters the objectives of promoting resiliency and prepares SIDCOs and Subpart C DCOs to meet the challenges of recovery or orderly wind-down in the event that they are necessary. Further, allowing newly designated SIDCOs six months to submit their plans should provide enough time to develop the plans. The Commission believes that these regulations will benefit registrants and market participants.

ii. Costs

The current regulations require a SIDCO or Subpart C DCO to maintain viable plans for recovery and orderly wind-down, and to submit such plans to the Commission. DCOs already have systems in place to notify clearing

[205] CME and ICC.

[206] ICE Clear US, Inc.; Minneapolis Grain Exchange, LLC; Nodal Clear, LLC; and OCC.

[207] These are ICE NGX Canada, Inc. (Canada), LCH SA (France), Eurex Clearing AG (Germany), as well as ICE Clear Europe and LCH Ltd (United Kingdom). Each of these jurisdictions has reported that they have fully implemented the standards in the PFMI. *See https://www.bis.org/cpmi/level1_status_report.htm.*

[208] To the extent foreign CCPs are subject to home jurisdiction regulation with different requirements for the subjects and analyses that must be included in their orderly wind-down plans, the Commission welcomes comments describing those requirements, and including suggestions on how to achieve the goals of this regulation in a manner that appropriately addresses possible inefficiencies.

[209] CBOE Clear Digital, LLC, CX Clearinghouse, L.P., LedgerX LLC, and North American Derivatives Exchange, Inc.

[210] With respect to orderly wind-down plans, the Commission notes that this requirement would be applicable only to the extent the DCO does not have an orderly wind-down plan on file at the Commission.

members when specific actions are taken, and the Commission believes that these existing systems can be used to notify clearing members when the recovery plan is initiated or orderly wind-down is pending. Thus, the costs involved would be the effort involved in preparing to use these existing systems to notify clearing members when the recovery plan is initiated or orderly wind-down is pending (including testing), and, if and when necessary, using them to make such notifications. Moreover, it does not appear that establishing the specified periods for filing the will cause additional costs above those involved in developing the recovery and orderly wind-down plans.

iii. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of sections 15(a)(2)(A), (B), (D), and (E) of the CEA, the proposed amendments will protect market participants, enhance the financial integrity of futures markets, reflect sound risk management practices, and enhance the public interest, by ensuring that the Commission and clearing members are notified when the recovery plan is initiated or orderly wind-down is pending, thereby aiding the Commission in taking action to protect markets and the broader financial system, and enabling clearing members to protect their own interests.

Section 15(a)(2)(C), price discovery, is not implicated by the proposed amendments.

4. Recovery Plan and Orderly Wind-Down Plan: Required Elements—§ 39.39(c)

Proposed § 39.39(c) would establish the required content of a SIDCO's or Subpart C DCO's recovery plan and orderly wind-down plan consistent with the guidance set forth in CFTC Letter No. 16–61. Proposed § 39.39(c)(1)–(8) would require that each plan's description include the identification and description of the critical operations and services the DCO provides to clearing members and other financial market participants, the service providers the DCO relies upon to provide these critical operations and services, interconnections and interdependencies, resilient staffing arrangements, obstacles to success of the plan, stress scenario analyses, potential triggers for recovery and orderly wind-down, available recovery and orderly wind-down tools, analyses of the effect of the tools on each scenario, lists of agreements to be maintained during recovery and orderly wind-down, and governance arrangements.

i. Benefits

Current § 39.39 does not provide explicit regulations governing the required elements of a SIDCO's or Subpart C DCO's recovery plan and orderly wind-down plan. At the time the 2013 rule was promulgated, the international standards and guidance covering such elements (with which a SIDCO and Subpart C DCO must comply) were consultative and not finalized. CFTC Letter No. 16–61 provided SIDCOs and Subpart C DCOs with comprehensive guidance related to the elements of acceptable recovery plans and orderly wind-down plans. Proposed § 39.39(c) would codify elements for a recovery plan and orderly wind-down plan that are, in general, drawn from the guidance on international standards related to recovery plans and orderly wind-down plans adopted by international standards-setting bodies since 2013, and described in detail in CFTC Letter No. 16–61.

Codifying the guidance set out in CFTC Letter No. 16–61, and enhancing the set of elements discussed in that guidance through proposed § 39.39(c)(1)–(8) should benefit market participants, including both DCOs and their members, by establishing specific regulatory requirements for well-designed and effective recovery and orderly wind-down plans. The requirements of proposed § 39.39(c)(1)–(8) should contribute to DCOs achieving a better *ex ante* understanding of, the critical services and operations that it provides clearing members and other financial market participants, the services and operations provided by others (including internal staff) upon which it depends to provide those services and operations (and contractual arrangements with such others that might be altered or terminated as a result of the circumstances that lead to the need for recovery or orderly wind-down), the scenarios that might lead to recovery or orderly wind-down, of the challenges a DCO would face in a recovery or wind-down scenario, the tools that the DCO would rely upon to meet those challenges, and the challenges and complexities in using those tools, and the DCO's governance arrangements for recovery and orderly wind-down. This understanding will be significantly enhanced if the DCO engages in annual testing of its plans, and modifies those plans in light of the results of such testing.

Thus, the DCOs, clearing members, and other financial market participants will benefit through the DCO being better prepared to meet those challenges successfully (and thus being more likely to continue to provide those critical services and operations upon which clearing members and other financial market participants depend, and to avoid the potential harms to clearing members, other financial market participants, and the financial system more broadly, from a disorderly cessation of those services and operations).

Including these explicit and specific requirements for recovery plans and orderly wind-down plans should significantly enhance the DCO's ability to implement its recovery plan (or, if necessary, orderly wind-down plan) promptly and effectively. Additionally, the information will better enable a newly designated SIDCO, or a DCO that is electing subpart C status, to understand the requirements for well-developed and effective plans, and to consider relevant issues including the tools it intends to activate, its process for monitoring for triggers, the sequencing of tools, impediments to the timely or successful use of its tools, its governance arrangements, internal and external approval processes, and whether contractual agreements will continue during recovery and orderly wind-down; moreover, it will have a plan in place to handle exigencies in a manner that mitigates the risk of financial instability or contagion.

ii. Costs

The specific requirements for a recovery plan's and orderly wind-down plan's description, analysis, and testing set forth in this regulation will require substantial time to be spent on analytical effort by DCO staff, including attorneys, compliance staff, and other subject matter experts. DCO staff will spend time to review existing plans and supporting arrangements, compare them to the proposed rules (to the extent that they are ultimately adopted), and make modifications or additions to those plans, in light of, *inter alia,* the specifics of each DCO's business model, services and operations provided by the DCO to clearing members and other financial market participants, products cleared (and the DCO's role in the financial sector), services and operations provided by others that the DCO relies upon to provide its services and operations to others, infrastructure, and governance arrangements. The revised plans will then need to be reviewed, first by senior management and then by the board of directors, at the cost of the

time of those persons, and potentially further amended in light of the results of such reviews (resulting in the further expenditure of time).

All of these DCOs will need to incur the cost of staff time to undertake additional analysis to (a) ensure that their recovery and orderly wind-down plans meet those portions of the proposed requirements that represent codification of staff guidance, and (b) meet those portions of the proposed requirements that represent enhancements to the staff guidance (this includes enhancements resulting from changes to definitions, *e.g.,* calling for considerations of non-default losses due to the actions of malicious actors, including internal, external, and nation-states).

This additional analysis includes developing an overview of each plan and describing how the plan will be implemented, ensuring that each plan identifies and describes (i) the critical operations and services that the DCO provides to clearing members and other financial market participants, (ii) the service providers upon which the DCO relies to provide these operations and services, (iii) plans for resilient staffing arrangements for continuity of operations, (iv) obstacles to success of the plans, (v) plans to address the risks associated with the failure of each critical operation and service, (vi) how the DCO will ensure that the identified operations and services continue thorough recovery and orderly wind-down.

Further, the DCO will need to ensure that the analysis of scenarios for its recovery plan includes each of the scenarios specified in § 39.39(c)(2)(ii)(A)–(K) and (iii), or that the analysis documents why such scenario is not possible in light of the DCO's structure and activities, and that, for each possible scenario, the analysis includes the elements specified in § 39.39(c)(2)(i)(A)–(F). The DCO will need to ensure that the analysis establishes triggers for recovery or consideration of orderly wind-down, and the information-sharing and governance process within senior management and board of directors. The DCO will also need to ensure that the plans describe the tools that it would use to meet the full scope of financial deficits that the DCO might need to remediate, and, for each set of tools, provides the additional analysis described in § 39.39(c)(4)(ii)–(ix) (for the recovery plan) and § 39.39(c)(5)(iii)–(x) (for the orderly wind-down plan).

Additionally, the DCO will need to ensure that its plans include determinations of which of the contracts, etc. associated with the provision of its services as a DCO are subject to alteration or termination as a result of the implementation of recovery or orderly wind-down, and the actions that the DCO has taken to ensure that its critical operations and services will continue during recovery and orderly wind-down despite such alteration or termination. The DCO will also need to ensure that the plans are formally approved, and annually reviewed, by the board of directors, describe effective governance structures and processes to guide discretionary decision-making relevant to each plan, and describe the DCO's process for identifying and managing the diversity of stakeholder views and any conflict of interest between stakeholders and the DCO.

Moreover, the DCO will need to ensure that its plans include procedures for testing their viability, including the DCO's ability to implement the tools that each plan relies upon. This also includes the types of testing to be performed, to whom the results are reported, and procedures for updating the plans in light of the findings resulting from such tests. The tests need to include the participation of clearing members, where the plans rely upon their participation. The tests must be repeated following any material change to the recovery plan or orderly wind-down plan, but in any event not less than once annually.

If the foregoing recovery or orderly wind-down planning identifies vulnerabilities that need to be improved upon, the DCO will incur the cost of remediating such vulnerabilities.

As noted earlier in this section, plans revised in light of the foregoing analysis will then need to be reviewed, first by senior management and then by the board of directors, at the cost of the time of those persons, and potentially further amended in light of the results of such reviews (resulting in the further expenditure of time).

It is impracticable to quantify these costs, because they depend on the specific design and other circumstances of each DCO. including the specific services and operations that the DCO provides to clearing members and other financial participants, the services and operations provided by others that the DCO relies upon to provide those services, the contractual arrangements between and those service providers, and the DCO's current recovery and orderly wind-down plans., It seems likely that these requirements will require hundreds of hours of the effort of skilled professionals, at a cost of tens of (perhaps more than a hundred) thousands of dollars.

For DCOs that are currently SIDCOs or Subpart C DCOs, or other DCOs that may currently maintain recovery and orderly wind-down plans, the amount of time required for each DCO to initially amend its recovery plan and orderly wind-down plan may vary depending on the extent to which the DCO already addressed the foregoing requirements in its existing plans. The analysis and plan preparation that a SIDCO or Subpart C DCO will undertake to comply with this regulation, including designing and implementing changes to existing plans, was, to a significant extent, established in the 2016 staff guidance, and, based on staff's experience, SIDCOs and Subpart C DCOs generally already follow those standards. To that extent, for these DCOs, those costs may be reduced.

The Commission requests comment from existing SIDCOs and Subpart C DCOs concerning their estimates of the time, and corresponding costs, they would expect to incur in ensuring that their existing plans meet the requirements of the proposed rule, along with supporting data concerning the amount of effort expended on preparing existing plans, and the extent to which additional time may need to be spent to conform such plans to the proposed rules. The Commission also seeks comment from the public more generally as to estimates, along with supporting data, of the time, and corresponding costs that might be incurred in developing recovery and orderly wind-down plans that meet those requirements.

Additionally, to what extent are existing SIDCOs and Subpart C DCOs following the staff guidance in CFTC Letter No. 16–61? What is the impact of current practice among existing SIDCOs and Subpart C DCOs with respect to that staff guidance on the costs and benefits that would result from implementation of the proposed rules?

iii. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the section 15(a) factors. In consideration of sections 15(a)(2)(A), (B), (D), and (E) of the CEA, the Commission believes the proposed amendments to § 39.39(c)(1)–(8) would enhance existing protection of market participants and the public and the financial integrity of futures markets, and the regulations should aid in sound risk management practices by ensuring that the DCO considers in advance the impact that recovery and orderly wind-down would have on its operations and customers. Moreover, specifying the contents of the plans in the regulation

should increase the possibility that a DCO could continue to provide the critical services and operations upon which its clearing members and other financial market participants depend, and reduce the possibility that a DCO would fail in a disorganized fashion. The proposed rule should reduce the likelihood of a DCO's failure to meet its obligations to its members, thereby enhancing protection for a DCO's members and their customers, and should help to avoid the systemic effects of a DCO failure. Having the requisite plans in place, moreover, should allow DCOs to handle exigencies in a manner that mitigates the risk of financial instability or contagion. These benefits favor the public interest. Section 15(a)(2)(C), price discovery, does not appear to be implicated by the proposed amendments.

5. Information for Resolution Planning—§ 39.39(f)

The Commission is proposing in § 39.39(f) to require that a SIDCO and Subpart C DCO maintain information systems and controls to provide data and information necessary for the purposes of resolution planning to the Commission, and upon request provide such data and information to the Commission, electronically, in the form and manner specified by the Commission. Proposed § 39.39(f)(1)–(7) describes the types of information deemed pertinent to planning for resolution of a SIDCO or Subpart C DCO under Title II of the Dodd-Frank Act. Much of this information may already be provided to the Commission, and thus may not be requested. The proposed regulation expands on current § 39.39(c)(2) and lists explicitly the types of information that SIDCOs and Subpart C DCOs may be required to provide upon request because they are relevant to resolution planning, but which may not ordinarily be required to be provided under other sections of part 39.

i. Benefits

Proposed § 39.39(f)(1)–(7) describes the types of information that the Commission proposes to require for resolution planning under Title II of the Dodd-Frank Act. Thorough preparation *ex ante* is crucial for successfully managing matters relating to the resolution of a SIDCO or Subpart C DCO, as well as for establishing market confidence and the confidence of foreign counterparts to the Commission and to the United States agencies responsible for resolution of a SIDCO or Subpart C DCO. Because of the nature of principles-based regulation, there is some information in the possession of the DCO that, while important for resolution planning purposes, may not ordinarily be reported to the Commission and may not be publicly available. Thus, the primary benefit from this regulation is that the type of information to be requested will be available to the DCO, and upon request, the Commission may obtain the information in order to assist the Commission in planning and preparing for the resolution of a distressed DCO. There is also considerable public benefit in enhancing preparedness for resolution by making available to FDIC, as the resolution authority, information relevant to planning for the resolution of a SIDCO or Subpart C DCO.

ii. Costs

The proposal assumes that there is information relevant to resolution planning that is not ordinarily reported to the Commission under § 39.19, but which is in the possession of the DCO. As such, SIDCOs and Subpart C DCOs will face certain incremental costs (from gathering the information, reviewing it for accuracy, and transmitting it to the Commission) to produce this information upon request as required by proposed § 39.39(f)(1)–(7). Gathering the information and transmitting it would likely be accomplished by paraprofessionals, while review may require the work of paraprofessionals or professionals. The time that would be required to accomplish these tasks would depend on the information requested and the DCO's information system architecture. A crude estimate of the time required might be 10–20 hours, at a cost of $3,000–$6,000, once or twice a year for a SIDCO, and once every five years for a Subpart C DCO.

To the extent that some of this information requires analyses by the DCO that are not currently conducted, such incremental costs may be more significant. Here, the DCO would need to develop tools to analyze its information (which may involve new uses for existing tools, or may in some cases require the development of new tools), gather the underlying data, use the tools, review the results, and then transmit those results to the Commission. This may also involve effort in working with Commission staff to clarify and/or to sharpen the request. While some of this effort might be accomplished by paraprofessionals, the proportion that would need the effort of professionals would likely be greater than in the previous paragraph. A crude estimate of the time required might be 30–60 hours, at a cost of $12,000–$24,000, once a year for a SIDCO, and once every ten years for a Subpart C DCO.

It should be noted that the Commission does not anticipate asking Subpart C DCOs for information for resolution planning in the near term. This is because, even in the highly unlikely event that a Subpart C DCO would enter recovery, and that such recovery would fail, the likelihood of such a DCO qualifying for resolution under Title II is fairly low.

The Commission seeks comments, in particular from SIDCOs and Subpart C DCOs, on the accuracy of these estimates (with respect to both time required and cost), and on how they may be improved. In particular, SIDCOs that have responded to similar requests in the past are invited to discuss the costs that they incurred in doing so (both in building tools where necessary and in gathering and reviewing the information), and to provide insight into expected costs to do so in the future.

iii. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specified considerations identified in section 15(a) of the CEA. In consideration of sections 15(a)(2)(A), (B), (D), and (E) of the CEA, the Commission preliminarily believes that proposed § 39.39(f)(1)–(7) would protect market participants and the public, and support the financial integrity of futures markets, by enhancing preparation for resolution of DCO in advance of systemic failure, and thus increasing the likelihood that resolution would be successful. Furthermore, advance planning may identify issues that should and can be corrected in advance of market failure, thereby providing an opportunity to improve DCO risk management practices and further enhance the protection of market participants and the public, and the financial integrity of the derivatives markets. Finally, there is a strong public interest in holding CFTC-registered SIDCOs and Subpart C DCOs to regulations that incorporate international standards and guidance. Section 15(a)(2)(C), price discovery, does not appear to be implicated by this proposal.

6. Requested Reporting—§ 39.19(c)(5)(iii)

Proposed § 39.39(f)(1)–(7) requires a corresponding amendment to § 39.19(c)(5) regarding requested reporting. Proposed § 39.19(c)(5)(iii) would require that a SIDCO or Subpart C DCO that submits information related to resolution planning to the Commission pursuant to § 39.39(f)(1)–

(7), shall update the information upon request.

i. Benefits

The Commission is proposing an additional requirement to clarify that the information for resolution planning requested under proposed § 39.39(f) would be updated upon request. By requesting (and then providing to the FDIC) current, accurate, and pertinent information for resolution planning, the Commission may be able to assist in resolution planning more effectively. The financial system benefits as a whole when the FDIC can obtain, with the aid of the Commission, current, accurate, and pertinent information for resolution planning related to a SIDCO's or Subpart C DCO's structure and activities (§ 39.39(f)(1)), clearing members (§ 39.39(f)(2)), arrangements with other DCOs (§ 39.39(f)(3)), financial schedules and supporting details (§ 39.39(f)(4)), interconnections and interdependencies with internal and external service providers (§ 39.39(f)(5)), information concerning critical personnel (§ 39.39(f)(6)), and other necessary information (§ 39.39(f)(7)).

ii. Costs

The Commission anticipates that proposed § 39.19(c)(5) would add incremental costs to the business-as-usual activities of the DCOs. For information that is regularly maintained by the DCO, this would involve repeating the efforts described above in Section VIII.D.5(ii) of gathering, reviewing, and transmitting the information. For information that requires analyses that are not currently conducted by the DCO, the corresponding efforts described above in Section VIII.D.5(ii) would be called for, but some may be reduced or eliminated: the DCO would once again need to gather the information, but would presumably be able to use the tools that it repurposed (or newly developed) when it responded to the information request for the first time. Moreover, there may not be a need to clarify or sharpen the request, to the extent that the request is identical (except for time-period) to the first request. The DCO would still need to review the results, and transmit them to the Commission.

iii. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specified considerations identified in section 15(a) of the CEA. In consideration of sections 15(a)(2)(A), (B), (D), and (E) of the CEA, the Commission believes that § 39.39(f)(1)–(7) protects market participants and the public, and promotes the financial integrity of futures markets, by ensuring that resolution plans are based on current, accurate, and pertinent information. Further, planning for resolution is a pillar of sound risk management principles, and supports the public interest. Section 15(a)(2)(C), price discovery, does not appear to be implicated by this proposal.

7. Viable Plans for Orderly Wind-Down for DCOs That Are Neither SIDCOs Nor Subpart C DCOs—§ 39.13(k)

Proposed § 39.19(k)(1)(a) would require that DCOs that are neither SIDCOs nor Subpart C DCOs maintain and submit to the Commission viable plans for orderly wind down necessitated by default losses and non-default losses. As discussed above, proposed § 39.19(k)(2)–(6) would enumerate the information required to be incorporated in an orderly wind-down plan.

i. Benefits

Requiring DCOs that are neither SIDCOs nor Subpart C DCOs to maintain viable plans for orderly wind-down should contribute to a better *ex ante* understanding by such DCOs of the critical services and operations that clearing members and other financial market participants depend upon them to provide, and of the challenges the DCO would face in doing so. DCOs will benefit through better preparation to meet those challenges; moreover, by enumerating certain subjects, analyses, and testing that all DCOs must include in their orderly wind-down plans, a DCO's ability to wind-down promptly and in an orderly manner during any exigency should be significantly enhanced. To the extent that this analysis identifies vulnerabilities, the DCO will have the opportunity to remediate them.[211]

Importantly, an orderly and expeditious wind-down will help mitigate the damage to the DCO's participants (and their customers, if any) by facilitating either the continuation of the DCO's services (potentially through another DCO) or the prompt return of their participants' collateral.

ii. Costs

The Commission anticipates that some DCOs may bear a significant cost burden, as described further below, due to the proposed regulation, because of the various analyses and testing these DCOs would be required to conduct.

The specific requirements for an orderly wind-down plan's description, analysis, and testing set forth in this regulation will require substantial time to be spent on analytical effort by DCO staff, including attorneys, compliance staff, and other subject matter experts. DCO staff will need to draft plans and supporting arrangements that meet the standards set in the proposed rules (to the extent that they are ultimately adopted) in light of, *inter alia,* the specifics of each DCO's business model, services and operations provided by the DCO to clearing members and other financial market participants, products cleared (and the DCO's role in the financial sector), services and operations provided by others that the DCO relies upon to provide its services and operations to others, infrastructure, and governance arrangements. The plans will then need to be reviewed, first by senior management and then by the board of directors, at the cost of the time of those persons, and potentially further amended in light of the results of such reviews (resulting in the further expenditure of time).

These analyses include developing an overview of the orderly wind-down plan and describing how the plan will be implemented, ensuring that the orderly wind-down plan identifies and describes (i) the critical operations and services that the DCO provides to clearing members and other financial market participants, (ii) the service providers upon which the DCO relies to provide these operations and services, (iii) plans for resilient staffing arrangements for continuity of operation, (iv) obstacles to success of the plan, (v) plans to address the risks associated with the failure of each critical operation and service, (vi) how the DCO will ensure that the identified operations and services continue thorough orderly wind-down.

Further, the DCO will need to ensure that the analysis of scenarios for its orderly wind-down plan identifies scenarios that may prevent the DCO from meeting its obligations or providing critical operations and services as a going concern. The DCO will need to ensure that the analysis establishes triggers for consideration of orderly wind-down, and the information-sharing and governance process within senior management and board of directors. The DCO will also need to ensure that the plan describes the tools that it would use in an orderly wind-down that comprehensively address how the DCO would continue to

[211] To the extent that a foreign-based DCO already maintains an orderly wind-down plan, pursuant to the regulations of its home-country regulator, that meets the standards set in the proposed regulation, these benefits would be reduced or eliminated.

provide critical services, the governance and approval processes and arrangements that will guide the exercise of any available discretion, the steps necessary to implement each tool, the roles and responsibilities of all parties in the use of each tool, an assessment of the likelihood that the tools, individually and taken together, would result in an orderly wind-down, and an assessment of the risks to non-defaulting clearing members and their customers, and linked financial market infrastructures.

Additionally, the DCO will need to ensure that its plan includes determinations of which of the contracts, etc. associated with the provision of its services as a DCO are subject to alteration or termination as a result of the implementation of the orderly wind-down plan, and the actions that the DCO has taken to ensure that its critical operations and services will continue during orderly wind-down despite such alteration or termination. The DCO will also need to ensure that the plans are formally approved, and annually reviewed, by the board of directors, describe effective governance structures and processes to guide discretionary decision-making relevant to the plan, and describe the DCO's process for identifying and managing the diversity of stakeholder views and any conflict of interest between stakeholders and the DCO.

Moreover, the DCO will need to ensure that its plan includes procedures for testing the DCO's ability to implement the tools that the orderly wind-down plan relies upon. This also includes describing the types of testing to be performed, to whom the results are reported, and procedures for updating the plans in light of the findings resulting from such tests. The tests must be repeated following any material change to the orderly wind-down plan, but in any event not less than once annually.

If the foregoing wind-down planning identifies vulnerabilities that need to be improved upon, the DCO will incur the cost of remediating such vulnerabilities.

As noted earlier in this section, plans revised in light of the foregoing analysis will then need to be reviewed, first by senior management and then by the board of directors, at the cost of the time of those persons, and potentially further amended in light of the results of such reviews.

While it is impracticable to quantify these costs, because they depend on the specific design and other circumstances of each DCO. it seems likely that these requirements will require less effort than the corresponding requirements for both recovery plans and orderly wind-down plans for SIDCOs and Subpart C DCOs, because these DCOs are required only to prepare, and meet the standards for, an orderly wind-down plan. Moreover, in many cases, the business structure and operations of these DCOs may be less complex than those of SIDCOs or Subpart C DCOs. Nonetheless, the Commission estimates that an orderly wind-down plan will require hundreds of hours of the effort of skilled professionals, at a cost of tens of thousands of dollars.

For those DCOs that are based in jurisdictions that, pursuant to a legal framework that is consistent with the PFMI, already require them to maintain orderly wind-down plans, the cost should be substantially less, as the requirements for orderly wind-down plans are likely to be comparable to the requirements applicable in those other jurisdictions (and thus these DCOs would, for the most part, be able to rely upon their existing plans).[212] For other DCOs that are not required to have orderly wind-down plans pursuant to regulations of either the CFTC or other regulators, these costs would be larger while the orderly wind-down plans are first being developed, although there will be additional (albeit reduced) costs in reviewing, testing, and updating these plans on an ongoing basis. The initial costs may be mitigated to the extent that such DCOs may already have some form of a wind-down plan in place as part of their general risk management strategy. Additionally, DCOs may already have performed some of the proposed analyses as part of their existing regulatory compliance programs.

iii. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(A) of the CEA, the Commission believes that the proposed regulations should protect market participants and the public. At the outset, a viable plan for orderly wind down reduces uncertainty in times of market stress, since its existence enhances legal certainty for the DCO's clearing members and market participants, and increases the likelihood of an orderly and expeditious wind-down that will mitigate the harm to their interests from the closing of the DCO. Further, a viable plan for orderly wind-down should increase market confidence, because clearing members and their customers would know beforehand that the DCO is well prepared to undertake an orderly wind-down, if necessary. Importantly, the proposed regulations should enhance protection for a DCO's members and their customers by reducing the likelihood that a DCO would fail to meet certain obligations to its members and other market participants in orderly wind-down.

In consideration of section 15(a)(2)(B) of the CEA, with respect to the efficiency, competitiveness, and financial integrity of markets, plans for orderly wind-down (and for determining when orderly wind-down might be necessary) would enhance financial integrity of markets, by enhancing the likelihood that any wind-down would be orderly, and the existence of these standards might enhance market participants confidence in (and thus the competitiveness of) DCOs.

In consideration of section 15(a)(2)(D) of the CEA, the proposed regulations would aid in sound risk management practices. The requirement to maintain and submit to the Commission viable plans for orderly wind-down provides greater clarity and transparency before wind-down and facilitates timely decision-making and the continuation of critical operations and services during orderly wind-down. Wind-down planning—including, for example, considering the circumstances that may trigger an orderly wind-down, the tools the DCO would implement to help ensure an orderly wind-down (along with the likely effects on clearing members and the financial markets from implementing such tools), and the governance arrangements to guide decision-making during a wind-down—also would strengthen the risk management practices of the DCO by, among other things, identifying vulnerabilities that can be mitigated and preparing for multiple exigencies. Having an orderly wind-down plan in place, moreover, should allow the DCO to handle exigencies in a manner that mitigates the risk of financial instability or contagion. Moreover, in consideration of section 15(a)(2)(E), having an orderly wind-down plan in place would promote the public interest. However, section 15(a)(2)(C), price discovery, is not implicated by the proposed amendments.

[212] To the extent that this assumption is incorrect, and the proposal would require foreign-based DCOs to comply with overly burdensome additional requirements, the Commission seeks comments that set forth inconsistencies between the proposed requirements and the requirements in the relevant foreign jurisdictions, and recommendations as to how those inconsistencies can and should be mitigated through amendments to the proposed requirements.

8. Notification Requirement for DCOs That Are Neither SIDCOs Nor Subpart C DCOs of Pending Orderly Wind-Down—§§ 39.19(k)(1)(b) and 39.19(c)(4)(xxv)

The Commission is proposing in new § 39.19(k)(1)(b) that DCOs that are neither SIDCOs nor Subpart C DCOs have procedures in place for informing the Commission and clearing members, as soon as practicable, when orderly wind-down is pending, consistent with the requirements of proposed new paragraph § 39.19(c)(4)(xxv).[213]

i. Benefit

A DCO should notify the Commission as soon as practicable of a pending orderly wind-down so that the Commission may promptly take appropriate steps to monitor the wind-down process, and to protect the interests of clearing members and other market participants. Likewise, a DCO should notify its clearing members as soon as practicable as well, so that they may promptly take steps to protect themselves (including, *e.g.,* by seeking to replace hedge positions). Such information-sharing fosters market transparency, which can serve to increase confidence and enhance market participants' abilities to protect their own interests.

ii. Costs

DCOs should already have tools and procedures in place for notifying the Commission and clearing members of other circumstances or events triggering notification; Thus, the only costs involved would be the effort involved in preparing to use these existing tools and procedures to notify the Commission and clearing members when orderly wind-down is pending (including testing), and, if and when necessary, using them to make such notifications.

iii. Section 15(a) Factors

The proposed regulations should protect market participants and the public under section 15(a)(2)(A) of the CEA, enhance efficiency, competitiveness, and financial integrity of futures markets under section 15(a)(2)(B) of the CEA, aid in sound risk management practices under section 15(a)(2)(D) of the CEA, and promote the public interest under section 15(a)(2)(E) of the CEA. Clearing members and their customers cannot accurately evaluate the risks and costs associated with using a DCO's services if they do not have sufficient information, including when the DCO is no longer a going concern. A requirement that clearing members be notified as soon as practicable of a pending winding-down also allows market participants time to take action to protect their own interests. Likewise, market participants can use a DCO's services with the confidence that the DCO will not delay in notifying them of a pending orderly wind-down, which should enhance competitiveness. The requirement also reduces risk by providing DCO's stakeholders sufficient notice to help ensure an orderly wind-down. However, section 15(a)(2)(C), price discovery, is not implicated by the proposed amendments.

9. Timing for DCOs' Submission of Recovery and Orderly Wind-Down Plans—§ 39.19(c)(4)(xxiv)

Proposed § 39.19(c)(4)(xxiv) would continue to require that a DCO that is required to maintain recovery and orderly wind-down plans pursuant to § 39.39(b) shall submit its plans to the Commission no later than the date the DCO is required to have the plans. It would add an explicit requirement that those plans be accompanied by supporting information, and would newly require that a DCO that is required to maintain orderly wind-down plans pursuant to § 39.13(k) shall submit its plans and supporting information at the time it files its application for registration under § 39.3.[214] The Commission is proposing a deadline of six months from the effective date of the rule (if adopted) for those DCOs currently registered with the Commission to complete and submit the orderly wind-down plans and supporting information. Moreover, this proposed rule would continue to require that a SIDCO or Subpart C DCO, upon revising the plan(s), submit the current (formerly, ''revised'') plan(s) to the Commission, along with a description of any changes and the reason(s) for such changes. This requirement would be new for other DCOs. The proposal would add requirements that the plans, including any supporting information, must be submitted at least annually.

i. Benefits

DCOs seeking registration with the Commission will promptly have orderly wind-down plans and supporting information available upon registration. Clearing members and potential customers, moreover, will immediately benefit from orderly wind-down planning that has already taken place. For those DCOs currently registered with the Commission, the Commission believes six months is sufficient with respect to both the time and resources necessary for orderly wind-down planning, and takes into account the need to prepare promptly viable plans for orderly wind-down, given that a disorderly wind-down poses risks to clearing members and other financial market participants, and potentially, in some cases, risk to the financial system, especially in turbulent and uncertain market environments.

Requiring that current plans be submitted at least annually would help to ensure that the plans available to the Commission for review remain reasonably current (given the possibility that some minor changes or updates to the plans may be considered as not meeting the threshold of ''revisions''), thereby aiding the Commission's exercise of its supervisory responsibilities both in its ongoing risk-based examination program and in case of financial distress at the DCO.

As discussed above in Section IV, DCOs may, in some instances, include supporting information within their plans, or may organize the documentation with supporting information kept separately, *e.g.,* as an appendix or annex. Adding the term ''and supporting information'' would have the benefit of ensuring that the Commission has timely access to such supporting information.

ii. Costs

The Commission anticipates that the costs for DCOs to submit the viable plans for orderly wind-down that they are otherwise required to maintain would be limited to the cost of transmission using DCOs' already established systems and procedures to submit documents to the Commission. Similarly, re-submitting current plans with supporting information should involve only the costs of gathering that information together and transmitting it, as the information must be at hand in order to plan adequately. As discussed above, some DCOs will already have orderly wind-down plans in place; others may already have considered at least some of the subjects and analyses as part of their efforts to comply with the DCO Core Principles.

iii. Section 15(a) Factors

For the same reasons as previously noted above, the Commission believes the proposed regulations would protect

[213] Proposed new § 39.19(c)(4)(xxv) would provide that each DCO shall notify the Commission and clearing members as soon as practicable when, among other things, orderly wind-down is pending.

[214] As previously noted, for any DCO that submits (or has submitted) an application for registration with the Commission before the date that is six months after the effective date of this rulemaking, if it is adopted, the Commission is proposing to require that the DCO have until the date that is six months after the effective date of this rulemaking to submit its orderly wind-down plans.

market participants and the public under section 15(a)(2)(A) of the CEA, enhance competitiveness of futures markets under section 15(a)(2)(B) of the CEA, and aid in sound risk management practices under section 15(a)(2)(D) of the CEA. Ensuring the prompt availability of viable plans for orderly wind down would reduce uncertainty in times of market stress, increase market confidence, and provide assurance to market participants and the public that DCOs are meeting minimum risk standards. Likewise, orderly wind-down plans enhance protection for a DCO's members and their customers. Having viable plans for orderly wind-down already in place additionally provides greater clarity and transparency before wind-down, assists the DCO in identifying vulnerabilities and preparing for multiple exigencies, and facilitates timely decision-making and the continuation of critical operations and services during orderly wind-down. Given its benefits, the Commission believes that new DCOs should have viable plans for orderly wind-down in place at the time they seek registration and before market participants come to rely upon them. The Commission has considered the other section 15(a) factors and believes they are not implicated by the proposed amendments.

10. Conforming Changes to Bankruptcy Provisions—Part 190.

Based upon the proposed requirement that all DCOs maintain viable plans for orderly wind-down, the Commission is proposing several conforming changes to Part 190's bankruptcy provisions. Specifically, current § 190.12(b)(1) would be amended so that a DCO in a Chapter 7 proceeding provide to the trustee copies of, among other things, orderly wind-down plans it must maintain pursuant to new § 39.13(k) in addition to § 39.39(b). Current § 190.15(a) would be amended so that the trustee not avoid or prohibit certain actions taken by the DCO either reasonably within the scope of, or provided for in, any orderly wind-down plains maintained by the DCO and filed with the Commission pursuant to new § 39.13(k) in addition to § 39.39. Current § 190.15(c) would be amended so that the trustee act in accordance with any orderly wind-down plans maintained by the debtor and filed with the Commission pursuant to new § 39.13(k) in addition to § 39.39 in administering the bankruptcy proceeding. Current § 190.19(b)(1) would be amended so that a shortfall in certain funds be supplemented in accordance with orderly wind-down plans maintained by the DCO pursuant to new § 39.19(k) in addition to § 39.39.

i. Benefits

In promulgating the current Part 190 bankruptcy rules for DCOs in 2021, the Commission found that ''directing a trustee to implement the DCO's own default rules and procedures, and recovery and orderly wind-down plans, would benefit the estate by providing the trustee with a menu of purpose-built rules, procedures and plans to liquidate a DCO, which rules, procedures and plans the DCO has developed subject to the requirements of the Commission's regulations and supervision of the Commission. Adding concepts of reasonability and practicability will give the trustee the discretion to modify those rules, procedures, and plans where and to the extent appropriate.'' [215] Adding the orderly wind-down plans required under proposed § 39.13(k) for DCOs other than SIDCOs and Subpart C DCOs should further achieve these benefits, by providing such a menu in an additional context, namely the bankruptcy of these DCOs.

ii. Costs

The Commission does not anticipate additional costs from the proposed regulations. The amendments are conforming changes so that the orderly wind-down plan of a DCO that is neither a SIDCO nor a Subpart C DCO is given the same weight as a SIDCO's or Subpart C DCO's orderly wind-down plan would be given in bankruptcy.

iii. Section 15(a) Factors

The proposed regulations should enhance protection for market participants and the public under section 15(a)(2)(A) of the CEA, enhance the competitiveness and financial integrity of futures markets under section 15(a)(2)(B) of the CEA, aid in sound risk management practices under section 15(a)(2)(D) of the CEA, and promote the public interest under section 15(a)(2)(E) of the CEA. The assurance that the orderly wind-down plan, to the extent reasonable and practicable, and consistent with the protection of customers, will be followed in a bankruptcy proceeding should instill confidence in a DCO's clearing members and customers, who can make certain decisions without fear that a trustee will inappropriately diverge from the orderly wind-down plan in bankruptcy. Moreover, market participants in general can be assured that the DCO's pre-bankruptcy actions will not be voided by the trustee; likewise, the DCO's clearing members and customers can anticipate that a shortfall will be supplemented in the manner provided for in the orderly wind-down plan. The Commission also believes that a viable plan for orderly wind-down should also reduce the risk of disorderly events in bankruptcy. All of these factors would also promote the public interest. However, section 15(a)(2)(C), price discovery, is not implicated by the proposed amendments.

11. Requests for Up to One Year To Comply With §§ 39.34(d), 39.35, and 39.39(f)

Conforming to the approach of setting a six-month deadline discussed in section VIII(D)(4) above, the Commission is proposing to discontinue the process currently provided in subpart C pursuant to which the Commission may grant, upon request of a SIDCO or DCO that is electing to become subject to Subpart C, up to one year to comply with §§ 39.34, 39.35, and 39.39. The costs and benefits, and the application of the CEA Section 15(a) factors, for this approach were discussed there.

12. Amendments to Appendix A and Appendix B to Part 39

The Commission is proposing to amend Exhibit D to Form DCO. The proposal would add a requirement to provide as Exhibit D–5, the DCO's orderly wind-down plan, and a demonstration that the plan complies with the requirements of § 39.13(k).

This proposed change would implement the proposal to require the submission of the orderly wind-down plan. The Commission has considered the section 15(a) of the CEA factors and believes that they are not implicated by the proposed change to Form DCO.

The Commission is also proposing to amend the ''General Instructions'' and ''Elections and Certifications'' portions of the Subpart C Election Form. The proposal would remove the sections of the forms that reference requests for an extension of time to comply with any of the provisions of §§ 39.34, 39.35, and 39.39. Similarly, the Commission is proposing to amend the requirements for Exhibit F–1 to call for the attachment of the applicant's recovery plan and orderly wind-down plan, supporting information for these plans, and a demonstration that the plans comply with § 39.39(c).

These proposed changes would implement the proposal to delete the provision for making such requests for

[215] *Bankruptcy Regulations,* 86 FR 19324, 19412 (Apr. 13, 2021).

an extension of time, and the proposal to require the submission of the plans. The Commission does not anticipate that these proposed changes would impose any costs on SIDCOs or Subpart C DCOs. The Commission has considered the factors called for in section 15(a) of the CEA and believes that they are not implicated by the proposed changes to the Subpart C Election Form.

List of Subjects

17 CFR Part 39

Default rules and procedures, Definitions, Reporting requirements, Risk management, Recovery and Orderly wind-down, System safeguards.

17 CFR Part 190

Bankruptcy, Brokers, Reporting and recordkeeping requirements.

For the reasons stated in the preamble the Commodity Futures Trading Commission proposes to amend 17 CFR Chapter I as follows:

PART 39—DERIVATIVES CLEARING ORGANIZATIONS

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

Authority: 7 U.S.C. 2, 6(c), 7a–1, and 12a(5); 12 U.S.C. 5464; 15 U.S.C. 8325; Section 752 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, title VII, sec. 752, July 21, 2010, 124 Stat. 1749.

■ 2. Amend § 39.2 by adding the definitions of ''Default losses,'' ''Nondefault losses,'' ''Orderly wind-down or wind-down,'' and ''Recovery'' in alphabetical order to read as follows:

§ 39.2 Definitions.

* * * * *

Default losses means credit losses or liquidity shortfalls created by the default of a clearing member in respect of its obligations with respect to cleared transactions.

* * * * *

Non-default losses means losses from any cause, other than default losses, that may threaten the derivative clearing organization's viability as a going concern. These include, but are not limited to,

(1) any potential impairment of a derivatives clearing organization's financial position, as a business concern, as a consequence of a decline in its revenues or an increase in its expenses, such that expenses exceed revenues and result in a loss that the derivatives clearing organization must charge against capital,

(2) losses incurred by the derivatives clearing organization on assets held in custody or on deposit in the event of a custodian's (or subcustodian's or depository's) insolvency, negligence, fraud, poor administration or inadequate record-keeping,

(3) losses incurred by the derivatives clearing organization from diminution of the value of investments of its own or its participants' resources, including cash or other collateral,

(4) losses from adverse judgments, or other losses, arising from legal, regulatory, or contractual obligations, including damages or penalties, and the possibility that contracts that the derivatives clearing organization relies upon are wholly or partly unenforceable, and

(5) losses occasioned by deficiencies in information systems or internal processes, human errors, management failures, malicious actions (whether by internal or external threat actors), disruptions to services provided by third parties, or disruptions from internal or external events that result in the reduction, deterioration, or breakdown of services provided by the derivatives clearing organization.

* * * * *

Orderly wind-down or *wind-down* means the actions of a derivatives clearing organization to effect the permanent cessation, sale, or transfer, of one or more of its critical operations or services, in a manner that would not increase the risk of significant liquidity, credit, or operational problems spreading among financial institutions or markets and thereby threaten the stability of the U.S. financial system.

* * * * *

Recovery means the actions of a derivatives clearing organization, consistent with its rules, procedures, and other *ex-ante* contractual arrangements, to address any uncovered credit loss, liquidity shortfall, inadequacy of financial resources, or business, operational or other structural weakness, including the replenishment of any depleted pre-funded financial resources and liquidity arrangements, as necessary to maintain the derivatives clearing organization's viability as a going concern.

* * * * *

■ 3. In 39.13, add and reserve paragraph (j), and add paragraph (k) to read as follows:

§ 39.13 Risk management.

* * * * *

(j) [Reserved].

(k) *Orderly wind-down plan.* (1) *Orderly wind-down plan required.* Each derivative clearing organization that is not a systemically important derivatives clearing organization or a subpart C derivatives clearing organization shall:

(i) Maintain and, consistent § 39.19(c)(4)(xxiv), submit to the Commission, a viable plan for orderly wind-down that may be necessitated by default losses and by non-default losses, including supporting information for that plan.

(ii) Have procedures for informing the Commission and clearing members, as soon as practicable, when orderly wind-down is pending, and shall notify the Commission and clearing members consistent with § 39.19(c)(4)(xxv).

(2) *Orderly wind-down plan description.* The orderly wind-down plan required by paragraph (k)(1) of this section shall include an overview of the plan and a description of how the plan will be implemented. The description of the plan shall include the identification and description of the derivatives clearing organization's critical operations and services, interconnections and interdependencies, resilient staffing arrangements, stress scenario analyses, potential triggers for consideration of implementing the orderly wind-down plan, available wind-down tools, analyses of the effect of the tools on each scenario, lists of agreements to be maintained during orderly wind-down, and governance arrangements.

(i) *Critical operations and services, interconnections and interdependencies, and resilient staffing arrangements.* The orderly wind-down plan shall identify and describe the critical operations and services the derivatives clearing organization provides to clearing members and other financial market participants, the service providers upon which the derivatives clearing organization relies to provide these critical operations and services, including internal and external service providers and ancillary services providers, financial and operational interconnections and interdependencies, aggregate cost estimates for the continuation of services during orderly wind-down, plans for resilient staffing arrangements for continuity of operations, obstacles to success of the orderly wind-down plan, plans to address the risks associated with the failure of each critical operation and service, and how the derivatives clearing organization will ensure that each identified operation and service continues through orderly wind-down.

(ii) *Orderly wind-down triggers.* The orderly wind-down plan shall establish the criteria that may trigger consideration of implementation of that plan, and the process the derivatives

clearing organization has in place for monitoring for events that may trigger implementation of the plan.

(iii) *Governance description.* The orderly wind-down plan shall include a description of the pre-determined information-sharing and escalation process within the derivatives clearing organization's senior management and the board of directors. The derivatives clearing organization must have a defined process that will be used that will include the factors the derivatives clearing organization considers most important in guiding the board of directors' exercise of judgment and discretion with respect to its orderly wind-down plan in light of those triggers and that process.

(3) *Orderly wind-down scenarios and tools.* The orderly wind-down plan shall:

(i) identify scenarios that may prevent the derivatives clearing organization from meeting its obligations or providing critical operations and services as a going concern;

(ii) describe the tools that the derivatives clearing organization would expect to use in an orderly wind-down that comprehensively address how the derivatives clearing organization would continue to provide critical operations and services;

(iii) describe the order in which each such tool would be expected to be used;

(iv) describe the governance and approval processes and arrangements within the derivatives clearing organization for the use of each of the tools available, including the exercise of any available discretion;

(v) describe the processes to obtain any approvals external to derivatives clearing organization (including any regulatory approvals) that would be necessary to use each of the tools available, and the steps that might be taken if such approval is not obtained;

(vi) establish the time frame within which each such tool could be used;

(vii) set out the steps necessary to implement each such tool;

(viii) describe the roles and responsibilities of all parties in the use of each such tool;

(ix) provide an assessment of the likelihood that the tools, individually and taken together, would result in orderly wind-down; and

(x) provide an assessment of the associated risks from the use of each such tool to non-defaulting clearing members and those clearing members' customers with respect to transactions cleared on the derivatives clearing organization, and linked financial market infrastructures.

(4) *Agreements to be maintained during orderly wind-down.* The derivatives clearing organization shall determine which of its contracts, arrangements, agreements, and licenses associated with the provision of its critical operations and services as a derivatives clearing organization are subject to alteration or termination as a result of implementation of the orderly wind-down plan. The orderly wind-down plan shall describe the actions that the derivatives clearing organization has taken to ensure that its critical operations and services will continue during orderly wind-down, despite such potential alteration or termination.

(5) *Governance.* The derivatives clearing organization's orderly wind-down plan shall:

(i) Be formally approved, and annually reviewed, by the board of directors;

(ii) Describe an effective governance structure that clearly defines the responsibilities of the board of directors, board members, senior executives and business units;

(iii) Describe the processes that the derivatives clearing organization will use to guide its discretionary decision-making relevant to the orderly wind-down plan; and

(iv) Describe the derivatives clearing organization's process for identifying and managing the diversity of stakeholder views and any conflict of interest between stakeholders and the derivatives clearing organization.

(6) *Testing.* Each derivatives clearing organization's orderly wind-down plan shall include procedures for testing the derivatives clearing organization's ability to implement the tools that the orderly wind-down plan relies upon. The orderly wind-down plan shall include the types of testing that will be performed, to whom the findings of such tests are reported, and the procedures for updating the orderly wind-down plan in light of the findings resulting from such tests. Such testing shall occur following any material change to the orderly wind-down plan, but in any event not less than once annually, and the plan shall be promptly updated in light of the findings resulting from such testing.

* * * * *

■ 4. In § 39.19, revise paragraph (c)(4)(xxiv) and add paragraphs (xxv) and (c)(5)(iii) to read as follows:

§ 39.19 Reporting.

* * * * *

(c) * * *

(4) * * *

(xxiv) A derivatives clearing organization that is required to maintain recovery and orderly wind-down plans pursuant to § 39.39(b) shall submit its plans and supporting information to the Commission no later than the date on which the derivatives clearing organization is required to have the plans. A derivatives clearing organization that is required to maintain an orderly wind-down plan pursuant to § 39.13(k) shall submit its plan and supporting information to the Commission at the time it files its application for registration under § 39.3. A derivatives clearing organization shall, upon revising its recovery plan or orderly wind-down plan, but in any event no less frequently than annually, submit the current plan(s) and supporting information to the Commission, along with a description of any changes and the reason(s) for such changes.

(xxv) Each derivatives clearing organization shall notify the Commission and clearing members as soon as practicable when the derivatives clearing organization has initiated its recovery or when orderly wind-down is pending.

* * * * *

(5) * * *

(iii) *Information for resolution planning.* A systemically important derivatives clearing organization or subpart C derivatives clearing organization that submits information to the Commission pursuant to § 39.39(f)(2) shall update such information upon request.

* * * * *

■ 5. In § 39.34, remove and reserve paragraph (d) to read as follows:

§ 39.34 System safeguards for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations.

* * * * *

(d) [Reserved].

* * * * *

■ 6. In § 39.39, revise the section heading and paragraphs (a), (b), (c), and (f) to read as follows:

§ 39.39 Recovery and orderly wind-down for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations; Information for resolution planning.

* * * * *

(a) *Definitions.* For the purposes of this section: *Unencumbered liquid financial assets* include cash and highly liquid securities.

* * * * *

(b) *Recovery plan and orderly wind-down plan.* (1) Each systemically

important derivatives clearing organization and subpart C derivatives clearing organization shall maintain and, consistent with § 39.19(c)(4)(xxiv), submit to the Commission, viable plans for recovery and orderly wind-down that may be necessitated, in each case, by default losses and by non-default losses, including supporting information for such plans.

(2) Each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall have procedures for informing the Commission and clearing members, as soon as practicable, when the recovery plan is initiated or orderly wind-down is pending, and shall notify the Commission and clearing members consistent with § 39.19(c)(4)(xxv).

(3) Each systemically important derivatives clearing organization shall file a recovery plan and (to the extent it has not already done so) an orderly wind-down plan, and supporting information for these plans, within 6 months of designation as systemically important by the Financial Stability Oversight Council. Each derivatives clearing organization electing to become subject to the provisions of Subpart C of this chapter shall file a recovery plan and (to the extent it has not already done so) an orderly wind-down plan, and supporting information for these plans, as part of its election. Each recovery plan and orderly wind-down plan shall be updated annually.

(c) *Requirements for recovery plan and orderly wind-down plan.* The recovery plan and orderly wind-down plan required by paragraph (b) of this section shall include an overview of each plan and a description of how each plan will be implemented. The description of each plan shall include the identification and description of the derivatives clearing organization's critical operations and services, interconnections and interdependencies, resilient staffing arrangements, stress scenario analyses, potential triggers for recovery and orderly wind-down, available recovery and wind-down tools, analyses of the effect of the tools on each scenario, lists of agreements to be maintained during recovery and orderly wind-down, and governance arrangements.

(1) *Critical operations and services, interconnections and interdependencies, and resilient staffing arrangements.* The recovery plan and orderly wind-down plan shall identify and describe the critical operations and services the derivatives clearing organization provides to clearing members and other financial market participants, the service providers upon which the derivatives clearing organization relies to provide these critical operations and services, including internal and external service providers and ancillary services providers, financial and operational interconnections and interdependencies, aggregate cost estimates for the continuation of services during recovery and orderly wind-down, plans for resilient staffing arrangements for continuity of operations, obstacles to success of the recovery plan and orderly wind-down plan, plans to address the risks associated with the failure of each critical operation or service, and how the derivatives clearing organization will ensure that each identified operation or service continues through recovery and orderly wind-down.

(2) *Recovery scenarios and analysis.* Each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall identify scenarios that may prevent it from meeting its obligations or providing its critical services as a going concern.

(i) For each scenario, the recovery plan shall provide an analysis that includes:

(A) a description of the scenario;

(B) the events that are likely to trigger the scenario;

(C) the derivatives clearing organization's process for monitoring for such events;

(D) the market conditions and other relevant circumstances that are likely to result from the scenario;

(E) the potential financial and operational impact of the scenario on the derivatives clearing organization and on its clearing members, internal and external service providers and relevant affiliated companies, both in an orderly market and in a disorderly market; and

(F) the specific steps the derivatives clearing organization would expect to take when the scenario occurs, or appears likely to occur, including, without limitation, any governance or other procedures that may be necessary to implement the relevant recovery tools and to ensure that such implementation occurs in sufficient time for the recovery tools to achieve their intended effect.

(ii) The derivatives clearing organization's recovery plan scenarios should also address the default risks and non-default risks to which the derivatives clearing organization is exposed, and shall include at least the scenarios listed in paragraphs (c)(2)(ii)(A) through (K) of this section, to the extent such a scenario is possible in light of the derivatives clearing organization's structure and activities. For any scenario enumerated in paragraphs (c)(2)(ii)(A) through (K) of this section that the derivatives clearing organization determines is not possible in light of its structure and activities, the derivatives clearing organization should document its reasoning.

(A) Credit losses or liquidity shortfalls created by single and multiple clearing member defaults;

(B) Liquidity shortfall created by a combination of clearing member default and a failure of a liquidity provider to perform;

(C) Settlement bank failure;

(D) Custodian or depository bank failure;

(E) Losses resulting from investment risk;

(F) Losses from poor business results;

(G) Financial effects from cybersecurity events;

(H) Fraud (internal, external, and/or actions of criminals or of public enemies);

(I) Legal liabilities, including liabilities related to the derivatives clearing organization's obligations with respect to cleared transactions and those not specific to the derivatives clearing organization's business as a derivatives clearing organization;

(J) Losses resulting from interconnections and interdependencies among the derivatives clearing organization and its parent, affiliates, and/or internal or third-party service providers; and

(K) Losses resulting from interconnections and interdependencies with other derivatives clearing organizations.

(iii) The recovery plan shall also consider any combination of at least two scenarios involving multiple failures (*e.g.,* a member default occurring simultaneously, or nearly so, with a failure of a service provider) that, in the judgment of the derivatives clearing organization, are particularly relevant to the derivatives clearing organization's business. The derivatives clearing organization shall document the reasons why the selected scenarios are particularly relevant.

(3) *Recovery and orderly wind-down triggers.*

(i) A systemically important derivatives clearing organization's or subpart C derivatives clearing organization's:

(A) recovery plan shall establish the criteria that may trigger implementation or consideration of implementation of that plan, and the process the derivatives clearing organization has in place for monitoring for events that are

likely to trigger the scenarios identified in paragraph (c)(2) of this section; and

(B) orderly wind-down plan shall establish the criteria that may trigger consideration of implementation of that plan, and the process the derivatives clearing organization has in place for monitoring for events that may trigger implementation of the plan.

(ii) The recovery plan and orderly wind-down plan shall include a description of the pre-determined information-sharing and escalation process within the derivatives clearing organization's senior management and the board of directors. The derivatives clearing organization must have a defined governance process that will be used that will include the factors the derivatives clearing organization considers most important in guiding the board of directors' exercise of judgment and discretion with respect to recovery and orderly wind-down plans in light of those triggers and that process.

(4) *Recovery tools.* A derivatives clearing organization or subpart C derivatives clearing organization shall have a recovery plan that includes the following:

(i) a description of the tools that the derivatives clearing organization would expect to use in each scenario required by paragraph (b) of this section that meet the full scope of financial deficits the derivatives clearing organization may need to remediate and comprehensively address how the derivatives clearing organization would continue to provide critical operations and services;

(ii) the order in which each such tool would be expected to be used;

(iii) the time frame within which each such tool would be expected to used;

(iv) a description of the governance and approval processes and arrangements within the derivatives clearing organization for the use of each of the tools available, including the exercise of any available discretion;

(v) the processes to obtain any approvals external to the derivatives clearing organization (including any regulatory approvals) that would be necessary to use each of the tools available, and the steps that might be taken if such approval is not obtained;

(vi) the steps necessary to implement each such tool;

(vii) a description of the roles and responsibilities of all parties, including non-defaulting clearing members, in the use of each such tool;

(viii) whether the tool is mandatory or voluntary;

(ix) an assessment of the likelihood that the tools, individually and taken together, would result in recovery; and

(x) an assessment of the associated risks from the use of each such tool to non-defaulting clearing members and those clearing members' customers with respect to transactions cleared on the derivatives clearing organization, linked financial market infrastructures, and the financial system more broadly.

(5) *Orderly wind-down scenarios and tools.* Each systemically important derivatives clearing organization and Subpart C derivatives clearing organization shall:

(i) identify scenarios that may prevent it from meeting its obligations or providing critical operations and services as a going concern;

(ii) describe the tools that it would expect to use in an orderly wind-down that comprehensively address how the derivatives clearing organization would continue to provide critical operations and services;

(iii) describe the order in which each such tool would be expected to be used;

(iv) establish the time frame within which each such tool would be expected to be used;

(v) describe the governance and approval processes and arrangements within the derivatives clearing organization for the use of each of the tools available, including the exercise of any available discretion;

(vi) describe the processes to obtain any approvals external to the derivatives clearing organization (including any regulatory approvals) that would be necessary to use each of the tools available, and the steps that might be taken if such approval is not obtained;

(vii) set out the steps necessary to implement each such tool;

(viii) describe the roles and responsibilities of all parties, including non-defaulting clearing members, in the use of each such tool;

(ix) provide an assessment of the likelihood that the tools, individually and taken together, would result in orderly wind-down; and

(x) provide an assessment of the associated risks from the use of each such tool to non-defaulting clearing members and those clearing members' customers with respect to transactions cleared on the derivatives clearing organization, linked financial market infrastructures, and the financial system more broadly.

(6) *Agreements to be maintained during recovery and orderly wind-down.* A systemically important derivatives clearing organization and subpart C derivatives clearing organization shall determine which of its contracts, arrangements, agreements, and licenses associated with the provision of its critical operations and services as a derivatives clearing organization are subject to alteration or termination as a result of implementation of the recovery plan or orderly wind-down plan. The recovery plan and orderly wind-down plan shall describe the actions that the derivatives clearing organization has taken to ensure that its critical operations and services will continue during recovery and orderly wind-down despite such alteration or termination.

(7) *Governance.* Each systemically important derivatives clearing organization and Subpart C derivatives clearing organization's recovery plan and orderly wind-down plan shall, in each case,

(i) Be formally approved, and annually reviewed, by the board of directors;

(ii) Describe an effective governance structure that clearly defines the responsibilities of the board of directors, board members, senior executives, and business units;

(iii) Describe the processes that the derivatives clearing organization will use to guide its discretionary decision-making relevant to each plan; and

(iv) Describe the derivatives clearing organization's process for identifying and managing the diversity of stakeholder views and any conflict of interest between stakeholders and the derivatives clearing organization.

(8) *Testing.* The recovery plan and orderly wind-down plan of each systemically important derivatives clearing organization and Subpart C derivatives clearing organization shall include procedures for testing the viability of the recovery plan and orderly wind-down plan, including testing of the derivatives clearing organization's ability to implement the tools that each plan relies upon. The recovery plan and the orderly wind-down plan shall include the types of testing that will be performed, to whom the findings of such tests are reported, and the procedures for updating the recovery plan and orderly wind-down plan in light of the findings resulting from such tests. A systemically important derivatives clearing organization and Subpart C derivatives clearing organization shall conduct the testing described in this paragraph with the participation of their clearing members, where the plan depends on their participation, and the derivatives clearing organization shall consider including external stakeholders that the plan relies upon, such as service providers, to the extent practicable and appropriate. Such testing shall occur following any material change to the recovery plan or orderly wind-down plan, but in any event not less than once

annually, and the plan shall be promptly updated in light of the findings resulting from such testing.

* * * * *

(f) *Information for resolution planning.* To the extent not already provided pursuant to paragraph (b) of this section, or required by § 39.19, a systemically important derivatives clearing organization or subpart C derivatives clearing organization shall maintain information systems and controls that are designed to enable the derivatives clearing organization to provide data and information electronically, as requested by the Commission for purposes of resolution planning and during resolution under Title II of the Dodd-Frank Act, and shall provide such information and data in the form and manner specified by the Commission. This includes the following:

(1) Information regarding the derivatives clearing organization's organizational structure and corporate structure, activities, governing documents and arrangements, rights and powers of shareholders, and committee members and their responsibilities.

(2) Information concerning clearing members, including (for both house and customer accounts) information regarding collateral, variation margin, and contributions to default and guaranty funds.

(3) Arrangements and agreements with other derivatives clearing organizations, including offset and cross-margin arrangements.

(4) Off-balance sheet obligations or contingent liabilities, and obligations to creditors, shareholders, or affiliates not otherwise reported under part 39.

(5) Information regarding interconnections and interdependencies with internal and external service providers, licensors, and licensees, including information regarding services provided by or to affiliates and other third parties and related agreements.

(6) Information concerning critical personnel.

(7) Any other information deemed appropriate to plan for resolution under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

■ 7. Revise Appendix A to Part 39—Form DCO Derivatives Clearing Organization Application for Registration to read as follows:

BILLING CODE 6351–01–P

OMB No. 3038-0076

COMMODITY FUTURES TRADING COMMISSION

FORM DCO

DERIVATIVES CLEARING ORGANIZATION
APPLICATION FOR REGISTRATION

GENERAL INSTRUCTIONS

Intentional misstatements or omissions of fact may constitute federal criminal violations (7 U.S.C. 13 and 18 U.S.C. 1001) or grounds for disqualification from registration.

DEFINITIONS

Unless the context requires otherwise, all terms used in this Form DCO have the same meaning as in the Commodity Exchange Act ("Act"), and in the General Rules and Regulations of the Commodity Futures Trading Commission ("Commission") thereunder. All references to Commission regulations are found at 17 CFR Ch. I.

For the purposes of this Form DCO, the term "Applicant" shall include any applicant for registration as a derivatives clearing organization.

GENERAL INSTRUCTIONS

1. This Form DCO, which includes a Cover Sheet and required Exhibits (together, "Form DCO" or "application"), is to be filed with the Commission by all applicants for registration as a derivatives clearing organization, including applicants when amending a pending application, pursuant to Section 5b of the Act and the Commission's regulations thereunder. Upon the filing of an application for registration or an amendment to an application in accordance with the instructions provided herein, the Commission will publish notice of the filing and afford interested persons an opportunity to submit written data, views and comments concerning such application. No application for registration will be effective unless the Commission, by order, grants such registration.
2. Individuals' names, except the executing signature, shall be given in full (Last Name, First Name, Middle Name).
3. With respect to the executing signature, it must be manually signed by a duly authorized representative of the Applicant as follows: If the Form DCO is filed by a corporation, it must be signed in the name of the corporation by a principal officer duly authorized; if filed by a limited liability company, it must be signed in the name of the limited liability company by a manager or member duly authorized to sign on the limited liability company's behalf; if filed by a partnership, it must be signed in the name of the partnership by a general partner duly authorized; if filed by an unincorporated organization or association which is not a partnership, it must be signed in the name of such organization or association by the managing agent, *i.e.*, a duly authorized person who directs or manages or who participates in the directing or managing of its affairs.

4. If this Form DCO is being filed as an application for registration, all applicable items must be answered in full. If any item or Exhibit is inapplicable, this response must be affirmatively indicated by the designation "none," "not applicable," or "N/A," as appropriate.

5. Under section 5b of the Act and the Commission's regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this Form DCO from any Applicant seeking registration as a derivatives clearing organization and from any registered derivatives clearing organization. Disclosure by the Applicant of the information specified in this Form DCO is mandatory prior to the start of the processing of an application for registration as a derivatives clearing organization. The information provided in this Form DCO will be used for the principal purpose of determining whether the Commission should grant or deny registration to an Applicant.

   The Commission may determine that additional information is required from the Applicant in order to process its application. An Applicant is therefore encouraged to supplement this Form DCO with any additional information that may be significant to its operation as a derivatives clearing organization and to the Commission's review of its application. A Form DCO which is not prepared and executed in compliance with applicable requirements and instructions may be returned as not acceptable for filing. Acceptance of this Form DCO, however, shall not constitute a finding that the Form DCO has been filed as required or that the information submitted is true, current or complete.

6. As provided in 17 CFR 39.3(a)(5), except in cases where the Applicant submits a request for confidential treatment with the Secretary of the Commission pursuant to the Freedom of Information Act and 17 CFR 145.9, information supplied in this application will be included routinely in the public files of the Commission and will be available for inspection by any interested person.

APPLICATION AMENDMENTS

1. 17 CFR 39.3(a)(4) requires an Applicant to promptly amend its application if it discovers a material omission or error in the application, or if there is a material change in the information contained in the application, including any supplement or amendment thereto.

2. Applicants, when filing this Form DCO for purposes of amending a pending application, must re-file an entire Cover Sheet, amended if necessary and including an executing signature, and attach thereto revised Exhibits or other materials marked to show changes, as applicable. The submission of an amendment to a pending application represents that the remaining items and Exhibits that are not amended remain true, current, and complete as previously filed.

WHERE TO FILE

This Form DCO must be filed with the Commission in the format and manner specified by the Commission.

COMMODITY FUTURES TRADING COMMISSION

FORM DCO

DERIVATIVES CLEARING ORGANIZATION
APPLICATION FOR REGISTRATION

COVER SHEET

_____

Exact name of Applicant as specified in charter

_____

Address of principal executive offices

☐ If this is an **APPLICATION** for registration, complete in full and check here.

☐ If this is an **AMENDMENT** to a pending application, list below all items that are being amended and check here.

_____

_____

_____

_____

GENERAL INFORMATION

1. Name under which business is or will be conducted, if different than name specified above (include acronyms, if any):

_____

2. If name of derivatives clearing organization is being amended, state previous derivatives clearing organization name:

_____

3. Additional contact information:

_____

Website URL Main Phone Number

4. List of principal office(s) and address(es) where derivatives clearing organization activities are/will be conducted:

Office	Address
_____	_____
_____	_____
_____	_____

BUSINESS ORGANIZATION

5. If Applicant is a successor to a previously registered derivatives clearing organization, please complete the following:

   a. Date of succession _____

   b. Full name and address of predecessor registrant

   _____

   Name

   _____

   Street Address

   _____

   City State Country Zip Code

6. Applicant is a:

☐ Corporation

☐ Partnership (specify whether general or limited)

☐ Limited Liability Company

☐ Other form of organization (specify) _____

7. Date of formation: _____

8. Jurisdiction of organization: _____

List all other jurisdictions in which Applicant is qualified to do business (including non-US jurisdictions):

_____

_____

List all other regulatory licenses or registrations of Applicant (or exemptions from any licensing requirement) including with non-US regulators:

_____

_____

9. FEIN or other Tax ID#: _____

10. Fiscal Year End: _____

ADDITIONAL CONTACT INFORMATION

11. Provide contact information specifying name, title, phone numbers, mailing address and e-mail address for the following individuals:

a. The primary contact for questions and correspondence regarding the application

Name and Title

Office Phone Number | Mobile Phone Number

Mailing address | E-mail Address

b. The individual responsible for handling questions regarding the Applicant's financial statements

Name and Title

Office Phone Number | Mobile Phone Number

Mailing address | E-mail Address

c. The individual responsible for serving as the Chief Risk Officer of the Applicant pursuant to § 39.13 of the Commission's regulations

Name and Title

Office Phone Number | Mobile Phone Number

Mailing address | E-mail Address

d. The individual responsible for serving as the Chief Compliance Officer of the Applicant pursuant to § 39.10 of the Commission's regulations

Name and Title

Office Phone Number | Mobile Phone Number

Mailing address E-mail Address

e. The individual responsible for serving as the chief legal officer of the Applicant

Name and Title

Office Phone Number Mobile Phone Number

Mailing address E-mail Address

12. Outside Service Providers: Provide contact information specifying name, title, phone numbers, mailing address and e-mail address for any outside service provider retained by the Applicant as follows:

a. Certified Public Accountant

Name and Title

Office Phone Number Mobile Phone Number

Mailing address E-mail Address

b. Legal Counsel

Name and Title

Office Phone Number Mobile Phone Number

Mailing address E-mail Address

c. Records Storage or Management

Name and Title

Office Phone Number Mobile Phone Number

Mailing address E-mail Address

d. Business Continuity/Disaster Recovery

Name and Title

Office Phone Number Mobile Phone Number

Mailing address E-mail Address

e. Professional consultants providing services related to this application

Name and Title

Office Phone Number Mobile Phone Number

Mailing address E-mail Address

13. Applicant agrees and consents that the notice of any proceeding before the Commission in connection with this application may be given by sending such notice by certified mail to the person named below at the address given.

Print Name and Title

Street Address

City State Country Zip Code

SIGNATURE/REPRESENTATION

14. Applicant has duly caused this application to be signed on its behalf by its duly authorized representative as of the _____ day of _____, 20_____. Applicant and the undersigned each

represent hereby that, to the best of their knowledge, all information contained herein is true, current and complete in all material respects. It is understood that all required items and Exhibits are considered integral parts of this Form DCO and that the submission of any amendment represents that all unamended items and Exhibits remain true, current, and complete as previously filed.

_____

Name of Applicant

By:_____

Manual Signature of Duly Authorized Person

_____

Print Name and Title of Signatory

COMMODITY FUTURES TRADING COMMISSION

FORM DCO

DERIVATIVES CLEARING ORGANIZATION
APPLICATION FOR REGISTRATION

EXHIBIT INSTRUCTIONS

1. The following Exhibits must be filed with the Commission by each Applicant seeking registration as a derivatives clearing organization pursuant to section 5b of the Act and the Commission's regulations thereunder.

2. The application must include a Table of Contents listing each Exhibit required by this Form DCO and indicating which, if any, Exhibits are inapplicable. For any Exhibit that is inapplicable, next to the Exhibit letter specify "none," "not applicable," or "N/A," as appropriate.

3. The Exhibits must be labeled as specified in this Form DCO. If any Exhibit requires information that is related to, or may be duplicative of, information required to be included in another Exhibit, Applicant may summarize such information and provide a cross-reference to the Exhibit that contains the required information.

4. If the information required in an Exhibit involves computerized programs or systems, Applicant must submit descriptions of system test procedures, tests conducted, or test results in sufficient detail to demonstrate the Applicant's ability to comply with the core principles specified in section 5b of the Act and the Commission's regulations thereunder (the "Core Principles"). With respect to each system test, Applicant must identify the methodology used and provide the computer software, programs, and data necessary to enable the Commission to duplicate each system test as it relates to the applicable Core Principle.

5. If Applicant seeks confidential treatment of any Exhibit or a portion of any Exhibit, Applicant must mark such Exhibit with a prominent stamp, typed legend, or other suitable form of notice on each page or portion of each page stating "Confidential Treatment Requested by [Applicant]." If such marking is impractical under the circumstances, a cover sheet prominently marked "Confidential Treatment Requested by [Applicant]" should be provided for each group of records submitted for which confidential treatment is requested. Each of the records transmitted in this matter shall be individually marked with an identifying number and code so that they are separately identifiable. Applicant must also file a confidentiality request with the Secretary of the Commission in accordance with 17 CFR 145.9.

DESCRIPTION OF EXHIBITS

EXHIBIT A — GENERAL INFORMATION/COMPLIANCE

- Attach as **Exhibit A-1**, a regulatory compliance chart setting forth each Core Principle and providing citations to the Applicant's relevant rules, policies, and procedures that address each Core Principle, and a brief summary of the manner in which Applicant will comply with each Core Principle.

- Attach as **Exhibit A-2**, a copy of Applicant's rulebook. The rulebook must consist of all the rules necessary to carry out Applicant's role as a derivatives clearing organization. Applicant must certify that its rules constitute a binding agreement between Applicant and its clearing members and, in addition to any separate clearing member agreements, establish rights and obligations between Applicant and its clearing members.

- Attach as **Exhibit A-3**, a narrative summary of Applicant's proposed clearing activities including (i) the anticipated start date of clearing products (or, if Applicant is already clearing products, the anticipated start date of activities for which Applicant is seeking an amendment to its registration), and (ii) a description of the scope of Applicant's proposed clearing activities (*e.g.*, clearing for a designated contract market; clearing for a swap execution facility; clearing bilaterally executed products).

- Attach as **Exhibit A-4**, a detailed business plan setting forth, at a minimum, the nature of and rationale for Applicant's activities as a derivatives clearing organization, the context in which it is beginning or expanding its activities, and the nature, terms, and conditions of the products it will clear.

- Attach as **Exhibit A-5**, a list of the names of any person (i) who owns 5% or more of Applicant's stock or other ownership or equity interests; or (ii) who, either directly or indirectly, through agreement or otherwise, may control or direct the management or policies of Applicant. Provide as part of **Exhibit A-5** the full name and address of each such person, indicate the person's ownership percentage, and attach a copy of the agreement or, if there is no agreement, an explanation of the basis upon which such person exercises or may exercise such control or direction.

- Attach as **Exhibit A-6**, a list of Applicant's current officers, directors, governors, general partners, LLC managers, and members of all standing committees, as applicable, or persons performing functions similar to any of the foregoing, indicating for each:

  a. Name and Title (with respect to a director, such title must include participation on any committee of Applicant);

  b. Dates of commencement and, if appropriate, termination of present term of office or position;

  c. Length of time each such person has held the same office or position;

  d. Brief description of the business experience of each person over the last ten years;

  e. Any other current business affiliations in the financial services industry;

  f. If such person is not an employee of Applicant, list any compensation paid to the person as a result of his or her position at Applicant. For a director, describe any performance-based compensation;

  g. A certification for each such person that the individual would not be disqualified under section 8a(2) of the Act or § 1.63; and

  h. With respect to a director, indicate whether such director is an independent director, and whether such director is a market participant, and the basis for such a determination as to the director's status.

If another entity will operate or control the day-to-day business operations of the Applicant, attach for such entity all of the items indicated in **Exhibit A-6**.

- ☐ Attach as **Exhibit A-7**, a diagram of the entire corporate organizational structure of Applicant including the legal name of all entities within the organizational structure and the applicable percentage ownership among affiliated entities. Additionally, provide (i) a list of all jurisdictions in which Applicant or its affiliated entities are doing business; (ii) the registration status of Applicant and its affiliated entities, including pending applications or exemption requests and whether any applications or exemptions have been denied (*e.g.*, country, regulator, registration category, date of registration or request for exemption, date of denial, if applicable); and (iii) the address for legal service of process for Applicant (which cannot be a post office box) for each applicable jurisdiction.

- ☐ Attach as **Exhibit A-8**, a copy of the constituent documents, articles of incorporation or association with all amendments thereto, partnership or limited liability agreements, and existing bylaws, operating agreement, or instruments corresponding thereto, of Applicant. Provide a certificate of good standing or its equivalent for Applicant for each jurisdiction in which Applicant is doing business, including any foreign jurisdiction, dated within one month of the date of the Form DCO.

- ☐ Attach as **Exhibit A-9**, a brief description of any material pending legal proceeding(s) or governmental investigation(s) to which Applicant or any of its affiliates is a party or is subject, or to which any of its or their property is at issue. Include the name of the court or agency where the proceeding(s) is pending, the date(s) instituted, the principal parties involved, a description of the factual allegations in the complaint(s), the laws that were allegedly violated, and the relief sought. Include similar information as to any such proceeding(s) or any investigation known to be contemplated by any governmental agency.

- ☐ If Applicant intends to use the services of an outside service provider (including services of its clearing members or market participants), to enable Applicant to comply with any of the Core Principles, Applicant must submit as **Exhibit A-10** all agreements entered into or to be entered into between Applicant and the outside service provider, and identify (1) the services that will be provided; (2) the staff of the outside service provider who will provide the services (specifying (i) in which department or unit of the outside service provider they are employed, (ii) title, and (iii) if known, level of expertise); and (3) the Core Principles addressed by such arrangement. Each submitted agreement must include all attachments cited therein. If a submitted agreement is not final and executed, the Applicant must submit evidence that constitutes reasonable assurance that such services will be provided as soon as operations require.

- ☐ Attach as Exhibit **A-11**, documentation that demonstrates compliance with the Chief Compliance Officer ("CCO") requirements set forth in § 39.10(c), including but not limited to:

  a. Evidence of the designation of an individual to serve as Applicant's CCO with full responsibility and authority to develop and enforce appropriate compliance policies and procedures;

  b. A description of the background and skills of the person designated as the CCO and a certification that the individual would not be disqualified under section 8a(2) or 8a(3) of the Act;

  c. Identification of to whom the CCO reports (*i.e.*, the senior officer of the derivatives clearing organization, the senior officer responsible for the derivative clearing organization's clearing activities, or the Board of Directors of the derivatives clearing organization);

  d. Any plan of communication or regular or special meetings between the CCO and the Board of Directors or senior officer as appropriate;

  e. A job description setting forth the CCO's duties;

  f. Procedures for the remediation of noncompliance issues; and

g. A copy of Applicant's written compliance policies and procedures (including a code of ethics and conflict of interest policy).

☐ Attach as Exhibit **A-12**, a description of Applicant's enterprise risk management program, and how it complies with the requirements set forth in § 39.10(d).

EXHIBIT B — FINANCIAL RESOURCES

☐ Attach as **Exhibit B**, documents that demonstrate compliance with the financial resources requirements set forth in § 39.11 of the Commission's regulations, including but not limited to:

a. General – Provide as **Exhibit B-1**:

(1) The most recent year-end audited financial statements of Applicant calculated in accordance with U.S. generally accepted accounting principles ("U.S. GAAP"), including the balance sheet, income statement, statement of cash flows, notes to the financial statements, and an independent auditor's report issued by a certified public accountant, dated as of the end of Applicant's last fiscal year-end prior to the date of filing the Form DCO. If Applicant does not have its own year-end audited financial statements, it may submit the audited financial statements of its direct parent company, dated as of the end of the direct parent company's last fiscal year-end prior to the date of filing the Form DCO. Applicant should be aware that once it is registered as a derivatives clearing organization it must submit its own year-end audited financial statements, as required by § 39.11(f)(2)(i), and the cost of such audit must be included in Applicant's calculation of its total projected operating costs in Exhibit B-3, as described in paragraph c(5) below;

(2) If Applicant is unable to submit a copy of its own audited financial statements or the audited financial statements of its direct parent company, as required by paragraph a(1) above, Applicant must provide its year-end financial statements calculated in accordance with U.S. GAAP, including the balance sheet, income statement, statement of cash flows, and notes to the financial statements, dated as of the end of Applicant's last fiscal year-end prior to the date of filing the Form DCO. These year-end financial statements must be accompanied by an independent accountant's review report issued by a certified public accountant;

(3) If the audited or reviewed financial statements submitted in accordance with either paragraph a(1) or paragraph a(2) above are not dated as of the end of Applicant's last fiscal quarter prior to the date of filing the Form DCO, Applicant must also provide a set of Applicant's quarterly unaudited financial statements, dated as of the end of Applicant's last fiscal quarter prior to the date of filing the Form DCO;

(4) If Applicant is incorporated or organized under the laws of any foreign country, it may submit the financial statements described above prepared in accordance with either U.S.GAAP or the International Financial Reporting Standards ("IFRS") issued by the International Accounting Standards Board. Applicant should be aware that once it is registered as a derivatives clearing organization it must submit financial statements prepared in accordance with U.S. GAAP or IFRS, as required by § 39.11(f)(1) and (f)(2);

(5) If Applicant is a start-up or will commence operations after it is registered as a derivatives clearing organization, Applicant must submit a set of pro-forma financial statements, including the balance sheet, income statement, and statement of cash flows, dated as of the first month-end after Applicant's expected start date. The set of pro-forma statements must include a narrative description of how the estimates were determined;

(6) A narrative description of how Applicant will fund its financial resources obligations on the first day of its operation as a registered derivatives clearing organization; and

(7) Applicant must complete the form that is used by registered derivatives clearing organizations for quarterly reports under § 39.11(f)(1), as of the date of the most recent financial statements provided in Exhibit B-1. If Applicant is a start-up, Applicant must complete the form using estimated figures and must provide a narrative description of how the estimates were determined. The Division of Clearing and Risk will provide the current form to Applicant, upon request.

b. Default Resources – Provide as **Exhibit B-2**:

(1) A calculation of the financial resources needed to enable Applicant to meet its requirements under § 39.11(a)(1), as of the date of the most recent financial statements provided in Exhibit B-1. Applicant must provide hypothetical default scenarios designed to reflect a variety of market conditions, and the assumptions and variables underlying the scenarios must be explained. All results of the analysis must be included. This calculation requires a start-up enterprise to estimate its largest anticipated financial exposure and explain the basis for such estimate;

(2) Evidence of unencumbered assets sufficient to satisfy § 39.11(a)(1), as of the date of the most recent financial statements provided in Exhibit B-1. For example, this may be demonstrated by audited financial statements or a copy of a bank balance statement(s), custodian statement(s), or statement(s) from any other institution holding such assets for each type of financial resource. A start-up enterprise may not make this demonstration through audited financial statements. If relying on § 39.11(b)(1)(v), such other resources must be thoroughly explained. If Applicant intends to use a committed line of credit or similar facility to meet the liquidity requirement pursuant to § 39.11(e)(1)(iii), Applicant must provide a copy of the applicable credit agreement(s). If relying on § 39.11(b)(1)(i) and/or (v), Applicant cannot also count these assets when demonstrating its compliance with its operating resources requirement under § 39.11(a)(2) and Applicant must detail the amounts or percentages of such assets that apply to each financial resource requirement;

(3) A demonstration that Applicant can perform the monthly calculations required by § 39.11(c)(1);

(4) A demonstration that Applicant's financial resources are sufficiently liquid as required by § 39.11(e)(1), as of the date of the most recent financial statements provided in Exhibit B-1;

(5) A demonstration of how Applicant will be able to maintain, at all times, the level of resources required by § 39.11(a)(1); and

(6) A demonstration of how default resources financial information will be updated and reported to clearing members and the public under § 39.21, and to the Commission as required by § 39.11(f)(1) and § 39.19.

c. Operating Resources – Provide as **Exhibit B-3**:

(1) A calculation of the financial resources needed to enable Applicant to meet its requirements under § 39.11(a)(2), as of the date of the most recent financial statements provided in Exhibit B-1;

(2) Evidence of assets sufficient to satisfy the amount required under § 39.11(a)(2), as of the date of the most recent financial statements provided in Exhibit B-1. For example, this

may be demonstrated by audited financial statements or a copy of a bank balance statement(s), custodian statement(s), or statement(s) from any other institution holding such assets, in the name of Applicant, for each type of financial resource. A start-up enterprise may not make this demonstration through audited financial statements. If relying on § 39.11(b)(2)(ii), such other resources must be thoroughly explained. If Applicant intends to use a committed line of credit or similar facility to meet the liquidity requirement pursuant to § 39.11(e)(2), Applicant must provide a copy of the applicable credit agreement(s). If relying on § 39.11(b)(2)(i) or (ii), Applicant cannot also count these assets when demonstrating its compliance with meeting its default resources requirement under § 39.11(a)(1) and Applicant must detail the amounts or percentages of such assets that apply to each financial resource requirement;

(3) A narrative statement demonstrating the adequacy of Applicant's physical infrastructure to carry out business operations, which includes a principal executive office (separate from any personal dwelling) with a street address (not merely a post office box number). For its principal executive office and other facilities Applicant plans to occupy in carrying out its functions as a derivatives clearing organization, a description of the space (*e.g.*, location and square footage), use of the space (*e.g.*, executive office, data center), and the basis for Applicant's right to occupy the space (*e.g.*, lease, agreement with parent company to share leased space);

(4) A narrative statement demonstrating the adequacy of the technological systems necessary to carry out Applicant's business operations, including a description of Applicant's information technology and telecommunications systems and a timetable for full operability;

(5) A calculation pursuant to § 39.11(c)(2), including the total projected operating costs for Applicant's first year of operation as a derivatives clearing organization, calculated on a monthly basis with an explanation of the basis for calculating each cost and a discussion of the type, nature, and number of the various costs included;

(6) A demonstration that Applicant's financial resources are sufficiently liquid and unencumbered, as required by § 39.11(e)(2), as of the date of the most recent financial statements provided in Exhibit B-1;

(7) A demonstration of how Applicant will maintain, at all times, the level of resources required by § 39.11(a)(2) with an explanation of asset valuation methodology and calculation of projected revenue, if applicable; and

(8) A demonstration of how financial information for operating resources will be updated and reported to clearing members and the public under § 39.21, and to the Commission as required by § 39.11(f)(1) and § 39.19.

d. Human Resources – Provide as **Exhibit B-4**:

(1) An organizational chart showing Applicant's current and planned staff by position and title, including key personnel (as such term is defined in § 39.2) and, if applicable, managerial staff reporting to key personnel.

(2) A discussion and description of the staffing requirements needed to fulfill all operations and associated functions, tasks, services, and areas of supervision necessary to operate Applicant on a day-to-day basis; and

(3) The names and qualifications of individuals who are key personnel or other managerial staff who will carry out the operations and associated functions, tasks, services, and

supervision needed to run the Applicant on day-to-day basis. In particular, Applicant must identify such individuals who are responsible for risk management, treasury, clearing operations and compliance (and specify whether each such person is an employee or consultant/agent).

EXHIBIT C — PARTICIPANT AND PRODUCT ELIGIBILITY

☐ Attach as **Exhibit C**, documents that demonstrate compliance with the participant and product eligibility requirements set forth in § 39.12 of the Commission's regulations, including but not limited to:

a. Participant Eligibility – Provide as **Exhibit C-1**, an explanation of the requirements for becoming a clearing member and how those requirements satisfy § 39.12 and, where applicable, support Applicant's compliance with other Core Principles. Applicant must address how its participant eligibility requirements comply with the core principles and regulations thereunder for financial resources, risk management, and operational capacity. The explanation also must include:

(1) A final version of the membership agreement between Applicant and its clearing members that sets forth the full scope of respective rights and obligations;

(2) A discussion of how Applicant will monitor for and enforce compliance with its eligibility criteria, especially minimum financial requirements;

(3) An explanation of how the eligibility criteria are objective and allow for fair and open access to Applicant. Applicant must include an explanation of the differences between various classes of membership or participation that might be based on different levels of capital and/or creditworthiness. Applicant must also include information about whether any differences exist in how Applicant will monitor and enforce the obligations of its various clearing members including any differences in access, privilege, margin levels, position limits, or other controls;

(4) If Applicant allows intermediation, Applicant must describe the requirements applicable to those who may act as intermediaries on behalf of customers or other market participants;

(5) A description of the program for monitoring the financial status of the clearing members on an ongoing basis;

(6) The procedures that Applicant will follow in the event of the bankruptcy or insolvency of a clearing member, which did not result in a default to Applicant;

(7) A description of whether and how Applicant would adjust clearing member participation under continuing eligibility criteria based on the financial, risk, or operational status of a clearing member;

(8) A discussion of whether Applicant's clearing members will be required to be registered with the Commission; and

(9) A list of current or prospective clearing members. If a current or prospective clearing member is a Commission registrant, Applicant must identify the member's designated self-regulatory organization.

b. Product Eligibility – Provide as **Exhibit C-2**, an explanation of the criteria used to determine the eligibility of products submitted for clearing, including:

(1) The regulatory status of each market on which a contract to be cleared by Applicant is traded (*e.g.*, designated contract market, swap execution facility, not a registered market), and whether the market for which Applicant clears intends to join the Joint Audit Committee. For bilaterally executed agreements, contracts, or transactions not traded on a registered market, Applicant must describe the nature of the related market and its interest in having the particular bilaterally executed agreement, contract, or transaction cleared;

(2) The criteria, and the factors considered in establishing the criteria, for determining the types of products that will be cleared;

(3) An explanation of how the criteria for deciding what products to clear take into account the different risks inherent in clearing different agreements, contracts, or transactions and how those criteria affect maintenance of assets to support the guarantee function in varying risk environments;

(4) A precise list of all the agreements, contracts, or transactions to be covered by Applicant's registration order, including the terms and conditions of all agreements, contracts, or transactions;

(5) A forecast of expected volume and open interest at the outset of clearing operations as a derivatives clearing organization, after six months, and after one year of operation as a derivatives clearing organization; and

(6) The mechanics of clearing each contract, such as reliance on exchange for physical, exchange for swap, or other substitution activity; whether the contracts are matched prior to submission for clearing or after submission; and other aspects of clearing mechanics that are relevant to understanding the products that would be eligible for clearing.

EXHIBIT D — RISK MANAGEMENT

☐ Attach as **Exhibit D**, documents that demonstrate compliance with the risk management requirements set forth in § 39.13 of the Commission's regulations, including but not limited to:

a. Risk Management Framework – Provide as **Exhibit D-1**, a copy of Applicant's written policies, procedures, and controls, as approved by Applicant's Board of Directors, that establish Applicant's risk management framework as required by § 39.13(b). Applicant must also provide a description of the composition and responsibilities of Applicant's Risk Management Committee.

b. Measuring Risk – Provide as **Exhibit D-2**, a narrative explanation of how Applicant has projected and will continue to measure its counterparty risk exposure, including:

(1) A description of the risk-based margin calculation methodology;

(2) The assumptions upon which the methodology was designed, including the risk analysis tools and procedures employed in the design process;

(3) An explanation as to whether other margining methodologies were considered and, if so, why they were not chosen;

(4) A demonstration of the margin methodology as applied to real or hypothetical clearing scenarios;

(5) A description of the data sources for inputs used in the methodology, *e.g.*, historical price data reflecting market volatility over various periods of time;

(6) A description of the sources of price data for the measurement of current exposures and the valuation models for addressing circumstances where pricing data is not readily available or reliable;

(7) The frequency and circumstances under which the margin methodology will be reviewed and the criteria for deciding how often to review and whether to modify a margin methodology;

(8) An independent validation of Applicant's systems for generating initial margin requirements, including its theoretical models;

(9) The frequency of measuring counterparty risk exposures (mark to market), whether counterparty risk exposures are routinely measured on an intraday basis, whether Applicant has the operational capacity to measure counterparty risk exposures on an intraday basis, and the circumstances under which Applicant would conduct a non-routine intraday measurement of counterparty risk exposures;

(10) Preliminary forecasts regarding future counterparty risk exposure and assumptions upon which such forecasts of exposure are based;

(11) A description of any systems or software that Applicant will require clearing members to use in order to margin their positions in their internal bookkeeping systems, and whether and under what terms and conditions Applicant will provide such systems or software to clearing members; and

(12) A description of the extent to which counterparty risk can be offset through the clearing process (*i.e.*, the limitations, if any, on Applicant's duty to fulfill its obligations as the buyer to every seller and the seller to every buyer).

c. Limiting Risk – Provide as **Exhibit D-3**, a narrative discussion addressing the specifics of Applicant's clearing activities, including:

(1) How Applicant will collect financial information about its clearing members and other traders or market participants, monitor price movements, and mark to market, on a daily basis, the products and/or portfolios it clears;

(2) How Applicant will monitor accounts carried by clearing members, the accumulation of positions by clearing members and other market participants, and compliance with risk limits; and how it will use large trader information;

(3) How Applicant will determine variation margin levels and outstanding initial margin due;

(4) How Applicant will identify unusually large pays on a proactive basis before they occur;

(5) Whether and how Applicant will compare price moves and position information to historical patterns and to the financial information collected from its clearing members; and how it will identify unusually large pays on a daily basis;

(6) How Applicant will use various risk tools and procedures such as: (i) value-at-risk calculations; (ii) stress testing; (iii) back testing; and/or (iv) other risk management tools and procedures. If Applicant is currently clearing products for which it is seeking registration as a derivatives clearing organization, provide back testing results for actual

portfolios containing each such product, which demonstrate margin coverage at least at the 99 percent confidence level over the previous 252 trading days;

(7) How Applicant will communicate with clearing members, settlement banks, other derivatives clearing organizations, designated contract markets, swap execution facilities, major swap participants, swap data repositories, and other entities in emergency situations or circumstances that might require immediate action by the Applicant;

(8) How Applicant will monitor risk outside of its business hours;

(9) How Applicant will review its clearing members' risk management practices;

(10) Whether Applicant will impose credit limits and/or employ other risk filters (such as automatic system denial of entry of trades under certain conditions);

(11) Plans for handling "extreme market volatility" and how Applicant defines that term;

(12) An explanation of how Applicant will be able to offset positions in order to manage risk including: (i) ensuring both Applicant and clearing members have the operational capacity to do so; and (ii) liquidity of the relevant market, especially with regard to bilaterally executed products;

(13) Plans for managing accounts that are "too big" to liquidate and for conducting "what if" analyses on these accounts;

(14) If options are involved, how Applicant will manage the different and more complex risk presented by these products;

(15) If Applicant intends to clear swaps, whether and how often Applicant will offer multilateral portfolio compression exercises for its clearing members; and

(16) If Applicant intends to clear credit default swaps, credit default futures, and any derivatives that reference either credit default swaps or credit default futures, how Applicant will manage the unique risks associated with clearing these products, including but not limited to liquidity risk, currency risk, seasonable risk, compounding risk, jump-to-default risk or similar jump risk.

d. Existence of collateral (funds and assets) to apply to losses resulting from realized risk – Provide as **Exhibit D-4**:

(1) An explanation of the factors, process, and methodology used for calculating and setting required collateral levels, the required inputs, the appropriateness of those inputs, and an illustrative example;

(2) An analysis supporting the sufficiency of Applicant's collateral levels for capturing all or most price moves that may take place in one settlement cycle;

(3) A description of how Applicant will value open positions and collateral assets;

(4) A description and explanation of the forms of assets allowed as collateral, why they are acceptable, and whether there are any haircuts or concentration limits or charges on certain kinds of assets, including how often any such haircuts and concentration limits or charges are reviewed;

(5) An explanation of how and when Applicant will collect collateral, whether and under what circumstances it will collect collateral on an intraday basis, and what will happen

if collateral is not received in a timely manner. Include a proposed collateral collection schedule based on changes in market positions and collateral values; and

(6) If options are involved, a full explanation of how Applicant will manage the associated risk through the use of collateral including, if applicable, a discussion of Applicant's option pricing model, how it establishes its implied volatility scan range, and other matters related to the complex matter of managing the risk associated with the clearing of option contracts.

e. Orderly wind-down plan – Provide as **Exhibit D-5**, the derivatives clearing organization's orderly wind-down plan, and a demonstration that the plan complies with the requirements of § 39.13(k).

EXHIBIT E — SETTLEMENT PROCEDURES

☐ Attach as **Exhibit E**, documents that demonstrate compliance with the settlement procedures requirements set forth in § 39.14 of the Commission's regulations, including but not limited to:

a. Settlement – Provide as **Exhibit E-1**, a full description of the daily process of settling financial obligations on all open positions being cleared. This must include:

(1) Procedures for completing settlements on a timely basis during normal market conditions (and no less frequently than once each business day);

(2) Procedures for completing settlements on a timely basis in varying market circumstances including in the event of a default by the clearing member creating the largest financial exposure for Applicant in extreme but plausible market conditions;

(3) A description of how contracts will be marked to market on at least a daily basis;

(4) Identification of the settlement banks used by Applicant (including identification of the lead settlement bank, if applicable) and a copy of Applicant's settlement bank agreement(s). Such settlement bank agreements must (i) outline daily cash settlement procedures, (ii) state clearly when settlement fund transfers will occur, (iii) provide procedures for settlements on bank holidays when the markets are open, and (iv) ensure that settlements are final when effected;

(5) Identification of settlement banks that Applicant will allow its clearing members to use for margin calls and variation settlements;

(6) A description of the criteria and review process used by Applicant when selecting settlement banks to be used by the Applicant or its clearing members, including criteria addressing the capitalization, creditworthiness, access to liquidity, operational reliability, and regulation or supervision of such settlement banks;

(7) Procedures for monitoring the continued appropriateness of each approved settlement bank, including a description of how Applicant monitors the full range and concentration of its exposures to each settlement bank;

(8) The specific means by which settlement instructions are communicated from Applicant to the settlement bank(s);

(9) A timetable showing the flow of funds associated with the settlement of financial obligations with respect to all cleared products for a 24-hour period or such other

settlement timeframe specified with respect to a particular product; this may be presented in the form of a chart, as in the following example:

FORM DCO - SAMPLE SETTLEMENT CYCLE CHART [Specify U.S. Dollar or other currency as applicable]	
TRADE DATE = T **[INSERT TIME ZONE]** **[INSERT EXACT TIMES BELOW]**	**EXAMPLE OF SETTLEMENT ACTIVITY FOR WHICH TIMES SHOULD BE PROVIDED**
T: _____ pm	Last market closes (end of regular trading hours).
T: Approx. ____ pm	DCO/DCM/SEF establishes daily settlement price for each product based on information generated by its [INSERT NAME OF APPLICABLE CLEARING SYSTEM].
T: By _____ pm	Clearing members' position information for intraday settlement is obtained from DCO's clearing system.
T+1: Approx. ____ am	DCO provides daily initial margin (IM) and settlement variation/option premium (SVOP) amounts to clearing members and banks.
T+1: By ____ am	Banks commit to pay daily IM and SVOP amounts.
T+1: Approx. ____ am	Banks pay daily IM and SVOP amounts from clearing members to DCO.
T+1: Approx. __ am	Banks pay daily IM and SVOP amounts from DCO to clearing members.
T: Approx. ____ pm	DCO/DCM/SEF determines prices for intraday settlement.
T: Approx. ____ pm	Clearing members' position information for intraday settlement is obtained from DCO's clearing system.
T: By approx. ____ pm	DCO provides intraday IM and SVOP amounts to banks and clearing members.
T: By ____ pm	Banks commit to pay intraday IM and SVOP amounts.
T: Approx. ____ pm	Banks pay intraday IM and SVOP amounts from clearing members to DCO.
T: Approx. ____ pm	Banks pay intraday IM and SVOP amounts from DCO to clearing members.

(10) A description of what happens in the event that there are insufficient funds in a clearing member's settlement account;

(11) An explanation of how and when Applicant will collect variation margin, whether and under what circumstances it will collect variation margin on an intraday basis, what will

happen if variation margin is not received in a timely manner, and a proposed variation margin collection schedule based on changes in market prices;

(12) All the information above, to the extent relevant, for any products cleared that may be denominated in a foreign currency; and

(13) With respect to physical settlements, identify Applicant's rules that clearly state each obligation of Applicant with respect to physical deliveries, and explain how Applicant intends to identify and manage risks arising from physical settlement.

b. Recordkeeping – Provide as **Exhibit E-2**, a full description of the following:

(1) The nature and quality of the information collected concerning the flow of funds involved in clearing and settlement; and

(2) How such information will be recorded, maintained, and accessed.

c. Relationships with other clearing organizations – Provide as **Exhibit E-3**, a description of Applicant's relationships with other derivatives clearing organizations, clearing agencies, financial market utilities, or foreign entities that perform similar functions, including how compliance with the terms and conditions of agreements or arrangements with such other entities will be satisfied, *e.g.*, any netting or offset arrangements, cross-margining, portfolio margining, linkage, common banking, common clearing programs or limited guaranty agreements or arrangements.

EXHIBIT F — TREATMENT OF FUNDS

☐ Attach as **Exhibit F**, documents that demonstrate compliance with the treatment of funds requirements set forth in § 39.15 of the Commission's regulations, including but not limited to:

a. Safe custody – Provide as **Exhibit F-1**, documents that demonstrate:

(1) How Applicant will ensure the safekeeping of funds and assets belonging to clearing members and their customers in depositories and how Applicant will minimize the risk of loss or of delay in accessing such funds and assets;

(2) The depositories that will hold such funds and assets and any written agreements between or among such depositories, Applicant, or its clearing members regarding the legal status of the funds and assets and the specific conditions or prerequisites for movement of the funds and assets; and

(3) How Applicant will limit the concentration of risk in depositories where such funds and assets are deposited.

b. Segregation of customer and proprietary funds and assets – Provide as **Exhibit F-2**, documents that demonstrate:

(1) The appropriate segregation of customer funds and assets and associated acknowledgment documentation, including the acknowledgment letters required under §§ 1.20 and/or 22.5, as applicable, for each bank or trust company that Applicant will use for the deposit of customer funds and assets; and

(2) Requirements or restrictions regarding commingling customer funds and assets with proprietary funds and assets, obligating customer funds and assets for any purpose other than to purchase, clear, and settle the products Applicant is clearing, procedures regarding customer funds and assets which are subject to cross-margin or similar agreements, and any other aspects of the segregation of customer funds and assets.

c. Investment standards – Provide as **Exhibit F-3**, documents that demonstrate:

(1) Policies and procedures to ensure that funds and assets belonging to clearing members and their customers would only be invested in instruments with minimal credit, market, and liquidity risks, and that any investment of customer funds or assets would comply with the requirements of § 1.25; and

(2) How Applicant will obtain and keep associated records and data regarding the details of such investments.

EXHIBIT G — DEFAULT RULES AND PROCEDURES

Attach as **Exhibit G**, documents that demonstrate compliance with the default rules and procedures requirements set forth in § 39.16 of the Commission's regulations, including but not limited to:

a. Default Management Plan – Applicant must provide a copy of its written default management plan which must contain all of the information required by § 39.16(b), along with Applicant's most recently documented results of a test of its default management plan.

b. Definition of default – Applicant must describe or otherwise document:

(1) The events (activities, lapses, or situations) that will constitute a clearing member default;

(2) What action Applicant can take upon a default and how Applicant will otherwise enforce the rules applicable in the event of default, including the steps and the sequence of the steps that will be followed. Identify whether a Default Management Committee exists and, if so, its role in the default process; and

(3) An example of a hypothetical default scenario and the results of the default management process used in the scenario.

c. Remedial action – Applicant must describe or otherwise document:

(1) The authority and methods by which Applicant may take appropriate action in the event of the default of a clearing member which may include, among other things, liquidating positions, hedging, auctioning, allocating (including any obligations of clearing members to participate in auctions or to accept allocations), and transferring of customer accounts to another clearing member (including an explanation of the movement of positions and collateral on deposit); and

(2) Actions taken by a clearing member or other events that would put a clearing member on Applicant's "watch list" or similar device.

d. Process to address shortfalls – Applicant must describe or otherwise document:

(1) Procedures for the prompt application of Applicant and/or clearing member financial resources to address monetary shortfalls resulting from a default;

(2) How Applicant will make publicly available its default rules including a description of the priority of application of financial resources in the event of default (*i.e.*, the "waterfall"); and

(3) How Applicant will take timely action to contain losses and liquidity pressures and to continue to meet each obligation of Applicant.

e. Use of cross-margin programs – Describe or otherwise document, as applicable, how cross-margining programs will provide for fair and efficient means of covering losses in the event of a default of any clearing member participating in the program.

f. Customer priority rule – Describe or otherwise document rules and procedures regarding priority of customer accounts over proprietary accounts of defaulting clearing members and, where applicable, specifically in the context of specialized margin reduction programs such as cross-margining or common banking arrangements with other derivatives clearing organizations, clearing agencies, financial market utilities, or foreign entities that perform similar functions.

EXHIBIT H — RULE ENFORCEMENT

☐ Attach as **Exhibit H**, documents that demonstrate compliance with the rule enforcement requirements set forth in § 39.17 of the Commission's regulations, including but not limited to:

a. Surveillance – Describe or otherwise document arrangements and resources for the effective monitoring of compliance with Applicant's rules.

b. Enforcement – Describe or otherwise document:

(1) Arrangements and resources for enforcing compliance with Applicant's rules and addressing instances of non-compliance, including disciplinary tools such as limiting, suspending, or terminating a clearing member's access or member privileges; and

(2) The standards and any procedural protections Applicant will follow in imposing any such enforcement measure.

c. Dispute resolution – Describe or otherwise document arrangements and resources for resolution of disputes between clearing members and Applicant.

EXHIBIT I — SYSTEM SAFEGUARDS

☐ Attach as **Exhibit I**, documents that demonstrate compliance with the system safeguards requirements set forth in § 39.18 of the Commission's regulations, including but not limited to:

a. A description of Applicant's program of risk analysis and oversight with respect to its operations and automated systems. This program must be designed to ensure daily processing, clearing, and settlement of transactions and address each of the following categories of risk:

(1) Information security;

(2) Business continuity-disaster recovery planning and resources;

(3) Capacity and performance planning;

(4) Systems operations;

(5) Systems development and quality assurance; and

(6) Physical security and environmental controls.

b. An explanation of how Applicant will establish and maintain resources that allow for the fulfillment of its program of risk analysis and oversight with respect to its operations and automated systems, and a description of such resources, including:

(1) A description of how Applicant will periodically verify that its resources are adequate to ensure daily processing, clearing, and, settlement;

(2) A demonstration that Applicant's automated systems are reliable, secure, and have (and will continue to have) adequate scalable capacity;

(3) A description of the physical, technological and personnel resources and procedures used by Applicant as part of its business continuity and disaster recovery plan, and support for the conclusion that these resources are sufficient to enable the Applicant to resume daily processing, clearing, and settlement no later than the next business day following a disruption; and

(4) A statement identifying which such resources are Applicant's own resources and which are provided by a service provider (outsourced). For resources that are outsourced, provide (i) all contracts governing the outsourcing arrangements, including all schedules and other supplemental materials, and (ii) a demonstration that Applicant employs personnel with the expertise necessary to enable them to supervise the service provider's delivery of the services.

c. An explanation of how Applicant will ensure the proper functioning of its systems, including its program for the periodic objective testing and review of its systems and back-up facilities (including all of its own and outsourced resources), and verification that all such resources will work effectively together;

d. Identification of the persons conducting the testing, including information as to their qualifications and independence;

e. A description of Applicant's emergency procedures, including a copy of its written plan for business continuity and disaster recovery and a description of how Applicant will coordinate its business continuity and disaster recovery plan (including testing) with its clearing members and providers of essential services such as telecommunications, power, and water; and

f. A description of how Applicant will report exceptional events and planned changes to the Commission as required by §§ 39.18(g) and 39.18(h).

EXHIBIT J — REPORTING

☐ Attach as **Exhibit J**, documents that demonstrate compliance with the reporting requirements set forth in § 39.19 of the Commission's regulations, including but not limited to:

a. A description of how Applicant will make available to Commission staff all the information Commission staff needs in order to carry out effective oversight, *e.g.*, the internal staff procedures Applicant will follow to provide such information. If the laws or regulations of any foreign country in which Applicant is incorporated or organized require any approval(s) by a foreign regulatory authority with respect to the provision of any information to the Commission, Applicant must submit evidence that such approval(s) have been obtained.

b. A representation that the Applicant will submit the information required to satisfy the daily, quarterly, annual, event-specific, and requested reporting requirements specified in § 39.19(c) of the Commission's regulations, in the format and manner and within the time specified by the Commission.

EXHIBIT K — RECORDKEEPING

☐ Attach as **Exhibit K**, documents that demonstrate compliance with the recordkeeping requirements set forth in § 39.20 of the Commission's regulations, including but not limited to:

a. Applicant's recordkeeping and record retention policies and procedures;

b. The different activities related to the entity as a derivatives clearing organization for which it must maintain records;

c. The manner in which records relating to swaps and swap data are gathered and maintained; and

d. How Applicant will satisfy the performance standards of § 1.31 as applicable to derivatives clearing organizations, including:

(1) What "full" or "complete" will encompass with respect to each type of book or record that will be maintained;

(2) The form and manner in which books or records will be compiled and maintained with respect to each type of activity for which such books or records will be kept;

(3) Confirmation that books and records will be open to inspection by any representative of the Commission or of the U.S. Department of Justice;

(4) How long books and records will be readily available and how they will be made readily available during the first two years; and

e. How long books and records will be maintained (and confirmation that, in any event, they will be maintained as required in § 1.31).

EXHIBIT L — PUBLIC INFORMATION

☐ Attach as **Exhibit L**, documents that demonstrate compliance with the public information requirements set forth in § 39.21 of the Commission's regulations, including but not limited to:

a. Applicant's procedures for making its rulebook, a list of all current clearing members, and all other information listed in § 39.21(c) readily available to the general public, in a timely manner, by posting such information on Applicant's website;

b. The URLs for Applicant's website for each item listed in § 39.21(c)(1) through (c)(9).

c. Any other information routinely made available to the public by Applicant;

d. How Applicant will make information available to clearing members and market participants in order to allow such persons to become familiar with Applicant's procedures before participating in clearing operations; and

e. How clearing members will be informed of their specific rights and obligations preceding a default and upon a default, and of the specific rights, options, and obligations of Applicant preceding and upon a clearing member's default.

EXHIBIT M — INFORMATION SHARING

☐ Attach as **Exhibit M**, documents that demonstrate compliance with the information sharing requirements set forth in § 39.22 of the Commission's regulations, including but not limited to:

a. The appropriate and applicable information sharing agreements to which Applicant is, or intends to be, a party including any domestic or international information-sharing agreements or arrangements, whether formal or informal, which involve or relate to Applicant's operations, especially as it relates to measuring and addressing counterparty risk;

b. A description of the types of information expected to be shared and how that information will be shared;

c. An explanation as to how information obtained pursuant to any information-sharing agreements or arrangements would be used to further the objectives of Applicant's risk management program and any of its surveillance programs including financial surveillance and continuing eligibility of its clearing members; and

d. An explanation as to how Applicant expects to obtain accurate information pursuant to the information-sharing agreement or arrangement and the mechanisms or procedures which would allow for timely use and application of all information.

EXHIBIT N — ANTITRUST CONSIDERATIONS

☐ Attach as **Exhibit N**, documents that demonstrate compliance with the antitrust considerations requirements set forth in § 39.23 of the Commission's regulations, including but not limited to policies or procedures to ensure compliance with the antitrust considerations requirements.

EXHIBIT O — GOVERNANCE

☐ Attach as **Exhibit O**, documents that demonstrate compliance with the governance fitness standards requirements set forth in § 39.24 of the Commission's regulations, including but not limited to:

a. A copy of:

(1) The charter (or mission statement) of Applicant (if not attached as **Exhibit A-8**);

(2) The charter (or mission statement) of Applicant's Board of Directors, each committee composed entirely or in part of members of the Board of Directors (including any Executive Committee), as well as each other committee that has the authority to amend or constrain actions of Applicant's Board of Directors (if not attached as **Exhibit A-8**);

(3) If another entity "operates" the Applicant, the charter (or mission statement) of such entity's Board of Directors (if not attached as **Exhibit A-8**); and a description of the manner in which the Applicant will ensure that such entity's officers, directors, employees, and agents and such entity's books and records shall be subject to the authority of the Commission pursuant to the Act and the Commission's regulations thereunder; and

(4) An internal organizational chart showing the lines of responsibility and accountability for each operational unit.

b. A description of how Applicant's governance arrangements place a high priority on Applicant's safety and efficiency and explicitly support the stability of the broader financial system and other relevant public interest considerations of clearing members, customers of clearing members, and other relevant stakeholders;

c. A description of how the Board of Directors makes certain that Applicant's design, rules, overall strategy, and major decisions appropriately reflect the legitimate interests of clearing members, customers of clearing members, and other relevant stakeholders;

d. A description of how major decisions of the Board of Directors are clearly disclosed to clearing members and other relevant stakeholders, and will be disclosed to the Commission, and how major decisions of the Board of Directors having a broad market impact are clearly disclosed to the public, to the extent consistent with other statutory and regulatory requirements on confidentiality and disclosure;

e. A description of how Applicant's governance arrangements are disclosed, as appropriate, to clearing members, customers of clearing members, Applicant's owners, and the public, and will

be disclosed to the Commission, to the extent consistent with other statutory and regulatory requirements on confidentiality and disclosure;

f. A description of how Applicant's governance arrangements: (1) describe the structure pursuant to which the Board of Directors, committees, and management operate; (2) include clear and direct lines of responsibility and accountability; (3) clearly specify the roles and responsibilities of the Board of Directors and its committees, including the establishment of a clear and documented risk management framework; and (4) clearly specify the roles and responsibilities of management;

g. A description of the procedures pursuant to which Applicant's Board of Directors oversees Applicant's chief risk officer, risk management committee, and material risk decisions;

h. A description of how Applicant provides risk management, internal control, and internal audit personnel with sufficient independence, authority, resources, and access to the Board of Directors so that the operations of Applicant are consistent with its risk management framework;

i. A description of how Applicant's governance arrangements assign responsibility and accountability for risk decisions, including in crises and emergencies, and assign responsibility for implementing default rules and procedures, system safeguard rules and procedures, and as applicable, recovery and wind-down plans;

j. A description of the fitness standards applicable to members of the Board of Directors, members of any disciplinary committee, clearing members, any other individual or entity with direct access to settlement or clearing activities, and any party affiliated with any of the above individuals or entities, including a description or other documentation explaining how Applicant will collect and verify information that supports compliance with the fitness standards and how Applicant will enforce compliance with such standards; and

k. A description of how Applicant will make certain that: (1) its Board of Directors consists of suitable individuals having appropriate skills and incentives; (2) the performance of the Board of Directors and individual directors are reviewed on a regular basis; and (3) managers have the appropriate experience, skills, and integrity necessary to discharge operational and risk management responsibilities.

EXHIBIT P — CONFLICTS OF INTEREST

☐ Attach as **Exhibit P**, documents that demonstrate compliance with the conflicts of interest requirements set forth in § 39.25 of the Commission's regulations, including but not limited to:

a. A description of Applicant's rules to minimize conflicts of interest in its decision-making process and how it enforces those rules;

b. A description of Applicant's process for resolving such conflicts of interest or for making fair and non-biased decisions in the event of a conflict of interest; and

c. A description of Applicant's procedures for identifying, addressing, and managing conflicts of interest involving members of its Board of Directors.

EXHIBIT Q — COMPOSITION OF GOVERNING BOARDS

☐ Attach as **Exhibit Q**, documents that demonstrate compliance with the composition of governing boards requirements set forth in § 39.26, including but not limited to documentation describing the composition of Applicant's Board of Directors, including the number of market participants.

EXHIBIT R — LEGAL RISK CONSIDERATIONS

☐ Attach as **Exhibit R**, documents that demonstrate compliance with the legal risk considerations requirements set forth in § 39.27 of the Commission's regulations, including but not limited to:

a. A discussion of how Applicant operates pursuant to a well-founded, transparent, and enforceable legal framework that addresses each aspect of the activities of Applicant. The framework must provide for Applicant to act as a counterparty, including, as applicable:

(1) Novation;

(2) Netting arrangements;

(3) Applicant's interest in collateral (including margin);

(4) The steps that Applicant can take to address a default of a clearing member, including but not limited to, the unimpeded ability to liquidate collateral and close out or transfer positions in a timely manner;

(5) Finality of settlement and funds transfers that are irrevocable and unconditional when effected (no later than when Applicant's accounts are debited and credited); and

(6) Other significant aspects of Applicant's operations, risk management procedures, and related requirements.

b. If Applicant provides, or will provide, clearing services outside the United States, Applicant must provide a memorandum from local counsel analyzing insolvency issues in the foreign jurisdiction where Applicant is based, which should describe or otherwise document:

(1) The manner in which Applicant's clearing rules and procedures pertaining to customer funds ("FCM Clearing Rules") segregate such funds, in accordance with section 4d of the Act and the Commission's regulations ("ring-fence");

(2) The basis for the conclusion that the arrangements to ring-fence customer funds set forth in the FCM Clearing Rules would be effective, under any relevant non-U.S. law or regulation, in the insolvency of a futures commission merchant ("FCM") clearing member or of the Applicant itself, including how such customer funds would not, therefore, form part of the general estate for distribution to the unsecured creditors of an insolvent FCM clearing member or of the Applicant;

(3) The basis for the conclusion that the laws of the jurisdiction in which Applicant is domiciled and the laws of any other relevant jurisdiction (*e.g.*, other jurisdictions in which customer funds may be held) support the enforceability of the FCM Clearing Rules;

(4) The basis for the conclusion that a local court or insolvency official in the jurisdiction in which Applicant is domiciled (and any other relevant jurisdiction) respect the choice of U.S. law in governing specific aspects of the FCM Clearing Rules to determine the extent of rights that Applicant has with respect to customer funds and be bound to follow the FCM Clearing Rules with respect to customer funds. The memorandum should explain whether the application of U.S. law to customer funds would contravene any public policy in the jurisdiction in which Applicant is domiciled (or any other relevant jurisdiction);

(5) The basis for the conclusion that the FCM Clearing Rules are enforceable (*i.e.*, the conclusion that the Applicant may take default action, pursuant to the FCM Clearing Rules, discretely against each FCM clearing member in respect of FCM customer

accounts without interference from the law of insolvency applicable to the FCM clearing member or to Applicant); and

(6) The basis for the conclusion that following the default of an FCM clearing member or of the Applicant, Applicant will be able to comply with the provisions of the U.S. Bankruptcy Code and Commission regulations with respect to the pro rata distribution requirements set forth therein, as well as comply with any relevant order or direction by a U.S. court (including a bankruptcy court) regarding the distribution of customer funds.

In all cases, the memorandum must include separate discussions of the legal analysis and conclusions with respect to: (a) the default of the Applicant, and (b) the default of an FCM clearing member.

■ 8. Revise Appendix B to part 39—Subpart C Election Form to read as follows:

COMMODITY FUTURES TRADING COMMISSION

SUBPART C ELECTION FORM

GENERAL INSTRUCTIONS: Intentional misstatements or omissions of fact may constitute federal criminal violations (7 U.S.C. 13 and 18 U.S.C. 1001).

DEFINITIONS

Unless the context requires otherwise, all terms used in this Subpart C Election Form have the same meaning as in the Commodity Exchange Act ("Act"), and in the General Rules and Regulations of the Commodity Futures Trading Commission ("Commission") thereunder. All references to Commission regulations are found at 17 CFR Ch. I.

For purposes of this Subpart C Election Form, the term "Applicant" shall mean a derivatives clearing organization that is filing this Subpart C Election Form with a Form DCO as part of an application for registration as a derivatives clearing organization pursuant to section 5b of the Act and 17 CFR 39.3(a).

GENERAL INSTRUCTIONS

1. Any derivatives clearing organization requesting an election to become subject to subpart C of part 39 of the Commission's regulations must file this Subpart C Election Form. The Subpart C Election Form includes the election to be subject to the provisions of subpart C of part 39 of the Commission's regulations, certain required certifications, disclosures, and exhibits, and any supplements or amendments thereto filed pursuant to 17 CFR 39.31(b) or (c) (collectively, the "Subpart C Election Form").
2. Individuals' names, except the executing signature, shall be given in full (Last Name, First Name, Middle Name).
3. The signatures required in this Subpart C Election Form shall be the manual signatures of a duly authorized representative of the derivatives clearing organization as follows: If the Subpart C Election Form is filed by a corporation, it must be signed in the name of the corporation by a principal officer duly authorized; if filed by a limited liability company, it must be signed in the name of the limited liability company by a manager or member duly authorized to sign on the limited liability company's behalf; if filed by a partnership, it must be signed in the name of the partnership by a general partner duly authorized; if filed by an unincorporated organization or association which is not a partnership, it must be signed in the name of such organization or association by the managing agent, *i.e.*, a duly authorized person who directs or manages or who participates in the directing or managing of its affairs.
4. All applicable items must be answered in full.
5. Under section 5b of the Act and the Commission's regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this Subpart C Election Form from any Applicant seeking registration as a derivatives clearing organization and from any registered derivatives clearing organization.
6. Disclosure of the information specified in this Subpart C Election Form is mandatory prior to the processing of the election to become a derivatives clearing organization subject to the provisions of subpart C of part 39 of the Commission's regulations. The Commission may determine that additional information is required in order to process such election.
7. A Subpart C Election Form that is not prepared and executed in compliance with applicable requirements and instructions may be returned as not acceptable for filing. Acceptance of this Subpart C Election Form, however, shall not constitute a finding that the Subpart C Election Form is acceptable as filed or that the information is true, current or complete.
8. As provided in 17 CFR 39.31(d), except in cases where a derivatives clearing organization submits a request for confidential treatment with the Secretary of the Commission pursuant to the Freedom of Information Act and 17 CFR 145.9, information supplied in this Subpart C Election Form will be included routinely in the public files of the Commission and will be made available for inspection by any interested person.

APPLICATION AMENDMENTS

1. 17 CFR 39.31(b)(3) and (c)(4) require a derivatives clearing organization that has submitted a Subpart C Election Form to promptly amend its Subpart C Election Form if it discovers a material omission or error in, or if there is a material

change in, the information provided to the Commission in the Subpart C Election Form or other information provided in connection with the Subpart C Election Form.

2. When amending a Subpart C Election Form, a derivatives clearing organization must re-file the Election and Certifications page, amended if necessary, and including all required executing signatures, and attach thereto revised exhibits or other materials marked to show changes, as applicable.

WHERE TO FILE

1. This Subpart C Election Form must be filed electronically with the Secretary of the Commission in the format and manner specified by the Commission.

2. Any supplemental information must be filed electronically with the Division of Clearing and Risk, or any successor division, in the format and manner specified by the Commission.

COMMODITY FUTURES TRADING COMMISSION

SUBPART C ELECTION FORM

ELECTION AND CERTIFICATIONS

_____

Exact Name of the Derivatives Clearing Organization
(as set forth in its charter, if an Applicant,
or as set forth in its most recent order of registration, if registered with the Commission)

□ Check here and complete sections 1 and 3 below, if the organization is an Applicant.

□ Check here and complete sections 2 and 3 below, if the organization currently is registered with the Commission as a derivatives clearing organization.

1. The derivatives clearing organization named above hereby elects to become subject to the provisions of subpart C of part 39 of the Commission's regulations in the event that the Commission approves its application for registration as a derivatives clearing organization.

   The derivatives clearing organization and the undersigned each certify that, in the event that the Commission approves the derivatives clearing organization's application for registration and permits its election to become subject to subpart C of part 39 of the Commission's regulations, the derivatives clearing organization will remain in compliance with the provisions contained in subpart C of part 39 of the Commission's regulations until the election is rescinded pursuant to 17 CFR 39.31(e).

_____

Name of Derivatives Clearing Organization

By:_____

Manual Signature of Duly Authorized Person

_____

Print Name and Title of Signatory

2. The derivatives clearing organization named above hereby elects to become subject to the provisions of subpart C of part 39 of the Commission's regulations as of:

   _____ ("Effective Date")

   [insert date, which must be **at least 10 business days after the date this Subpart C Election Form is filed with the Commission**].

The derivatives clearing organization and the undersigned each certify that, as of the Effective Date set forth above, the derivatives clearing organization shall be in compliance with subpart C of part 39 of the Commission's regulations, and that the derivatives clearing organization will remain in compliance with provisions contained in subpart C of part 39 of the Commission's regulations until this election is rescinded pursuant to 17 CFR 39.31(e).

_____

Name of Derivatives Clearing Organization

By:_____

Manual Signature of Duly Authorized Person

_____

Print Name and Title of Signatory

3. The derivatives clearing organization named above has duly caused this Subpart C Election Form (which includes, as an integral part thereof, the Election and Certifications and all Disclosures and Exhibits) to be signed on its behalf by its duly authorized representative as of the _____ day of _____, 20_____. The derivatives clearing organization and the undersigned each represent hereby that, to the best of their knowledge, all information contained in this Subpart C Election Form is true, current and complete in all material respects. It is understood that all required items including, without limitation, the Election and Certifications and Disclosures and Exhibits, are considered integral parts of this Subpart C Election Form.

_____

Name of Derivatives Clearing Organization

By:_____

Manual Signature of Duly Authorized Person

_____

Print Name and Title of Signatory

COMMODITY FUTURES TRADING COMMISSION

PART 39, SUBPART C ELECTION FORM

DISCLOSURES AND EXHIBITS

Each derivatives clearing organization that requests an election to become subject to the provisions set forth in subpart C of part 39 of the Commission's regulations shall provide the Disclosures and Exhibits set forth below:

DISCLOSURES:

The derivatives clearing organization shall publish on its website in a readily identifiable location, the following documents that are required to be completed pursuant to 17 CFR 39.37:

1. The derivatives clearing organization's responses to the Disclosure Framework for Financial Market Infrastructures ("Disclosure Framework"), published by the Committee on Payments and Market Infrastructure ("CPMI") and the Board of the International Organization of Securities Commissions ("IOSCO"). The derivatives clearing organization's responses must be completed in accordance with section 2.0 and Annex A of the Disclosure Framework and must fully explain how the derivatives clearing organization observes the Principles for Financial Market Infrastructures ("PFMIs") published by CPMI-IOSCO.

   Provide the URL to the specific page on the derivatives clearing organization's website where its responses to the Disclosure Framework may be found:

   _____

2. The most recent quantitative disclosure prepared by the derivatives clearing organization that satisfies the Public Quantitative Disclosure Standards for Central Counterparties published by CPMI-IOSCO ("Quantitative Disclosure").

   If applicable, provide the URL to the specific page on the derivatives clearing organization's website where its Quantitative Disclosure may be found:

   _____

EXHIBITS:

EXHIBIT INSTRUCTIONS:

1. The derivatives clearing organization must include a Table of Contents listing each Exhibit required by this Subpart C Election Form.

2. If the derivatives clearing organization is an Applicant, in its Form DCO, the derivatives clearing organization may summarize such information and provide a cross-reference to the Exhibit in this Subpart C Election Form that contains the required information.

The derivatives clearing organization shall provide the following Exhibits to this Subpart C Election Form:

EXHIBIT A – COMPLIANCE WITH SUBPART C

Attach, as Exhibit A, a regulatory compliance chart that sets forth citations to the relevant rules, policies, and procedures of the derivatives clearing organization that address §§ 39.32-39.39 of the Commission's regulations and a narrative summary of the manner in which the derivatives clearing organization will comply with each regulation.

The narrative summary shall: (a) specifically and meaningfully explain the manner in which the derivatives clearing organization will comply with each such regulation; (b) sufficiently integrate references to documents contained in the exhibits to this Subpart C Election Form to clearly convey the derivatives clearing organization's policies and procedures with respect to each regulation; and (c) readily identify within such exhibits those derivatives clearing organization rules and governing documents that support the certifications set forth in this Subpart C Election Form. The narrative summary may be included as part of the compliance chart required by Exhibit A or a separate document within Exhibit A.

All citations and compliance summaries shall be separated by individual regulation and shall be clearly labeled with the corresponding regulation.

EXHIBIT B – FINANCIAL RESOURCES

Attach, as **Exhibit B**, information and documents that demonstrate compliance with the financial resource requirements set forth in § 39.33 of the Commission's regulations, including but not limited to:

a. Valuation of financial resources – Attach as **Exhibit B-1**, a demonstration that assessments for additional guaranty fund contributions (*i.e.*, guaranty fund contributions that are not prefunded) are not included in calculating the financial resources available to meet the derivatives clearing organization's obligations under § 39.33(a) or § 39.11(a)(1).

b. Liquidity resources – Attach as **Exhibit B-2**, a demonstration that the derivatives clearing organization maintains eligible liquidity resources as required under § 39.33(c).

c. Liquidity providers – Attach as **Exhibit B-3**, a demonstration that the derivatives clearing organization's liquidity providers meet the requirements as set forth in § 39.33(d).

d. Documentation of financial resources and liquidity resources – Attach as **Exhibit B-4**, a demonstration that the derivatives clearing organization documents its supporting rationale for, and has appropriate governance arrangements relating to, the amount of total financial resources it maintains pursuant to § 39.33(a) and the amount of total liquidity resources it maintains pursuant to § 39.33(c).

EXHIBIT C – SYSTEM SAFEGUARDS

Attach, as **Exhibit C**, information and documents that demonstrate compliance with the system safeguards requirements set forth in § 39.34 of the Commission's regulations, including but not limited to:

a. Attach as **Exhibit C-1**, a demonstration that, notwithstanding § 39.18(c)(2), the business continuity and disaster recovery plan described in § 39.18(c)(1) and the physical, technological, and personnel resources described in § 39.18(c)(1) enable the derivatives clearing organization to recover its operations and resume daily processing, clearing, and settlement no later than two hours following the disruption, for any disruption including a wide-scale disruption.

b. Attach as **Exhibit C-2**, a demonstration that the derivatives clearing organization maintains a degree of geographic dispersal of physical, technological and personnel resources consistent with the requirements set forth in § 39.34(b).

c. Attach as **Exhibit C-3**, a demonstration that the derivatives clearing organization conducts regular, periodic tests of its business continuity and disaster recovery plans and resources and its capacity to achieve the required recovery time objective in the event of a wide-scale disruption, and that the provisions of § 39.18(e) apply to such testing.

EXHIBIT D – DEFAULT RULES AND PROCEDURES FOR UNCOVERED LOSSES OR SHORTFALLS

Attach, as **Exhibit D**, information and documents that demonstrate compliance with the requirements for default rules and procedures for uncovered losses or shortfalls set forth in § 39.35 of the Commission's regulations, including but not limited to:

a. Allocation of uncovered credit losses – Attach as **Exhibit D-1**, a demonstration that the derivatives clearing organization has explicit rules and procedures that address fully any loss arising from any individual or combined default relating to any clearing member's obligations to the derivatives clearing organization.

b. Allocation of uncovered liquidity shortfalls – Attach as **Exhibit D-2**, a demonstration that the derivatives clearing organization has established rules and/or procedures that enable it to promptly meet all of its settlement obligations, on a same day and, as appropriate, intraday and multiday basis, in the context of the occurrence of the scenarios set forth in § 39.35(b)(1)(i) and (ii). The derivatives clearing organization must demonstrate how such rules and procedures comply with the requirements of § 39.35(b)(2).

EXHIBIT E – RISK MANAGEMENT

Attach, as **Exhibit E**, information and documents that demonstrate compliance with the risk management requirements set forth in § 39.36 of the Commission's regulations, including but not limited to:

a. Stress tests of financial resources – Attach as **Exhibit E-1**, a demonstration that the derivatives clearing organization conducts stress tests of its financial resources in accordance with the standards and practices set forth in § 39.36(a);

b. Sensitivity analysis of margin model – Attach as **Exhibit E-2**, a demonstration that the derivatives clearing organization conducts on a monthly basis or more frequently as appropriate, a sensitivity analysis of its margin models to analyze and monitor model performance and overall margin coverage. The derivatives clearing organization shall demonstrate that the sensitivity analysis is conducted on both actual and hypothetical positions and in accordance with the requirements set forth in § 39.36(b)(2) and (3);

c. Stress tests of liquidity resources – Attach as **Exhibit E-3**, a demonstration that the derivatives clearing organization conducts stress tests of its liquidity resources in accordance with the standards and practices set forth in § 39.36(c);

d. Theoretical and empirical properties – Attach as **Exhibit E-4**, a demonstration that the derivatives clearing organization conducts an assessment of the theoretical and empirical properties of its margin model for all products it clears;

e. Validation – Attach as **Exhibit E-5**, a demonstration that the derivatives clearing organization conducts on an annual basis, a full validation of its financial risk management model and its liquidity risk management model in accordance with the requirements set forth in § 39.36(e);

f. Custody and investment risk – Attach as **Exhibit E-6**, a demonstration that the custody and investment arrangements of the derivatives clearing organization's own funds and assets are subject to the same requirements as those specified in § 39.15 for the funds and assets of clearing members, and apply to the derivatives clearing organization's own funds and assets to the same extent as if such funds and assets belonged to clearing members; and

g. Settlement banks – Attach as **Exhibit E-7**, a demonstration that the derivatives clearing organization, monitors, manages, and limits its credit and liquidity risks arising from its settlement banks; establishes and monitors adherence to strict criteria for its settlement banks that take account of, among other things, their regulation and supervision, creditworthiness, capitalization, access to liquidity, and operational reliability; and monitors and manages the concentration of credit and liquidity exposures to its settlement banks.

EXHIBIT F – RECOVERY AND WIND-DOWN

Attach, as **Exhibit F**, information and documents that demonstrate compliance with the recovery and orderly wind-down requirements set forth in § 39.39 of the Commission's regulations, including but not limited to:

a. Recovery and wind-down plans – Attach as **Exhibit F-1** the derivatives clearing organization's recovery plan, orderly wind-down plan, supporting information for these plans, and a demonstration that the plans comply with the requirements of § 39.39(c).

b. Financial resources to support recovery – Attach as **Exhibit F-2**, a narrative summary that demonstrates how the financial statements filed with the Commission pursuant to §§ 39.11 and 39.33 demonstrate that the derivatives clearing organization maintains sufficient unencumbered liquid financial assets, funded by the equity of its owners, to implement its recovery or wind-down plans. The narrative summary shall include a description of how the derivatives clearing organization complies with the requirements of § 39.39(d).

c. Additional financial resources – Attach as **Exhibit F-3**, a demonstration that the derivatives clearing organization maintains viable plans for raising additional financial resources as required under § 39.39(e).

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PART 190—BANKRUPTCY RULES

■ 9. The authority citation for part 190 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6c, 6d, 6g, 7a–1, 12, 12a, 19 and 24; 11 U.S.C. 362, 546, 548, 556, and 761–767, unless otherwise noted.

■ 10. In § 190.12, revise paragraph (b)(1) to read as follows:

§ 190.12 Required reports and records.

* * * * *

(b) * * *

(1) As soon as practicable following the commencement of a proceeding that is subject to this subpart and in any event no later than three hours following the later of the commencement of such proceeding or the appointment of the trustee, the debtor shall provide to the trustee copies of each of the most recent reports that the debtor was required to file with the Commission under § 39.19(c) of this chapter, including copies of any reports required under §§ 39.19(c)(2), (3), and (4) of this chapter (including the most up-to-date version of any recovery and orderly wind-down plans of the debtor maintained pursuant to § 39.13(k) or § 39.39(b) of this chapter) that the debtor filed with the Commission during the preceding 12 months.

* * * * *

■ 11. In § 190.15, revise paragraphs (a) and (c) to read as follows:

§ 190.15 Recovery and wind-down plans; default rules and procedures.

(a) *Prohibition on avoidance of actions taken pursuant to recovery and orderly wind-down plans.* Subject to the provisions of section 766 of the Bankruptcy Code and §§ 190.13 and 190.18, the trustee shall not avoid or prohibit any action taken by a debtor subject to this subpart that was reasonably within the scope of, and was provided for, in any recovery and orderly wind-down plans maintained by the debtor pursuant to § 39.13(k) or § 39.39(b) of this chapter and filed with the Commission pursuant to § 39.19 of this chapter.

* * * * *

(c) *Implementation of recovery and orderly wind-down plans.* In administering a proceeding under this subpart, the trustee shall, in consultation with the Commission, take actions in accordance with any recovery and orderly wind-down plans maintained by the debtor pursuant to § 39.13(k) or § 39.39(b) of this chapter and filed with the Commission pursuant to § 39.19 of this chapter, to the extent reasonable and practicable, and consistent with the protection of customers.

* * * * *

■ 12. In § 190.19, revise paragraph (b)(1) to read as follows:

§ 190.19 Support of daily settlement.

* * * * *

(b) * * *

(1) Such funds shall be supplemented with the property described in paragraphs (b)(1)(i) through (iv) of this section, as applicable, to the extent necessary to meet the shortfall, in accordance with the derivatives clearing organization's default rules and procedures adopted pursuant to § 39.16 and, as applicable, § 39.35 of this chapter, and (with respect to paragraph (b)(1)(ii) of this section) any recovery and orderly wind-down plans maintained pursuant to § 39.13(k) or

§ 39.39(b) of this chapter and submitted pursuant to § 39.19 of this chapter. Such funds shall be included as member property and customer property other than member property in the proportion described in paragraph (a) of this section, and shall be distributed promptly to members' house accounts and members' customer accounts which accounts are entitled to payment of such funds as part of that daily settlement.

* * * * *

Issued in Washington, DC, on July 3, 2023 by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Derivatives Clearing Organizations Recovery and Orderly Wind-Down Plans; Information for Resolution Planning—Voting Summary and Chairman's and Commissioners' Statements

Appendix 1—Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson and Goldsmith Romero voted in the affirmative. Commissioner Pham voted to concur. Commissioner Mersinger voted in the negative.

Appendix 2—Statement of Support of Chairman Rostin Behnam

As a fundamental pillar of global financial reform efforts and our most universally effective tool in the box, central clearing reduces risks, fosters resiliency, and builds continuity and confidence in financial markets. The global implementation of the central clearing mandate has produced a significant demand for clearing services and a substantial increase in overall clearing volumes in the swaps market. However, clearing is not without risk. Policymakers, both bank and market regulators, must take the necessary steps to ensure that clearinghouses are not simply commercially viable, but can continue to operate and provide critical services as expected, even in times of extreme market stress.

Today, the Commission considered a proposed rule to amend the requirements related to recovery and orderly wind-down and resolution planning for Derivatives Clearing Organizations (DCOs) that have been designated as systemically important (SIDCOs) as well as other DCOs that elect to comply with DCO core principles by satisfying the higher standards for SIDCOs—referred to as ''Subpart C DCOs.'' At a high level, the proposal would codify and expand existing staff guidance,[1] as well as propose to specify the types of information that a SIDCO or Subpart C DCO may be required to provide to the Commission to share with the FDIC for resolution planning. Building on the themes of risk management, resilience and contingency planning, this proposal aims to build consistency, awareness, and preparedness across SIDCOs and Subpart C DCOs by providing greater predictability should an unlikely event occur that prevents a DCO from being able to meet its obligations, provide critical services to its members, or if a DCO ultimately needs to wind-down operations in an orderly manner. That is why I fully support the proposal.

Today's proposal would set forth in Commission regulation an expectation that SIDCOs and Subpart C DCOs, as financial market infrastructures, have comprehensive and effective recovery plans and orderly wind-down plans. These plans would analyze the services that clearing members and others rely upon the DCOs to provide, as well as the necessary services that others provide to the DCOs. DCOs would also be required to consider, as part of their planning process, a thorough set of scenarios that might potentially create losses that challenge their ability to provide their critical operations and services. Some scenarios that we specify may not be applicable to every DCO, and the proposal notes scenarios are to be considered to the extent they are possible in light of the DCO's structure and activities. However, the proposal, reiterating existing guidance, cautions DCOs considering whether a scenario is possible to avoid confusing ''low risk'' with ''zero risk.'' There is a difference. A low risk scenario, which is remotely possible, must be addressed by the plans whereas a scenario that is not possible would not. It is critical that scenario analyses and, in turn, the preparation of recovery and orderly wind-down plans occur during business-as-usual operations, and not during times of stress, in order to ensure thorough preparation and planning.

I have remarked before, among the many lessons learned from the 2008 financial crisis, the interconnectedness of our global financial system is one of, if not the single, most important. All risk analyses must include a holistic examination of the systemic relationships throughout all of our financial markets. The proposal would require a SIDCO and Subpart C DCO to identify its financial and operational interconnections and interdependencies, plans for resilient staffing arrangements, governance structure, and any contracts or agreements subject to alteration in the event of orderly wind-down. The proposal also requires each SIDCO and Subpart C DCO to assess the full range of options for recovery and orderly wind-down, to test the plans, and to notify clearing members when recovery or wind-down is initiated.

In light of recent market events, the proposal approved by the Commission would require all DCOs, not just SIDCOs and Subpart C DCOs, to submit viable plans for orderly wind-down. The wind-down plan requirements for non-SIDCOs that are not Subpart C DCOs are similar in that the plan must identify scenarios, triggers, and available tools.

Finally, the proposal expands on existing regulation requiring SIDCOs and Subpart C DCOs to have procedures in place for providing the Commission with information needed for resolution planning. In the spirit of regulatory transparency, this proposal identifies categories of information that a SIDCO or Subpart C DCO would be required to provide to the Commission for such planning.

I look forward to the public's submission of comments and feedback on this proposed rulemaking.

Appendix 3—Statement of Commissioner Kristin N. Johnson

Derivatives clearing organizations (DCOs) play a significant role in our markets by providing essential clearing and settlement market infrastructure. As intermediaries, these firms serve a fundamental role in creating stability. DCOs face substantial risks including custody, credit, and liquidity risk; general business, operational, and legal risks; as well as the risk of clearing member defaults. Such risks may pose a threat to a DCO's continuity of operations, as well as its clearing members and the broader financial system.

During periods of stress, DCOs provide services that are crucial for continuity in the financial markets they serve. Given the significance of DCOs in our markets, a liquidity or solvency crisis event at a DCO may trigger effects that have far-reaching consequences throughout the entire financial system. Recovery and wind-down plans are critical to prevent losses across our markets and any knock-on effects or spill over into other markets. It is essential that DCOs have recovery and orderly wind-down plans to prevent significant market disruption throughout our financial system.

I support the Commission's consideration of the proposed regulations on recovery and orderly wind-down plans for DCOs. The proposed rule addresses the longstanding need for DCOs to have wind-down plans. While the Commission has previously taken appropriate steps to introduce recovery and orderly wind-down plans for DCOs deemed systemically important in the aftermath of the 2008 Financial Crisis, evidence suggests the need to ensure the integrity of not only the largest DCOs, but all DCOs. In addition, the proposal provides for an important update to Commission regulations for DCOs including codification of staff guidance 16–61 and incorporation of international guidance on recovery and resolution planning issued since 2013.[1] The implementation of these proposed regulations would operate to support the strength and continuity of all DCOs as

[1] *See* CFTC Letter No. 16–61, Recovery Plans and Wind-down Plans Maintained by Derivatives Clearing Organizations and Tools for the Recovery and Orderly Wind-down of Derivatives Clearing Organizations (July 21, 2016), *available at https://www.cftc.gov/LawRegulation/CFTCStaffLetters/letters.htm?title=16-61&field_csl_letter_types_target_id%5B%5D=711&field_csl_letter_year_value=.*

[1] Commodity Futures Trading Commission, Notice of Proposed Rulemaking on Derivatives Clearing Organizations Recovery and Orderly Wind-down Plans; Information for Resolution Planning, p. 5–6 (Jun. 7, 2023), *https://www.cftc.gov/media/8711/votingdraft060723_17CFRPart39b/download* (hereinafter ''NPRM on DCO Recovery and Orderly Wind-down Plans'').

instructed by the reforms established in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank).[2]

The History and Development of § 39.39 Recovery and Wind-Down Regulations

I. Legislative and Regulatory History

In 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd Frank Act'') establishing a clearing framework for over-the-counter derivatives, including swaps.[3] The Dodd Frank Act introduced statutory authority for the Commission to promulgate regulations governing DCOs. Title VII of the Dodd-Frank Act sets out eighteen core principles for DCOs (DCO Core Principles), with which DCOs must comply in order to register and maintain registration with the Commission.[4] The DCO Core Principles ''serve to reduce risk, increase transparency, and promote market integrity within the financial system.'' [5] In conjunction with section 8a(5) of the Commodity Exchange Act (CEA), Title VII grants the Commission authority to promulgate regulation as necessary to implement and enforce the DCO Core Principles.[6] In 2011, the Commission adopted regulations to implement Title VII of Dodd-Frank.[7] These regulations created regulatory standards for compliance with DCO Core Principles.[8] Among the many regulations adopted was Part 39, including DCO Core Principle D—Risk Management.[9] Core Principle D requires DCOs to have policies and procedures in place that ensure the DCO will be able to manage the risks associated with discharging its responsibilities.[10]

Title VIII of the Dodd-Frank Act introduced a collaborative, multi-agency framework for regulating systemically important financial market utilities (FMUs) providing payment, clearing, and settlement activities.[11] Specifically, section 804 of the Dodd-Frank Act provides the Financial Stability Oversight Council (FSOC) with the authority to designate certain FMUs as systemically important.[12] This includes the ability to designate DCOs as systemically important (SIDCOs). In 2012, FSOC designated two CFTC-registered DCOs as SIDCOs.[13]

In addition to establishing a multi-agency regulatory framework, Title VIII created standards for SIDCOs for risk mitigation.[14] The objectives and principles for risk management at SIDCOs include (1) promoting risk management; (2) promoting safety and soundness; (3) reducing systemic risks; and (4) supporting the stability of the broader financial system.[15] The risks that DCOs face may not only threaten the viability and strength of a DCOs operations, but also may threaten clearing members of DCOs and the broader financial system. Such risks include credit and liquidity risk by both the DCO itself and its clearing members as well as other general business, operational, custody, investment, and legal risks.[16] All of these risks could result in financial failures of DCOs. Disorderly failure [17] of DCOs—in particular SIDCOs—would likely cause significant disruption to our financial markets.[18] This systemic risk results in a necessity for DCOs to have viable plans for recovery and orderly wind-down during times of significant stress or in the event of failure.

Title VIII of the Dodd-Frank Act also directs the Commission to consider prudential requirements and international standards when promulgating risk management regulations that govern operations relating to payment, clearing, and settlement activities for SIDCOs.[19] In 2013, the Commission considered international standards relevant to risk management of SIDCOs as required under section 805(a)(2)(A).[20] At that time, the Commission determined the most relevant international standards were the Principles for Financial Market Infrastructure (PFMIs) established by the Bank for International Settlements (BIS) and the International Organization of Securities Commissions (IOSCO).[21] The PFMIs are a ''unified set of international risk management standards for central counterparties'' (CCPs) that facilitate clearing and settlement.[22] They set out a list of twenty-four principles that seek to address the numerous risks faced by CCPs.[23]

Later in 2013, the Commission implemented the Part 39 regulations setting out broad rules for recovery, wind-down, and resolution planning for SIDCOs and Subpart C DCOs.[24] In adopting these wind-down and recovery regulations, the Commission considered PFMI Principles 3 and 15.[25] PFMI Principle 3 calls for a framework for the comprehensive management of risks including legal, credit, liquidity, business, and operational risks.[26] PFMI Principle 15 covers general business risk and calls for a CCPs to identify, monitor, and manage general business risk.[27] The Commission determined that although there is no DCO Core Principle that directly calls for DCOs to establish recovery and wind-down plans, DCO Core Principles B (financial resources), D (risk management), G (default rules and procedures), and I (system safeguards), as well as PFMI Principles 3 and 15, collectively support the need for DCOs to create policies and procedures that identify scenarios that may prevent a SIDCO or Subpart C DCO ''from providing critical operations and services as a going concern and would assess the effectiveness of a full range of options for recovery and wind-down.'' [28] In light of this determination, the Commission adopted Regulation 39.39 which requires SIDCOs and Subpart C DCOs ''to maintain viable plans for recovery and orderly wind-down.'' [29]

II. CFTC Letter 16–61 and International Standards

At the time the Commission adopted Regulation 39.39, there was no specific international guidance on wind-down and recovery planning. In 2014, the Committee on Payments and Market Infrastructures (CPMI) with IOSCO issued guidance for FMIs and governing authorities on development of recovery plans (2014 CPMI–IOSCO Recovery Guidance).[30] The guidance considered and interpreted key principles relevant to recovery planning, including PFMI Principles 3 and 15.[31] Further, the report provided guidance on the recovery planning

[2] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[3] Derivatives Clearing Organizations and International Standards, 78 FR 72,475, 72,476 (Dec. 12, 2013) (codified in 17 CFR pt. 39) (hereinafter ''2013 DCOs Rule Release'').

[4] 7 U.S.C. 7a–1(c)(2).

[5] NPRM on DCO Recovery and Orderly Wind-down Plans, p. 4.

[6] 7 U.S.C. 7a–1(c)(2)(A)(i); 7 U.S.C. 12a(5).

[7] Derivatives Clearing Organizations General Provisions and Core Principles, 76 FR 69,333 (Nov. 8, 2011) (codified in 17 CFR pts. 1, 21, 29, and 140) (hereinafter ''2011 DCOs Core Principles Release'').

[8] 2011 DCOs Core Principles Release at 69,335.

[9] *Id.* at 69,362.

[10] 7 U.S.C. 7a–1(c)(2)(D).

[11] Section 805 of the Dodd-Frank Act, 12 U.S.C. 5464.

[12] Section 804 of the Dodd-Frank Act, 12 U.S.C. 5463.

[13] 2013 DCOs Final Rule Release at 72,477.

[14] Enhanced Risk Management Standards for Systemically Important Derivatives Clearing Organizations, 78 FR 49,663, 49,665 (Aug. 15, 2023) (codified in 17 CFR pt. 39) (hereinafter ''2013 SIDCOs Final Rule Release'').

[15] Section 805 of the Dodd-Frank Act, 12 U.S.C. 5464(b). As outlined in section 805(c), these standards may address such areas as: (1) Risk management policies and procedures; (2) margin and collateral requirements; (3) participant or counterparty default policies and procedures; (4) the ability to complete timely clearing and settlement of financial transactions; (5) capital and financial resources requirements for designated [FMUs]; and (6) other areas that are necessary to achieve the objectives and principles in [section 805](b). 2013 SIDCO Final Rule Release at 49,665 (quoting 12 U.S.C. 5464(C)).

[16] NPRM on DCO Recovery and Orderly Wind-down Plans, p. 5.

[17] While not formally defined in Dodd-Frank, ''disorderly failure'' typically refers to a significant disruption to a financial institution without a plan for recovery or wind-down that results in the inability of the institution to maintain ongoing viability that cause detrimental impacts to customers, clients, related entities, and the broader financial system.

[18] NPRM on DCO Recovery and Orderly Wind-down Plans, p. 5.

[19] 2013 SIDCO Final Rule Release at 49,665.

[20] *See* 2013 SIDCO Final Rule Release.

[21] 2013 SIDCO Final Rule Release at 49,666.

[22] *Id.*

[23] *Id.*

[24] 2013 DCOs Final Rule Release at 72,494. In 2013, the Commission also adopted regulations to allow registered DCOs that are not designated as SIDCOs to elect to become subject to the provisions of Subpart C of part 39 of the Commission's regulations. Those DCOs that make the election are referred to as Subpart C DCOs. In making this election, Subpart C DCOs voluntarily agree to operate in compliance with and be subject to review for compliance with PFMIs and other heightened standards for SIDCOs. *See* 2013 DCOs Final Rule Release at 72,479.

[25] 2013 DCOs Final Rule Release at 72,495.

[26] *Id.* at 72,478.

[27] *Id.* at 72,495.

[28] *Id.*

[29] *Id.*

[30] CPMI–IOSCO, Recovery of financial market infrastructures (Oct. 15, 2014) (hereinafter ''2014 CPMI–IOSCO Recovery Guidance'').

[31] 2014 CPMI–IOSCO Recovery Guidance.

process, contents of recovery plans, and recovery tools to be used by FMIs.[32]

In 2016, in light of 2014 CPMI–IOSCO Recovery Guidance, the staff of the Commission's Division of Clearing and Risk (DCR) issued Letter 16–61 to provide additional details on the subjects and analyses that SIDCOs and Subpart C DCOs should include in their wind-down plans.[33] The letter provided a list of subjects DCR believed SIDCOs and Subpart C DCOs should analyze and include in their recovery and wind-down plans including such as inclusion of particular tools to be used in recovery and wind-down.[34] Specifically, the guidance provided a list of specific scenarios to be evaluated and set out a framework for how to identify, monitor for, and analyze the scenario and include such information in recovery plans.[35] Further, the guidance suggested a framework for how to identify, implement, and analyze recovery tools in such scenarios and how to incorporate it into recovery plans.[36] Finally, the guidance also provided a framework for including processes for wind-down options in the event of a failure or inability to successfully implement a recovery plan.[37]

In 2017, CPMI and IOSCO issued further guidance that updated the 2014 CPMI–IOSCO Recovery Guidance.[38] The guidance sought to clarify, among other things, how to implement recovery plans, replenish financial resources, and transparency in recovery tools.[39] Further, in 2017, the Financial Stability Board issued guidance regarding CCP resolution planning that included recommendations for resolution authorities about continuity of critical functions and implementation of crisis management groups, and development of resolution plans.[40] Most recently, in August 2022, CPMI and IOSCO published a discussion paper on CCP practices to address non-default loses which included a discussion of annual testing and review of a CCP's recovery plan.[41]

Recovery and Orderly Wind-Down Planning

Recovery planning is essential to DCO risk management and provides a mechanism to consider risk scenarios and their potential scope of impact, as well as evaluate specific tools, steps, and contingency plans. Recovery plans provide well-established and well-tested actionable steps that may address exigent and extreme circumstances that may threaten the viability of DCOs. An anticipated scenario with a thoughtful corresponding recovery plan provides for a DCO to have an efficient and effective recovery ''such that it can continue to provide its critical services'' even while its viability may be threatened.[42] Additionally, recovery plans provides stability, certainty, and clarity for a DCO's clearing members and clients and may reduce the potential for panic and contagion. The reduction of stress and uncertainty as a result of advance recovery planning results in optimized, efficient, and effective recovery actions. Recovery planning is globally recognized as essential for market stability, and post-financial crisis reforms emphasize this understanding. As stated by CMPI–IOSCO in 2014:

'Recovery' concerns the ability of an FMI to recover from a threat to its viability and financial strength so that it can continue to provide its critical services without requiring the use of resolution powers by authorities. Recovery therefore takes place in the shadow of resolution.[43]

When recovery is not a viable option or where the execution of a recovery plan is ineffective, it is critical to financial stability for FMIs to have orderly resolution plans. Title II of the Dodd-Frank Act established the Orderly Liquidation Authority, an alternative framework and process to bankruptcy to efficiently and expeditiously wind-down financial institutions.[44] Title II establishes the Federal Deposit Insurance Corporation (FDIC) as the receiver for failing financial institutions designated as systematically important, like SIDCOs.[45] Effective wind-down plans provide the benefit of well-considered strategic planning for wind-down in advance of any viability threatening event that can be shared with the FDIC in an instance of insolvency. Wind-down plans facilitate the efficient transition of a SIDCO into FDIC receivership. Orderly wind-down procedures enhance financial market stability by minimizing the fallout of financial instability and ultimately minimize systemic risk.

Amendments to Part 39

Today, the Commission—in consultation with the FDIC, the Board of Governors of the Federal Reserve System, and the Securities and Exchange Commission (SEC)—takes the next step in recovery and wind-down planning for DCOs by proposing amendments that encompass all DCOs and provide clarity and specificity on the quality of such plans. We recognize that the failure of any DCO, not just those deemed systemically important, might result in significant market disruption. As such, the proposed regulations seek to provide important clarity and consistency for not only SIDCOs and Subpart C DCOs, but all DCOs. This NPRM codifies and expands upon DCR's 16–61 Letter and incorporates international guidance on recovery and resolution planning issued since 2013. The DCR staff has thoughtfully crafted proposed rules which will guide SIDCOs, Subpart C DCOs, and all other DCOs in updating or crafting wind-down plans and, in some instances, recovery plans.

Currently, Regulation 39.39 only applies to SIDCOs and Subpart C DCOs. It requires these DCOs ''to maintain viable plans for recovery and orderly wind-down.'' [46] The regulation specifies that in developing such plans, SIDCOs and Subpart C DCOs must identify scenarios which may prevent the DCO from meeting its obligations, providing its critical operations and services, and assess options for recovery and wind-down.[47] The wind-down plan must include procedures to timely notify the Commission when a recovery plan is initiated or a wind-down plan is pending as well as procedures for providing both the Commission and FDIC with necessary information for resolution planning.[48] Section 39 also requires the plans to be supported with financial resources sufficient to implement such plans.[49] SIDCOs and Subpart C DCOs must also maintain viable plans for raising additional financial resources, including capital, which must be approved by the DCO's board of directors and regularly updated.[50] For non-SIDCOs and non-Subpart C DCOs, no regulation currently requires them create and maintain recovery or wind-down plans.[51]

To align part 39 with CFTC Letter No. 16–61 and international standards, the Commission proposes to require all DCOs to create, maintain, and submit to the Commission plans for orderly wind-down substantially similar to those currently required for SIDCOs and Subpart C DCOs.[52] Additionally, the Commission proposes to amend Regulation 39.39 for SIDCOs and Subpart C DCOs to include eight specific sections in their wind-down and recovery plans:

1. Identify and describe critical operations and services, interconnections and interdependencies, and agreements and plans to address the risks associated with each.[53]

2. Conduct a six-part analysis for each recovery scenario, including for commonly applicable scenarios like settlement or custodian bank failure and scenarios resulting from investment risk, poor business results, fraud, legal liabilities, and losses resulting from interconnectedness and interdependencies.[54]

3. Discuss criteria that may trigger consideration or implementation of the recovery plan, describes a plan for monitoring events that are likely trigger the recovery plan, and includes a description of information-sharing and escalation processes

[32] 2014 CPMI–IOSCO Recovery Guidance.

[33] CFTC Letter No. 16–61 (July 21, 2016).

[34] *Id.*

[35] *Id.* at 5.

[36] *Id.* at 7.

[37] *Id.* at 9.

[38] CPMI–IOSCO, Recovery of financial market infrastructures (July 5, 2017) (hereinafter ''2017 CPMI–IOSCO Recovery Guidance'').

[39] NPRM on DCO Recovery and Orderly Wind-down Plans, p. 15.

[40] *Id.* (citing FSB, Guidance on Central Counterparty Resolution and Resolution Planning (July 5, 2017) (hereinafter ''2017 FSB Resolution Guidance'')).

[41] *Id.* at 16 (citing CPMI–IOSCO, A discussion paper on central counterparty practices to address non-default loses (Aug. 4, 2022)).

[42] *Id.* at 17.

[43] 2014 CPMI–IOSCO Recovery Guidance.

[44] Section 204(b) of the Dodd-Frank Act (codified at 12 U.S.C. 5384(b)).

[45] *See* 12 U.S.C. 5384(b).

[46] 2013 DCOs Final Rule Release at 72,495; 17 CFR 39.39(b).

[47] 17 CFR 39.39(c)(1).

[48] 17 CFR 39.39(c)(2).

[49] 17 CFR 39.39(d).

[50] 17 CFR 39.39(e).

[51] NPRM on DCO Recovery and Orderly Wind-down Plans, p. 13.

[52] Proposed § 39.13(k); NPRM on DCO Recovery and Orderly Wind-down Plans, p. 18–19.

[53] Proposed § 39.39(c)(1).

[54] Proposed § 39.39(c)(2).

with the DCO's senior management and board.[55]

4. Describe recovery tools, the order in which they will be used, the time frame for use of each tool, governance and approvals to execute the tools, necessary steps to implement the tools, whether a tool is mandatory or voluntary, and an assessment of the risks associated with each tool.[56]

5. Identify and describe scenarios that would prevent the DCO from meeting its obligations and tools that may be used in the orderly wind-down.[57]

6. Determine the agreements, arrangements, and licenses that are subject to change or termination as a result of activation of a recovery or wind-down plan and describe actions the DCO will take to ensure continuity of operations and services during recovery and wind-down despite alteration or termination.[58]

7. Include a requirement for an annual review and formal approval by the board of directors and describe the governance structure that defines the responsibilities of board members, senior executives, and business units. Must also include description of the decision-making process.[59]

8. Describe procedures for testing of viability plans and tools. The description must describe the types of testing and the procedures for updating the plans in light of findings from test results. The testing must be conducted with participation of clearing members.[60]

The other proposed amendments for Part 39 include updates to definitions to apply generally to all DCOs, establishing a fixed deadline to develop and file recovery and wind-down plans, requiring DCOs to provide certain information directly to the Commission to be shared with the FDIC[61] as well as information upon request, and updating the Subpart C election forms.

Conclusion

Prior to Dodd-Frank, there were limited means to facilitate orderly resolution. The lack of planning for financial distress proved tremendously harmful to our economy in a period of severe disruption. I believe the proposed rules, as currently drafted, would effectively facilitate transparency as well as provide a foundation for quick, efficient, and effective action in instances of market instability and risk to DCOs operations. Greater transparency and thoughtfully developed risk plans will result in increased confidence in our derivatives markets.

I want to thank the staff of the Division of Clearing and Risk—Robert Wasserman, Megan Wallace, and Eric Schmelzer—for their diligent and thoughtful work on these proposed regulations.

While I support the proposal, I look forward to carefully considering the comments we receive to determine the best path forward to protect our markets through the stability of DCOs. I am hopeful the comments submitted in response to the proposal will offer thoughtful guidance on the questions offered in the release of the notice of proposed rule-making.

[55] Proposed § 39.39(c)(3).

[56] Proposed § 39.39(c)(4).

[57] Proposed § 39.39(c)(5).

[58] Proposed § 39.39(c)(6).

[59] Proposed § 39.39(c)(7).

[60] Proposed § 39.39(c)(8).

[61] This includes information about organization structure, activities, and governance; information about clearing members; arrangements with other clearing entities (including offset and cross-margin arrangements); financial schedules and supporting details (off balance sheet obligations, contingent liabilities, obligations to creditors, shareholders, and affiliates). Proposed § 39.39(f).

Appendix 4—Statement of Commissioner Christy Goldsmith Romero

No one expects to fail. But the lessons from the 2008 financial crisis highlight how quickly contagion can spread between highly interconnected institutions, threatening the viability of firms. As the Special Inspector General for TARP (''SIGTARP''), I reported to Congress on the decisions made by the Government to save ''too big to fail'' Wall Street institutions. The theme that ran through our findings was a massive failure in planning, and shock from institutions and regulators caught unaware by dangerous interconnections across the financial system. The Government intervened with bailouts to avoid the chaos from disorderly bank failures that would hurt Main Street.

Fast forward to 2023, where the financial industry and regulators were once again shocked by bank failures—regional bank failures that required government intervention, although not a bailout. These failures seemed to happen at lightning speed as online banking and other technology as well as social media played a role in snowballing customer redemptions.[1] Once again, the lack of planning was apparent, and the government intervention was intended to help Main Street.

That government intervention 15 years after Congress authorized TARP only reinforces the importance of Dodd-Frank Act provisions designed to protect our financial system from systemic risk. I have reported to, and testified before, Congress on lessons learned from the 2008 financial crisis, on how to manage systemic risk, and on efforts to prevent future government intervention, such as requirements for living wills from the largest banks. I testified before the Senate in 2014 that I strongly supported the Dodd-Frank Act's ''dual approach: front line measures aimed at keeping the largest financial institutions safe and sound, and a last line defense aimed at letting a company fail without damaging the economy.''[2]

I support the proposed rule today because it does just that. It strengthens both front line measures and the last line of defense by laying out specific requirements for all clearinghouses to have orderly wind-down plans. This expands our requirements for wind-down plans from a handful of clearinghouses to the full range of clearinghouses—ranging from those deemed systemically important to new or future entrants, such as those who are digital asset-focused. The rule today codifies and strengthens the provisions in Commission guidance from 2016, and is designed in consideration of international standards.

I support the proposed rule because it has two major benefits. First, just as with bank living wills, the requirement for orderly wind-down plans decreases the likelihood that any failure will be disorderly, chaotic, or require government intervention, thereby protecting financial stability—in other words, the last line of defense. Second, the exercise of creating and maintaining the plans with the specific requirements contained in the rule could help to prevent the failure of clearinghouses by shoring up areas of potential existential risk and giving the Commission insight into risk exposure for our own oversight responsibilities—in other words, front line measures.

I want to thank the staff for these efforts to implement the goals of the Dodd-Frank Act and protect the financial system. I thank them for working with my office on changes to improve the proposal in ways that will promote greater transparency into interconnections in our financial system and improve accountability for clearinghouses as they develop and test their plans.

Last Line Defense: The Proposal Will Help Protect Financial Stability in the Face of New Kinds of Market Stress by Reducing the Likelihood of Disorderly and Chaotic Failures

As I testified to Congress in 2014, it is crucial for regulators and institutions to make use of ''what was missing in the crisis—time—time to understand the interconnections and the risk they pose, and limit any dangerous risk so they are not caught unaware again.''[3] While we already require systemically significant clearinghouses and a small handful of other clearinghouses to maintain orderly wind-down plans,[4] we do not require it for all.

In supporting the expansion of the requirement for orderly wind-down plans to all clearinghouses, I am reminded of one of my interviews with Treasury Secretary Timothy Geithner. Secretary Geithner told me, ''What size and mix of business do you classify as systemic?. . . . It depends too much on the state of the world at the time. You won't be able to make a judgment about

[1] An unfortunate consequence of these regional bank failures was large numbers of depositors withdrawing their funds only to deposit them in the largest banks. *See, e.g.,* Edward Harrison, *The Fed Is Helping Too-Big-to-Fail Banks Become Bigger,* Bloomberg (May 2, 2023) available at *https://www.bloomberg.com/news/newsletters/2023-05-02/the-fed-is-helping-too-big-to-fail-banks-become-bigger.*

[2] *Written Testimony Submitted by The Honorable Christy L. Romero, Special Inspector General for the Troubled Asset Relief Program Before the U.S. Senate Banking, Housing and Urban Affairs Committee Subcommittee on Financial Institutions and Consumer Protection,* available at *https://www.sigtarp.gov/sites/sigtarp/files/Testimony/SIGTARP_testimony_TBTF_and_SIFI_regulation_July_16_2014.pdf* (July 16, 2014) (2014 Goldsmith Romero Testimony).

[3] 2014 Goldsmith Romero Testimony.

[4] *Derivatives Clearing Organizations and International Standards,* 78 FR 72476, 72494 (Dec. 2, 2013).

what's systemic and what's not until you know the nature of the shock.'' [5]

Although the Financial Stability Oversight Council makes systemic designations, the fact that the Government intervened in regional bank failures this year emphasizes that disorderly failures of even non-systemic financial players can cause chaos and harm regular people. Additionally, this month our nation faced challenges with the debt ceiling, which would have had substantial impacts, which may not be planned for by all institutions.

By requiring orderly wind-down plans for all, and adopting the proposed standardized requirements before a crisis hits, we can better understand which market stresses might cause severe disruptions across clearinghouses, and how a failure may spread across derivatives markets, the financial system, and even the economy. We can then engage in supervision to ensure that clearinghouses effectively manage risk.

Front Line Measures: The Best Use of Orderly Wind-Down Plans Is Helping To Ensure We Never Need To Rely on Them

It has been said that those who fail to plan, plan to fail. But when it comes to financial stability, planning to fail is actually one of the best ways to avoid failing. A handful of clearinghouses already have wind-down plans pursuant to Commission guidance from 2016.[6]

I support the proposed rule with its specific requirements of what these wind-down plans should include because it can help mitigate the risk of failure, and prevent the need to ever rely on them. I testified before Congress in 2014 saying, that I encouraged regulators to use living wills to ''build a comprehensive roadmap of interconnections to capture the common risks, linkages and interdependencies in the financial system.'' [7]

I support that the proposed rule contains those same requirements—the inclusion of a clearinghouse's interconnections and interdependences. In addition to the well-established clearinghouses, our registrants include clearing houses (as well as applicants) that are focused largely on digital assets. This includes some clearinghouses where the clearing members are retail customers. Given the highly interconnected nature of the digital asset industry, and our lack of visibility into unregulated affiliates, we could find ourselves without the information needed to identify affiliate risk and supervise the management of that risk. This was most notably experienced with registered clearinghouse Ledger X, an affiliate of FTX.

Additionally, an increase in cyberattacks, including the one on ION Markets, show how increasing reliance on third party services and providers can create new avenues for disruption. When those disruptions hit multiple firms at once, the damage can compound, creating cascading failures that threaten financial stability. By requiring clearinghouses to identify these kinds of interdependencies and interconnections before they become a problem, as well as to identify potential triggering events, document how they will monitor these triggers, and conduct stress scenario analysis, this proposal encourages a systemic perspective that would help clearinghouses and the Commission steer away from trigger events, and more comprehensively manage what would otherwise be existential risk.[8]

The proposal also requires clearinghouses to test wind-down plans annually, or when they are updated. This is an opportunity for a regular robust assessment of the risks that a clearinghouse faces. The proposal recognizes that testing may be enhanced by participation by other stakeholders. I look forward to hearing comments about whether there are situations or scenarios where the participation of stakeholders other than clearing members should be required, instead of simply considered.

Clearinghouses can only identify failures caused by risks that they consider and review. The scenarios prescribed by the proposal would require assessing a broad range of relevant risks. I look forward to hearing from commenters about whether there are any other areas that might help us promote the resilience of clearinghouses and protect against chaotic failures.

This Proposal Will Only Protect the Financial System if We Have the Courage To Apply It

Unlike living wills for systemically important banks, there is no formal review or acceptance requirement for these wind-down plans. But that does not excuse us from a responsibility to carefully scrutinize the plans to ensure that they are comprehensive, appropriate, and rigorously tested. In 2011, I testified before Congress that rules designed to prevent systemic risk that would require government intervention ''are only as effective as their application'' and that ultimately, we ''rely on the courage of the regulators to protect our nation's broader financial system.'' [9]

We should have the courage to use these plans as a roadmap for our own vigilant oversight of derivatives markets and a guide for where we should focus efforts to bolster resilience to market stresses. I welcome comment on all aspects of the proposal, but especially those recommending additional ways we can promote financial stability.

For these reasons, I support the proposed rule.

Appendix 5—Dissenting Statement of Commissioner Summer K. Mersinger

I cannot support the proposed amendments to Part 39 of the Commodity Futures Trading Commission's [1] regulations before us today. The proposed amendments would: (1) make substantial changes to the current recovery and orderly wind-down plan regulations applicable to systemically important derivatives clearing organizations (SIDCOs) and Subpart C derivatives clearing organizations (Subpart C DCOs); [2] (2) require for the first time that all other CFTC-registered derivatives clearing organizations (DCOs) have orderly wind-down plans; (3) revise the CFTC's bankruptcy regulations that the CFTC just recently amended to now require a bankruptcy trustee to act in accordance with a DCO's recovery and orderly wind-down plans; and (4) require SIDCOs and Subpart C DCOs to provide copious amounts of information to the Federal Deposit Insurance Corporation (FDIC) through the CFTC for the purpose of planning the potential resolution of the entity (the Proposal).

To be clear, in considering the Proposal, the Commission is not debating whether SIDCOs and Subpart C DCOs should be required to engage in thoughtful planning for recovery and orderly wind-down. That has already been decided.[3] They are required to do so.[4] In fact, they have been required to do so since December 2013.[5]

[5] *See Statement of Christy Romero, Acting Special Inspector General, Troubled Asset Relief Program Before the House Committee on Financial Services Subcommittee on Financial Institutions and Consumer Credit,* available at *https://www.sigtarp.gov/sites/sigtarp/files/Testimony/Citi_Too_Big_To_Fail_June_14_2011_Testimony.pdf* (June 14, 2011).

[6] Staff have provided guidance on what clearing houses should consider when developing recovery and wind-down plans, much of which is codified in this rule. CFTC Letter No. 16–61, Recovery Plans and Wind-down Plans Maintained by Derivatives Clearing Organizations and Tools for the Recovery and Orderly Wind-down of Derivatives Clearing Organizations, (July 16, 2016) (hereinafter CFTC Letter No. 16–61), available at: *https://www.cftc.gov/csl/16-61/download.* The 2016 guidance was intended to be consistent with international standards. I note that this guidance has not been updated in seven years—seven years that included disruption and substantial market stresses.

[7] 2014 Goldsmith Romero Testimony.

[8] It would require clearinghouses to identify scenarios that may prevent them from fulfilling their critical role, including not just due to adverse market outcomes, but also financial effects from cybersecurity events and other losses from interconnections with third party services and providers. And it requires a clearinghouse to consider how a combination of failures, like the sort that crop up in a financial crisis, might affect its ability to operate.

[9] *Statement of Christy Romero, Acting Special Inspector General, Troubled Asset Relief Program Before the House Committee on Financial Services Subcommittee on Financial Institutions and Consumer Credit,* available at *https://www.sigtarp.gov/sites/sigtarp/files/Testimony/Citi_Too_Big_To_Fail_June_14_2011_Testimony.pdf,* (June 14, 2011).

[1] This statement uses the terms CFTC or Commission to refer to the Commodity Futures Trading Commission.

[2] As used herein, the term Subpart C DCO refers to a derivatives clearing organization that elects to be subject to the provisions in Subpart C of Part 39 of the Commission's regulations.

[3] *See* Derivatives Clearing Organizations and International Standards, 78 FR 72476 (Dec. 2, 2013).

[4] CFTC Rule 39.39(b), 17 CFR 39.39(b) (''Each [SIDCO] and [Subpart C DCO] shall maintain viable plans for: (1) recovery or orderly wind-down, necessitated by uncovered credit losses or liquidity shortfalls; and, separately, (2) recovery or orderly wind-down necessitated by general business risk, operational risk, or any other risk that threatens the [DCO's] viability as a going concern.'').

[5] *See* 78 FR at 72476 (stating ''the rule is effective December 31, 2013''). However, the Commission may, upon request, grant a SIDCO or a Subpart C DCO up to one year to comply with any provision

Continued

Instead, through a set of prescriptive requirements, the Proposal takes a ''government knows best'' approach to recovery and orderly wind-down plans and the events that might trigger them. Furthermore, the Proposal's obligation to have an orderly wind-down plan, and many of the Commission's prescriptive directives attendant thereto, would extend to all DCOs, not just the SIDCOs and Subpart C DCOs that tend to be the largest and most complex derivatives clearinghouses.

Ignoring the Work of SIDCOs and Subpart C DCOs Over the Past Decade

Over the past decade, SIDCOs and Subpart C DCOs have spent considerable time and resources developing viable plans for recovery and orderly wind-down. Adoption of those plans was not a one-time event, and those plans have not been allowed to grow stale. Indeed, current CFTC regulations require SIDCOs and Subpart C DCOs to *maintain* those plans.[6]

In accordance with Commission regulations, SIDCOs and Subpart C DCOs have been revising and updating those plans and taking steps to develop their strategies and tools, including adopting changes to their rulebooks that explicitly set forth tools they would use and when they would use them. Furthermore, the CFTC has engaged with SIDCOs and Subpart C DCOs on the contents of those plans and associated rules, including through approving rule changes and conducting examinations.

The Proposal would make significant changes to the CFTC's current regulations addressing recovery and orderly wind-down plans. With respect to SIDCOs and Subpart C DCOs, I do not believe that the benefits of the rule changes in this Proposal outweigh the costs of implementing them. Worse, I believe that the Proposal's prescriptive requirements would undermine the ability of SIDCOs and Subpart C DCOs to manage risks during business as usual and appropriately plan for recovery and orderly wind-down.

The Proposal Is Too Prescriptive

I am further concerned that the Proposal would require *every* DCO to consider as a potential trigger for recovery or orderly wind-down, as applicable,[7] a scenario that *some* DCOs might be able to manage during business as usual—a much preferred outcome in my opinion. This is not just a difference of semantics. The distinction between whether a DCO can manage a specific factual circumstance during business as usual or whether that fact pattern would trigger recovery or orderly wind-down has significant financial and governance implications.

In fact, if the CFTC requires a DCO to have tools and resources in its recovery plan to address a scenario that the DCO has determined it can manage during business as usual, then those resources and tools are required to be set aside for recovery and, by definition, are not available to manage the situation during business as usual. Not only is that inefficient and counterproductive, it undermines the focus on the DCO's risk management during business as usual. It is the DCO, not the Commission, that is in the best position to determine what risks it can manage during business as usual, and what risks would trigger use of its recovery plan and/or orderly wind-down plan, and to allocate its resources accordingly.

Furthermore, the Proposal would require recovery and orderly wind-down plans to consider a potentially limitless set of scenarios. The Proposal states, ''The [DCO's] recovery plan scenarios should also address the default risks and non-default risks to which the [DCO] is exposed.'' While the preamble spends a significant amount of time pontificating on a variety of risk-inducing scenarios, the Proposal does not define the terms ''default risks'' or ''non-default risks'' that are used in the rule text, and the requirement contains no limiting language. Without clear definitions or limitations, this phrase requires a DCO to consider *every* risk to which it might possibly be exposed in its recovery and orderly wind-down plans.

The Proposal goes on to require each SIDCO and Subpart C DCO to ''identify scenarios that *may* prevent it from *meeting its obligations* or providing its critical services as a going concern''[8] (emphasis added) in its recovery and orderly wind-down plans. I am concerned that this extremely low threshold could capture anything—and everything.

As if considering the aforementioned ''risks'' and ''scenarios'' were not enough, the Proposal requires a SIDCO's or Subpart C DCO's recovery plan to ''establish the criteria that may trigger implementation or consideration of implementation of that plan,'' and its orderly wind-down plan to ''establish the criteria that may trigger consideration of implementation of that plan.'' I am not sure there is a clear distinction between ''risks,'' ''scenarios,'' and ''triggers'' in the Proposal.

A Faulty Premise and Unnecessary Requirements for All DCOs

Based on the Proposal's definition of ''orderly wind-down,''[9] one purpose of having an orderly wind-down plan is to effect the permanent cessation of one or more of a DCO's critical operations or services in a manner that would not increase the risk of significant liquidity, credit, or operational problems spreading among financial institutions or markets and thereby threaten the stability of the U.S. financial system. We already have such a process—the bankruptcy of a DCO pursuant to chapter 7 of the U.S. Bankruptcy Code and Part 190 of the Commission's regulations.

Indeed, the Commission engaged in an extensive effort just a few years ago to update Part 190 of the Commission's regulations so that they specifically address the bankruptcy of a DCO.[10] By imposing on every DCO costly and burdensome requirements designed to prevent the DCO from ever going through the bankruptcy process, or to control that process by attempting to tell a bankruptcy trustee that it must follow the DCO's orderly wind-down plan, the Proposal assumes that bankruptcy proceedings are so fraught with the peril of disorder that any DCO going through bankruptcy pursuant to chapter 7 of the U.S. Bankruptcy Code and Part 190 of the Commission's regulations would threaten the stability of the U.S. financial system.

I question the fundamental premise of the Proposal that *every* DCO offers one or more services that is so critical that the sale, transfer, or permanent cessation of that service would threaten the stability of the U.S. financial system, thereby justifying the requirement that every DCO develop an orderly wind-down plan to avoid that. The preamble of the Proposal acknowledges that ''the failure of [a DCO that is neither a SIDCO nor a Subpart C DCO] is much less likely to have 'serious adverse effects on financial stability in the United States,' '' and states that, as a result of that conclusion, ''the Commission is not proposing to require these DCOs to maintain recovery plans.'' And yet, the Proposal would require those DCOs to expend significant time and resources to maintain and submit to the Commission a plan to ''effect the permanent cessation, sale, or transfer, of one or more of its critical operations or services, in a manner that would not increase the risk of significant liquidity, credit, or operational problems spreading among financial institutions or markets and thereby threaten the stability of the U.S. financial system.''

Just as I do not believe that it is necessary for every DCO to have an orderly wind-down plan, I certainly do not see the purpose of a DCO applicant submitting an orderly wind-down plan to the CFTC as part of its application for registration as a DCO. Not only does a DCO applicant lack a magic ball to foresee its future level of success, the applicant might not even be approved by the Commission. We are asking applicants to plan for going-out-of-business before they even have permission to go into business.

Unbridled Access to Information

I also am very concerned by the unbridled scope of information the Commission could

of CFTC regulations 39.39 or 39.35. *See* CFTC Rule 39.39(f), 17 CFR 39.39(f).

[6] CFTC Rule 39.39(b), 17 CFR 39.39(b).

[7] The Proposal would require all DCOs to have orderly wind-down plans, and only SIDCOs and Subpart C DCOs to have recovery plans.

[8] The Proposal uses the term ''critical services'' with respect to recovery scenarios and the term ''critical operations and services'' with respect to orderly wind-down scenarios.

[9] The Proposal defines ''orderly wind-down'' as ''the actions of a derivatives clearing organization to effect the permanent cessation, sale, or transfer, of one or more of its critical operations or services, in a manner that would not increase the risk of significant liquidity, credit, or operational problems spreading among financial institutions or markets and thereby threaten the stability of the U.S. financial system.''

[10] *See* Part 190 Bankruptcy Regulations, 86 FR 19324, 19325 (Apr. 13, 2021) (stating that one of the ''major themes in the revisions to part 190'' is that ''[t]he Commission is promulgating a new subpart C to part 190, governing the bankruptcy of a clearing organization. In doing so, the Commission is establishing *ex ante* the approach to be taken in addressing such a bankruptcy, in order to foster prompt action in the event such a bankruptcy occurs, and in order to establish a more clear counterfactual (*i.e.,* 'what would creditors receive in a liquidation in bankruptcy?') in the event of a resolution of a clearing organization pursuant to Title II of Dodd-Frank.'') (footnote omitted).

demand from SIDCOs and Subpart C DCOs under the Proposal with the goal of the Commission providing said information to the FDIC for purposes of resolution planning. As the primary regulator of SIDCOs and Subpart C DCOs, the CFTC can already request and receive information necessary to appropriately oversee these entities.[11] Additionally, pursuant to CFTC Regulation 39.39(c)(2), each SIDCO and Subpart C DCO already must have ''procedures for providing the Commission and the [FDIC] with information needed for purposes of resolution planning.'' [12]

The Proposal would specify six types of information that each SIDCO and Subpart C DCO would be required to provide upon request. It then includes an all-encompassing catch-all category of ''any other information deemed appropriate to plan for resolution under Title II of the Dodd-Frank Act.'' I do not support giving a government regulator, let alone *two* federal regulators, unlimited access to information, especially when that information is being collected for the purpose of providing it to a federal regulator that is not the entity's primary regulator. I am unmoved, and certainly not comforted, by the assertion that someone (though it is unclear who) must ''deem the information appropriate'' before it is requested by the CFTC or shared with the FDIC.

What's more, in light of today's cybersecurity risks, government agencies must take care in determining what information they collect and store. We must only collect information we need to do our job as regulators, not information we may want at some point for some event that may or may not materialize.

Conclusion

I have great respect for the Commission's long history of implementing principles-based regulation and allowing our regulated entities the flexibility to build the appropriate policies and procedures—best suited for their unique business—to satisfy those principles. Unfortunately, this Proposal supplants prescriptions for principles and regulatory constraints for flexibility.

Appendix 6—Concurring Statement of Commissioner Caroline D. Pham

I respectfully concur regarding the Notice of Proposed Rulemaking for Derivatives Clearing Organizations Recovery and Orderly Wind-down Plans; Information for Resolution Planning. While I generally support and appreciate the diligent efforts on this proposal, I do have several significant concerns regarding the proposal's breadth and prescriptiveness, as well as foundational questions on accountability and the role of the government in resolution planning.

Strengthening the Financial System Through Global Standards

It has been almost 14 years since the G20 met in Pittsburgh to address the financial stability risks that emerged during the 2008 global financial crisis. One pivotal outcome of that meeting was the agreement to improve the over-the-counter (OTC) derivatives markets by agreeing that all standardized OTC contracts should be exchange-traded and cleared through regulated central counterparties (CCPs) by 2012, aiming to diminish counterparty credit risk and enhance transparency.[13] This important decision resulted in a stronger and more resilient financial system by aiming to prevent a recurrence of the crisis from inadequate risk management. At that meeting, the G20 leaders pledged to implement this central clearing mandate in a coordinated and consistent manner across jurisdictions.

In 2012, the Committee on Payments and Market Infrastructures [14] and the International Organization of Securities Commissions (CPMI–IOSCO) established the Principles for Financial Market Infrastructures (PFMIs).[15] The PFMIs are a set of international standards that provide guidance for the operation and oversight of certain financial market utilities (FMUs), including CCPs (such as CFTC-regulated derivatives clearing organizations (DCOs) or SEC-regulated clearing agencies), trade repositories, payment systems, and central securities depositories (CSDs), that the international community has determined to be an essential component to preserving financial stability in the global financial markets.[16]

U.S. Approach to Implementation of the PFMIs

Pursuant to Title VIII of the Dodd-Frank Act, the U.S. has implemented the PFMIs through multiple regulators overseeing different FMUs, including DCOs, clearing agencies, payment systems, and CSDs.[17] The Financial Stability Oversight Council (FSOC) designates certain FMUs as systemically important if they pose a risk to the stability of the U.S. financial system (designated FMUs or DFMUs).[18] To date, the FSOC has designated eight FMUs as systemically important, including two systemically important derivatives clearing organizations (SIDCOs) regulated by the CFTC.[19]

The CFTC, the SEC, and the Federal Reserve have all taken steps to implement Title VIII and the PFMIs, and to promote the stability and efficiency of FMUs subject to their oversight. All three U.S. regulators have to achieve the same outcomes, because each is implementing the same standards from Title VIII and the PFMIs. In reviewing each agency's approach—the Fed's Regulation HH and the SEC's recent proposal for recovery and wind-down plans for clearing agencies—it seems that there is an opportunity for greater alignment and consistency across the CFTC, SEC, and the Fed to implementing these same requirements. I believe the U.S. should take an outcomes-based approach to oversight of DFMUs because we all have to get to the same destination in the end.

CFTC's 2013 Recovery and Wind-Down Rule for SIDCOs and Subpart C DCOs

In 2013, the CFTC determined that the PFMIs were the most relevant international standards for the risk management of SIDCOs, for purposes of meeting its obligations under Title VIII, and began implementing rules fully consistent with the PFMIs.[20] Specifically, the CFTC promulgated its recovery and wind-down rules for SIDCOs and Subpart C DCOs in 2013.[21] Since then, we have been fortunate enough to receive valuable guidance from CPMI–IOSCO and the Financial Stability Board regarding resolution frameworks for FMUs, the recovery planning process, and the content of recovery plans. These guidelines were initially published in 2014 and subsequently updated in 2017 (''CPMI–IOSCO Recovery Guidance''), providing us with invaluable insights.[22] I support keeping the CFTC's rules up-to-date and upholding international standards under Title VIII and the PFMIs established by CPMI–IOSCO.

In our derivatives markets, DCOs provide central clearing and serve as intermediaries who effectively mitigate risk for hundreds of thousands of transactions every day through the settlement and central clearing of contracts. A significant portion of settlement and clearing in the derivatives market is carried out by two CFTC-registered DCOs

[11] The preamble to the Proposal notes that ''Under Core Principle J, the Commission may request any information from a DCO that the Commission determines to be necessary to conduct oversight of the DCO'' and concedes that its aim is to obtain and provide to the FDIC ''certain information for resolution planning that goes beyond the information usually obtained during business as usual under the Core Principles and associated Part 39 regulations.''

[12] CFTC Rule 39.39(c)(2), 17 CFR 39.39(c)(2)

[13] *See* Leaders' Statement: The Pittsburgh Summit (2009), available at *https://www.oecd.org/g20/summits/pittsburgh/G20-Pittsburgh-Leaders-Declaration.pdf.*

[14] The Committee on Payments and Market Infrastructures was renamed the Committee on Payment and Settlement Systems. *See* History of the CPMI, Bank for International Settlements, available at *https://www.bis.org/cpmi/history.htm.*

[15] *See* Principles for Financial Market Infrastructures, Bank for International Settlements, available at *https://www.bis.org/cpmi/info_pfmi.htm.*

[16] *Id.*

[17] *See* Designated Financial Market Utilities, Board of Governors of the Federal Reserve System, available at *www.federalreserve.gov/paymentsystems/designated_fmu_about.htm.*

[18] *Id.*

[19] The Federal agency that has primary jurisdiction over one of the eight designated FMUs is indicated in parentheses: The Clearing House Payments Company, L.L.C. (Federal Reserve); CLS Bank International (Federal Reserve); Chicago Mercantile Exchange, Inc. (CFTC); The Depository Trust Company (Securities and Exchange Commission (SEC)); Fixed Income Clearing Corporation (SEC); ICE Clear Credit L.L.C. (CFTC); National Securities Clearing Corporation (SEC); and The Options Clearing Corporation (SEC). *See id.*

[20] *See Derivatives Clearing Organizations and International Standards,* 78 FR 72475, 72478 (Dec. 2, 2013) and Derivatives Clearing Organizations General Provisions and Core Principles, 85 FR 4800, 4822 (Jan. 27, 2020).

[21] *Id.*

[22] See CPMI–IOSCO, Recovery of financial market infrastructures (Oct. 15, 2014), available at *https://www.bis.org/cpmi/publ/d121.pdf* and CPMI–IOSCO, Resilience of central counterparties: further guidance on the PFMI (July 5, 2017), available at *https://www.bis.org/cpmi/publ/d163.htm.*

designated as SIDCOs by the FSOC in 2012.[23] It is no secret that if one of these SIDCOs were to experience a failure or collapse that it could have far-reaching and detrimental effects on the broader financial system. As ''giant warehouses of risk'', SIDCOs play a crucial role in mitigating risks for the entire global financial system. However, in the event of any DCO's financial distress or potential failure, effective regulations are necessary to ensure an orderly wind-down and recovery process. And that is why I believe it is so important that our DCOs are efficiently-regulated and well-managed at every level, and why the CFTC has long had the preeminent regulatory framework for the oversight of CCPs and led many international initiatives to strengthen financial stability.

While the prospect of a DCO collapse may appear to be beyond the realm of possibility, it is crucial for regulators to avoid succumbing to a failure of imagination. In instances where existing regulations prove inadequate, it is our responsibility through rulemakings to devise contingency plans for such worst-case scenarios.

Striking a Balance in Our Rulemaking—More Is Not Always Better

I thank the staff of the Division of Clearing and Risk and the Office of General Counsel for their work on this proposal. I would also like to particularly thank Bob Wasserman and Eric Schmelzer for their hard work and for the time they spent with my office on this proposal.

Generally, it is important that the CFTC continues to periodically review our regulations to see that they remain fit-for-purpose and to update them as necessary to reflect developments in international standards as well as in our markets. But as I mentioned earlier, while I support today's proposed rulemaking, I do have some significant concerns.

Definitions

First, regarding the definitions in this proposal. I appreciate that we attempt to align our definition for ''orderly wind-down'' with the definition in Regulation HH, as well as considered the definition in the recent SEC proposal. I thank the staff for making the revisions that I requested and welcome comments.

Another definition of particular focus to me was ''legal risk.'' Given my experience implementing governance, risk, and control frameworks—including legal risk management—I took particular care to evaluate the proposal's definition of legal risk and worked with the staff to try to ensure that the CFTC's definition was consistent with both international standards as well as best practices. I drew upon my own experience with risk governance frameworks for legal risk. I also looked at other aspects of the CFTC rules where we address legal risk for swap dealers and FCMs, as well as the Basel Committee publications on operational risk (since legal risk is a subset of operational risk), as well as the aforementioned CPMI–IOSCO Recovery Guidance, and the Fed's definition of legal risk (although that is for banking organizations). I then suggested, and my language is incorporated into the proposal, that the definition of legal risk includes ''losses arising from legal, regulatory, or contractual obligations.'' I encourage commenters to take a look at this proposed definition for legal risk, which builds upon some statements in the Recovery Guidance, and to weigh in if this is an appropriate definition, or if there's a better or alternate formulation.

Recovery Scenarios

Second, I believe it would be helpful to have commenters provide feedback on the likelihood of the stress scenarios and whether each of these scenarios are events or types of risk that should be included in all DCOs' recovery plans. I also believe that there should be a materiality threshold in connection with determining the recovery scenarios that need to be addressed.

One example of a materiality threshold is that the applicable recovery scenarios would need to have a ''significant likelihood'' of being triggered, or to evaluate whether multiple scenarios happening at the same time would pose a material risk to the DCO. I would like to have commenters weigh in on potential approaches to tailoring the type and number of required recovery scenarios.

Information for Resolution Planning

Third, turning to resolution planning, I believe that it is important to consider the respective roles and responsibilities of the CFTC as the primary regulator over our DCOs, and the FDIC as the resolution authority under Title II. Based on my own experience engaging with the FDIC, I understand and support the need for the FDIC to be able to carefully engage in resolution planning to address the financial stability risk posed by SIDCOs.

However, I believe that the accountability for sound financial and risk management should lie squarely with CCPs, including for stress, disruption, and even the unlikely event of resolution. Instead, it seems that our proposal shifts accountability from CCP management to the CFTC as regulator, and the FDIC as the primary responsible party for resolution planning, making it the government's job, not CCP management's job, to plan ahead. I believe this oversteps the appropriate role of government, and even interferes with day-to-day business operations by diverting limited resources from critical risk areas to burdensome document production. I will highlight a few examples.

Our proposal requires that SIDCOs produce voluminous information and documentation directly to the CFTC on an *ex ante* basis, so that the CFTC can then, in turn, review the information and documentation and then produce it to the FDIC to maintain. This raises several concerns.

From one perspective, I am concerned that we are shifting accountability and responsibility from the management of the SIDCOs where it should be, to the CFTC. One example is the proposal's requirements with respect to producing legal contracts for internal and external service providers, so that the CFTC and the FDIC can identify which contracts or agreements for services are not resolution resilient. It does not make sense to me why the burden-shifting is first on the CFTC and the FDIC. It is critical that the management of the SIDCOs identify and mitigate their legal risks, and in the first instance, review their *own* legal contracts and make their *own* determination.

I am not familiar with any other circumstance, for any other regulator, in which that type of legal documentation is comprehensively produced to the regulator on an ongoing basis to maintain. I believe that it is more common for regulated entities to be required to maintain an inventory of such legal documentation in addition to recordkeeping and retention requirements, and to mitigate the legal risks associated with those legal contracts or contractual obligations. Then, the regulator would periodically inspect or examine the framework for legal risk management and any specific regulatory requirements associated with the specific type of legal documentation, including the review of a sample or multiple samples of those legal contracts as appropriate. I would like to hear from commenters if this approach, which is standard practice for inspections and examinations, would make sense here.

Another example of this burden-shifting from business management to the regulators is with respect to producing copies of licenses and licensing agreements to the CFTC so that the CFTC can then produce them to the FDIC. I am not aware of any other regulator that keeps its own document repository of business licenses and licensing agreements for regulated entities.

Regarding information about clearing members that is requested for resolution planning, I do wonder if the CFTC already has this information because we directly regulate clearing members such as futures commission merchants (FCMs) and swap dealers. I would like to ensure that we are collecting any information from SIDCOs in the most efficient way possible, in order to make the best use of the CFTC's limited resources and to limit the administrative burden. And, it goes without saying that I hope the CFTC will request only information that is truly necessary, and is not information that the CFTC already collects, in order to minimize duplication.

And more generally, because the SEC and the Fed are the other regulators with primary jurisdiction over their respective DFMUs, I would like to know if the SEC and the Fed will be taking the same approach as the CFTC to the production of information for resolution planning to the FDIC. Again, there should be alignment across all three agencies if we are all subject to the same Dodd-Frank statutory requirements.

Orderly Wind-Down Plans

Fourth, moving to orderly wind-down plans, there are a number of detailed technical requirements set forth in the proposal. I will address a few of particular concern.

Ancillary service providers. The proposal includes a requirement to identify ancillary service providers in connection with critical operations and services provided by and to

[23] *See* note 7, *supra.*

DCOs. To be clear, this requirement is referring to fourth parties, which is the next frontier after third party risk management. I encourage commenters to address whether this requirement is an appropriate way to approach the risk from fourth parties, or if it the proposal is overbroad.

Annual testing. Regarding annual testing of tools for wind-down plans, I wonder if there is a more appropriate frequency for testing that would make sense for smaller DCOs that present a more limited risk profile. I believe that testing frequency should be risk-based, and I appreciate that the staff added this question into the proposal at my request. I also noted that it is possible that more than one tool can be used concurrently, and the staff have added a question regarding listing the order in which DCOs would use tools for wind-down plans.

Wind-down scenarios. On a technical point regarding wind-down scenarios, the proposal includes a requirement to assess the associated risks to non-defaulting clearing members and their customers and linked FMIs. I appreciate that the staff made some adjustments to that language in order to reflect my concern that because there are clearing members that are not FCMs that clear on an agency basis for their customers, that the proposal more accurately contemplates different types of clearing members and clearing models or market structure.

For example, there are clearing members of a DCO that are swap dealers and do self-clearing of their principal trading activities. Without clarification, the rule text could have been construed to encompass all of the clients, counterparties, and customers of a swap dealer that is a clearing member, even if unrelated to the swap dealer's self-clearing of swap dealing activity—such as the retail banking customers of a commercial bank, where the federally-chartered banking entity subject to regulation by the Office of the Comptroller of the Currency, is also registered with the CFTC as a swap dealer. I believe it would be overreaching for a DCO to be required to assess the associated risks of a DCO wind-down scenario to the retail banking customers of that legal entity.

Scope and lack of tailoring. I believe the proposal takes a one-size-fits-all approach to DCO wind-down plans by requiring all DCOs, regardless of size or risk profile, to adhere to the same extensive requirements. As one example, I imagine that for fully-collateralized DCOs which present a lesser risk profile, the cost of the legal and consulting fees to draft such wind-down plans could easily exceed their total annual operating budget, and a much simpler or straightforward plan would be sufficient. Accordingly, I believe the Commission should consider whether to allow risk-based tailoring of wind-down plans, and I appreciate that the staff has included a question in the proposal to reflect my concern.

Implementation of Plans

Finally, regarding implementation period, I am concerned that the mere six months for implementation that is permitted in the proposal is not sufficient for the incredibly thorough and detailed plans that the proposal requires. I appreciate that the staff has added a question on the appropriate amount of time to implement these new requirements for DCO recovery and orderly wind-down plans.

Conclusion

The world has come a long way since the 2008 global financial crisis to address systemic risk and financial stability in connection with FMIs such as CCPs, and I commend the leadership of the CFTC's efforts, alongside the G20, Financial Stability Board, IOSCO, the Bank for International Settlements (BIS) CPMI, and both U.S. and non-U.S. authorities. Though much work has been done, I believe in the adage that one's work is never done. That is why I support, and continue to support, the Commission and staff in periodically reviewing and updating our rules to reflect developments in international standards as well as in markets.

It is evident that the staff has invested significant time and effort in their drafting of this proposal for DCO recovery and orderly wind-down plans, and information for resolution planning, and I appreciate the staff's thoughtfulness. Nonetheless, I respectfully concur because I have several significant concerns regarding the proposal's breadth and prescriptiveness, as well as foundational questions on accountability and the role of the government in resolution planning.

Further, I believe there could be important benefits to enhancing the clarity of this proposal. The sheer length of the proposed rule itself makes it challenging to discern and address specific issues effectively. I believe that a more direct and concise rule would be prudent, and I look forward to receiving public comment.

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Part III

Department of Energy

10 CFR Parts 429 and 430

Energy Conservation Program: Energy Conservation Standards for Consumer Water Heaters; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[EERE–2017–BT–STD–0019]

RIN 1904–AD91

Energy Conservation Program: Energy Conservation Standards for Consumer Water Heaters

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

ACTION: Notice of proposed rulemaking and announcement of public meeting.

SUMMARY: The Energy Policy and Conservation Act, as amended (''EPCA''), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including consumer water heaters. EPCA also requires the U.S. Department of Energy (''DOE'' or ''the Department'') to periodically determine whether more-stringent standards would be technologically feasible and economically justified, and would result in significant energy savings. In this notice of proposed rulemaking (''NOPR''), DOE proposes amended energy conservation standards for consumer water heaters, and also announces a public meeting to receive comments on these proposed standards and associated analyses and results.

DATES: *Comments:* DOE will accept comments, data, and information regarding this NOPR no later than September 26, 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 August 28, 2023.

Meeting: DOE will hold a public meeting via webinar on September 13, 2023, from 1:00 p.m. to 4:00 p.m. See section VII, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov* under docket number EERE–2017–BT–STD–0019. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2017–BT–STD–0019, by any of the following methods:

(1) *Email: ConsumerWaterHeaters2017STD0019@ee.doe.gov.* Include the docket number EERE–2017–BT–STD–0019 in the subject line of the message.

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

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

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

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

The docket web page can be found at *www.regulations.gov/docket/EERE-2017-BT-STD-0019.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section VII of this document for information on how to submit comments through *www.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT:

Ms. Julia Hegarty, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Melanie Lampton, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (240) 751–5157. Email: *Melanie.Lampton@hq.doe.gov.*

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

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I. Synopsis of the Proposed Rule

The Energy Policy and Conservation Act,[1] as amended, Public Law 94–163 (42 U.S.C. 6291–6317, as codified) authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part B of EPCA [2] established the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6291–6309) These products include consumer water heaters, the subject of this proposed rulemaking.

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

In accordance with these and other statutory provisions discussed in this document, DOE proposes new and amended energy conservation standards for consumer water heaters. The proposed standards, which are expressed in terms of uniform energy factor (''UEF''), are shown in Table I.1. These proposed standards, if adopted, would apply to all consumer water heaters listed in Table I.1 manufactured in, or imported into, the United States starting on the date 5 years after the

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

publication of the final rule for this proposed rulemaking.

TABLE I.1—PROPOSED ENERGY CONSERVATION STANDARDS FOR CONSUMER WATER HEATERS

Product class	Effective storage volume and input rating * (if applicable)	Draw pattern	Uniform energy factor
Gas-fired Storage Water Heater	<20 gal	Very Small	$0.2062 - (0.0020 \times V_{eff})$
		Low	$0.4893 - (0.0027 \times V_{eff})$
		Medium	$0.5758 - (0.0023 \times V_{eff})$
		High	$0.6586 - (0.0020 \times V_{eff})$
	≥20 gal and ≤55 gal	Very Small	$0.3925 - (0.0020 \times V_{eff})$
		Low	$0.6451 - (0.0019 \times V_{eff})$
		Medium	$0.7046 - (0.0017 \times V_{eff})$
		High	$0.7424 - (0.0013 \times V_{eff})$
	>55 gal and ≤100 gal	Very Small	$0.6470 - (0.0006 \times V_{eff})$
		Low	$0.7689 - (0.0005 \times V_{eff})$
		Medium	$0.7897 - (0.0004 \times V_{eff})$
		High	$0.8072 - (0.0003 \times V_{eff})$
	>100 gal	Very Small	$0.1482 - (0.0007 \times V_{eff})$
		Low	$0.4342 - (0.0017 \times V_{eff})$
		Medium	$0.5596 - (0.0020 \times V_{eff})$
		High	$0.6658 - (0.0019 \times V_{eff})$
Oil-fired Storage Water Heater	≤50 gal	Very Small	$0.2909 - (0.0012 \times V_{eff})$
		Low	$0.5730 - (0.0016 \times V_{eff})$
		Medium	$0.6478 - (0.0016 \times V_{eff})$
		High	$0.7215 - (0.0014 \times V_{eff})$
	>50 gal	Very Small	$0.1580 - (0.0009 \times V_{eff})$
		Low	$0.4390 - (0.0020 \times V_{eff})$
		Medium	$0.5389 - (0.0021 \times V_{eff})$
		High	$0.6172 - (0.0018 \times V_{eff})$
Very Small Electric Storage Water Heater	<20 gal	Very Small	$0.5925 - (0.0059 \times V_{eff})$
		Low	$0.8642 - (0.0030 \times V_{eff})$
		Medium	$0.9096 - (0.0020 \times V_{eff})$
		High	$0.9430 - (0.0012 \times V_{eff})$
Small Electric Storage Water Heater	≥20 gal and ≤35 gal	Very Small	$0.8808 - (0.0008 \times V_{eff})$
		Low	$0.9254 - (0.0003 \times V_{eff})$
Electric Storage Water Heaters	>20 and ≤55 gal (excluding small electric storage water heaters).	Very Small	2.30
		Low	2.30
		Medium	2.30
		High	2.30
	>55 gal and ≤120 gal	Very Small	2.50
		Low	2.50
		Medium	2.50
		High	2.50
	>120 gal	Very Small	$0.3574 - (0.0012 \times V_{eff})$
		Low	$0.7897 - (0.0019 \times V_{eff})$
		Medium	$0.8884 - (0.0017 \times V_{eff})$
		High	$0.9575 - (0.0013 \times V_{eff})$
Tabletop Water Heater	<20 gal	Very Small	$0.5925 - (0.0059 \times V_{eff})$
		Low	$0.8642 - (0.0030 \times V_{eff})$
	≥20 gal and ≤120 gal	Very Small	$0.6323 - (0.0058 \times V_{eff})$
		Low	$0.9188 - (0.0031 \times V_{eff})$
Instantaneous Gas-fired Water Heater	<2 gal and ≤50,000 Btu/h	Very Small	0.64
		Low	0.64
		Medium	0.64
		High	0.64
	<2 gal and >50,000 Btu/h	Very Small	0.89
		Low	0.91
		Medium	0.91
		High	0.93
	≥2 gal and ≤200,000 Btu/h	Very Small	$0.2534 - (0.0018 \times V_{eff})$
		Low	$0.5226 - (0.0022 \times V_{eff})$
		Medium	$0.5919 - (0.0020 \times V_{eff})$
		High	$0.6540 - (0.0017 \times V_{eff})$
Instantaneous Oil-fired Water Heater	<2 gal and ≤210,000 Btu/h	Very Small	0.61
		Low	0.61
		Medium	0.61
		High	0.61
	≥2 gal and ≤210,000 Btu/h	Very Small	$0.2780 - (0.0022 \times V_{eff})$
		Low	$0.5151 - (0.0023 \times V_{eff})$
		Medium	$0.5687 - (0.0021 \times V_{eff})$
		High	$0.6147 - (0.0017 \times V_{eff})$
Instantaneous Electric Water Heater	<2 gal	Very Small	0.91
		Low	0.91

TABLE I.1—PROPOSED ENERGY CONSERVATION STANDARDS FOR CONSUMER WATER HEATERS—Continued

Product class	Effective storage volume and input rating * (if applicable)	Draw pattern	Uniform energy factor
		Medium	0.91
		High	0.92
	≥2 gal	Very Small	$0.8086 - (0.0050 \times V_{eff})$
		Low	$0.9123 - (0.0020 \times V_{eff})$
		Medium	$0.9252 - (0.0015 \times V_{eff})$
		High	$0.9350 - (0.0011 \times V_{eff})$
Grid-Enabled Water Heater	>75 gal	Very Small	$1.0136 - (0.0028 \times V_{eff})$
		Low	$0.9984 - (0.0014 \times V_{eff})$
		Medium	$0.9853 - (0.0010 \times V_{eff})$
		High	$0.9720 - (0.0007 \times V_{eff})$
Gas-fired Circulating Water Heater	≤200,000 Btu/h	Very Small	$0.8000 - (0.0011 \times V_{eff})$
		Low	$0.8100 - (0.0011 \times V_{eff})$
		Medium	$0.8100 - (0.0011 \times V_{eff})$
		High	$0.8100 - (0.0011 \times V_{eff})$
Oil-fired Circulating Water Heater	≤210,000 Btu/h	Very Small	$0.6100 - (0.0011 \times V_{eff})$
		Low	$0.6100 - (0.0011 \times V_{eff})$
		Medium	$0.6100 - (0.0011 \times V_{eff})$
		High	$0.6100 - (0.0011 \times V_{eff})$
Electric Circulating Water Heater	≤12 kW; for heat pump type units ≤24 A at ≤250 V	Very Small	$0.9100 - (0.0011 \times V_{eff})$
		Low	$0.9100 - (0.0011 \times V_{eff})$
		Medium	$0.9100 - (0.0011 \times V_{eff})$
		High	$0.9200 - (0.0011 \times V_{eff})$

* Effective storage volume is the representative value of storage volume as determined in accordance with the DOE test procedure at appendix E to subpart B of 10 CFR part 430 and applicable sampling plans.

A. Benefits and Costs to Consumers

Table I.2 presents DOE's evaluation of the economic impacts of the proposed standards on consumers of consumer water heaters, as measured by the average life-cycle cost (''LCC'') savings and the simple payback period (''PBP'').[3] The average LCC savings are positive for all product classes, and the PBP is less than the average lifetime of consumer water heaters, which is estimated to be 15 years for storage and 20 years for instantaneous water heaters (see section IV.F of this document).

TABLE I.2—IMPACTS OF PROPOSED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF CONSUMER WATER HEATERS

Product class	Effective storage volume and input rating (if applicable)	Average LCC savings (2022$)	Simple payback (years)
Gas-fired Storage Water Heater	≥20 gal and ≤55 gal	52	7.9
Oil-fired Storage Water Heater	≤50 gal	165	6.4
Electric Storage Water Heaters *	≥20 gal and ≤55 gal (excluding Small ESWHs)	1,868	3.0
	>55 gal and ≤120 gal	501	0.2
Instantaneous Gas-fired Water Heater	<2 gal and >50,000 Btu/h and <200,000 Btu/h	135	5.9

* DOE is not proposing amended standards for small electric storage water heaters (*i.e.,* electric storage water heaters greater than or equal to 20 gallons but less than 35 gallons in effective storage volume, with first-hour ratings less than 51 gallons), so those products are not impacted by the proposed rule.

DOE's analysis of the impacts of the proposed standards on consumers is described in section IV.F of this document.

B. Impact on Manufacturers

The industry net present value (''INPV'') is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2023–2059). Using a real discount rate of 9.6 percent, DOE estimates that the INPV for manufacturers of consumer water heaters in the case without amended standards is $2,554.7 million in 2022$. Under the proposed standards, the change in INPV is estimated to range from negative 8.1 percent to positive 6.5 percent, which is a loss of $207.3 million to a gain of $165.5 million. In order to bring products into compliance with amended standards, it is estimated that the industry would incur total conversion costs of $228.1 million.

DOE's analysis of the impacts of the proposed standards on manufacturers is described in section IV.J of this document. The analytic results of the manufacturer impact analysis (''MIA'') are presented in section V.B.2 of this document.

C. National Benefits and Costs [4]

DOE's analyses indicate that the proposed energy conservation standards for consumer water heaters would save a significant amount of energy. Relative

[3] The average LCC savings refer to consumers that are affected by a standard and are measured relative to the efficiency distribution in the no-new-standards case, which depicts the market in the compliance year in the absence of new or amended standards (see section IV.F.8 of this document). The simple PBP, which is designed to compare specific efficiency levels, is measured relative to the baseline product (see section IV.F.9 of this document).

[4] All monetary values in this document are expressed in 2022 dollars.

to the case without amended standards, the lifetime energy savings for consumer water heaters purchased in the 30-year period that begins in the anticipated year of compliance with the amended standards (2030–2059) amount to 27 quadrillion British thermal units (''Btu''), or quads.[5] This represents a savings of 21 percent relative to the energy use of these products in the case without amended standards (referred to as the ''no-new-standards case'').

The cumulative net present value (''NPV'') of total consumer benefits of the proposed standards for consumer water heaters are $56 billion at a 7-percent discount rate and $161 billion at a 3-percent discount rate. This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased product and installation costs for consumer water heaters purchased in 2030–2059.

In addition, the proposed standards for consumer water heaters are projected to yield significant environmental benefits. DOE estimates that the proposed standards would result in cumulative emission reductions (over the same period as for energy savings, 2030–2059) of 501 million metric tons (''Mt'')[6] of carbon dioxide (''CO_2''), 143 thousand tons of sulfur dioxide (''SO_2''), 988 thousand tons of nitrogen oxides (''NO_X''), 4,541 thousand tons of methane (''CH_4''), 4.6 thousand tons of nitrous oxide (''N_2O''), and 1.0 tons of mercury (''Hg'').[7]

DOE estimates the value of climate benefits from a reduction in greenhouse gases (''GHG'') using four different estimates of the social cost of CO_2 (''SC–CO_2''), the social cost of methane (''SC–CH_4''), and the social cost of nitrous oxide (''SC–N_2O''). Together these represent the social cost of GHG (''SC–GHG'').'').[8] DOE used interim SC–GHG values developed by an Interagency Working Group on the Social Cost of Greenhouse Gases (''IWG'').[9] The derivation of these values is discussed in section IV.L of this document. For presentational purposes, the climate benefits associated with the average SC–GHG at a 3-percent discount rate are estimated to be $25 billion. DOE does not have a single central SC–GHG point estimate and it emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates.

DOE estimated the monetary health benefits of SO_2 and NO_X emissions reductions using benefit per ton estimates from the scientific literature, as discussed in section IV.L of this document. DOE estimated the present value of the health benefits would be $17 billion using a 7-percent discount rate, and $49 billion using a 3-percent discount rate.[10] DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions.

Table I.3 summarizes the economic benefits and costs expected to result from the proposed standards for consumer water heaters. There are other important unquantified effects, including certain unquantified climate benefits, unquantified public health benefits from the reduction of toxic air pollutants and other emissions, unquantified energy security benefits, and distributional effects, among others.

TABLE I.3—SUMMARY OF MONETIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR CONSUMER WATER HEATERS

[TSL 2]

	Billion 2022$
3% discount rate	
Consumer Operating Cost Savings	198
Climate Benefits *	25
Health Benefits **	49
Total Monetized Benefits †	271
Consumer Incremental Product Costs ‡	36
Net Monetized Benefits	235
Change in Producer Cashflow (INPV ††)	(0.2) − 0.2
7% discount rate	
Consumer Operating Cost Savings	75
Climate Benefits * (3% discount rate)	25
Health Benefits **	17
Total Monetized Benefits †	117
Consumer Incremental Product Costs ‡	19
Net Monetized Benefits	98

[5] The quantity refers to full-fuel-cycle (''FFC'') energy savings. FFC energy savings includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and, thus, presents a more complete picture of the impacts of energy efficiency standards. For more information on the FFC metric, see section IV.H.1 of this document.

[6] A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO_2 are presented in short tons.

[7] DOE calculated emissions reductions relative to the no-new-standards case, which reflects key assumptions in the *Annual Energy Outlook 2023* (''*AEO2023*''). *AEO2023* 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 *AEO2023* assumptions that effect air pollutant emissions. The *AEO 2023* reflects the impact of the Inflation Reduction Act.

[8] To monetize the benefits of reducing greenhouse gas emissions this analysis uses the interim estimates presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990* published in February 2021 by the Interagency Working Group on the Social Cost of Greenhouse Gases (IWG).

[9] See Interagency Working Group on Social Cost of Greenhouse Gases, Technical Support Document: Social Coast 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/TechnicalSupport Document_SocialCostofCarbonMethaneNitrous Oxide.pdf.*

[10] DOE estimates the economic value of these emissions reductions resulting from the considered TSLs for the purpose of complying with the requirements of Executive Order 12866.

TABLE I.3—SUMMARY OF MONETIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR CONSUMER WATER HEATERS—Continued

[TSL 2]

	Billion 2022$
Change in Producer Cashflow (INPV ††)	(0.2) – 0.2

Note: This table presents the monetized costs and benefits associated with consumer water heaters shipped in 2030–2059. These results include benefits to consumers which accrue after 2059 from the products shipped in 2030–2059.

* Climate benefits are calculated using four different estimates of the social cost of carbon (SC–CO_2), methane (SC–CH_4), and nitrous oxide (SC–N_2O) (model average at 2.5-percent, 3-percent, and 5-percent discount rates; 95th percentile at 3-percent discount rate) (see section IV.L of this document). Together these represent the global SC–GHG. For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3-percent discount rate are shown, but DOE does not have a single central SC–GHG point estimate. To monetize the benefits of reducing greenhouse gas emissions this analysis uses the interim estimates presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990* published in February 2021 by the Interagency Working Group on the Social Cost of Greenhouse Gases (IWG).

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

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

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

†† Operating Cost Savings are calculated based on the life cycle costs analysis and national impact analysis as discussed in detail below. See sections IV.F and IV.H. DOE's NIA includes all impacts (both costs and benefits) along the distribution chain beginning with the increased costs to the manufacturer to manufacture the product and ending with the increase in price experienced by the consumer. DOE also separately conducts a detailed analysis on the impacts on manufacturers (the MIA). See section IV.J. In the detailed MIA, DOE models manufacturers' pricing decisions based on assumptions regarding investments, conversion costs, cashflow, and margins. The MIA produces a range of impacts, which is the rule's expected impact on the industry net present value (INPV). The change in industry NPV is the present value of all changes in industry cash flow, including changes in production costs, capital expenditures, and manufacturer profit margins. Change in INPV is calculated using the industry weighted average cost of capital value of 9.6% that is estimated in the manufacturer impact analysis (see chapter 12 of the NOPR TSD for a complete description of the industry weighted average cost of capital). For consumer water heaters, those values are – $207 million and $166 million. DOE accounts for that range of likely impacts in analyzing whether a TSL is economically justified. See section V.A of this document. DOE is presenting the range of impacts to the industry net present value under two markup scenarios: the Preservation of Gross Margin scenario, which is the manufacturer markup scenario used in the calculation of Consumer Operating Cost Savings in this table, and the Preservation of Operating Profit Markup scenario, where DOE assumed manufacturers would not be able to increase per-unit operating profit in proportion to increases in manufacturer production costs. DOE includes the range of estimated INPV in the above table, drawing on the MIA explained further in Section IV.J, to provide additional context for assessing the estimated impacts of this proposal to society, including potential changes in production and consumption, which is consistent with OMB's Circular A–4 and E.O. 12866. If DOE were to include the industry net present value into the net benefit calculation for this proposed rule, the net benefits would be $235 billion at 3-percent discount rate and $98 billion at 7-percent discount rate. DOE seeks comment on this approach.

The benefits and costs of the proposed standards can also be expressed in terms of annualized values. The monetary values for the total annualized net benefits are (1) the reduced consumer operating costs, minus (2) the increase in product purchase prices and installation costs, plus (3) the monetized value of climate and health benefits of emission reductions, all annualized.[11]

The national operating cost savings are domestic private U.S. consumer monetary savings that occur as a result of purchasing the covered products and are measured for the lifetime of consumer water heaters shipped in 2030–2059. The benefits associated with reduced emissions achieved as a result of the proposed standards are also calculated based on the lifetime of consumer water heaters shipped in 2030–2059. Total benefits for both the 3-percent and 7-percent cases are presented using the average GHG social costs with 3-percent discount rate. Estimates of SC–GHG values are presented for all four discount rates in section IV.L.1 of this document.

Table I.4 presents the total estimated monetized benefits and costs associated with the proposed standard, expressed in terms of annualized values. The results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and health benefits from reduced NO_X and SO_2 emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated cost of the standards proposed in this rule is $2,235 million per year in increased equipment costs, while the estimated annual benefits are $7,876 million in reduced equipment operating costs, $1,429 million in monetized climate benefits, and $1,805 million in monetized health benefits. In this case, the net monetized benefit would amount to $8,875 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the proposed standards is $2,420 million per year in increased equipment costs, while the estimated annual benefits are $11,357 million in reduced operating costs, $1,429 million in monetized climate benefits, and $2,798 million in monetized health benefits. In this case, the net monetized benefit would amount to $13,164 million per year.

[11] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2022, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (*e.g.,* 2030), and then discounted the present value from each year to 2022. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year, that yields the same present value.

TABLE I.4—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR CONSUMER WATER HEATERS

[TSL 2]

	Billion 2022$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	11.357	10.633	12.096
Climate Benefits *	1.429	1.412	1.446
Health Benefits **	2.798	2.764	2.832
Total Monetized Benefits †	15.584	14.809	16.374
Consumer Incremental Product Costs ‡	2.420	2.488	2.356
Net Monetized Benefits	13.164	12.321	14.018
Change in Producer Cashflow (INPV ††)	(0.021) – 0.017	(0.021) – 0.017	(0.021) – 0.017
7% discount rate			
Consumer Operating Cost Savings	7.876	7.380	8.382
Climate Benefits * (3% discount rate)	1.429	1.412	1.446
Health Benefits **	1.805	1.784	1.825
Total Monetized Benefits †	11.110	10.576	11.653
Consumer Incremental Product Costs ‡	2.235	2.290	2.183
Net Monetized Benefits	8.875	8.286	9.470
Change in Producer Cashflow (INPV ††)	(0.021) – 0.017	(0.021) – 0.017	(0.021) – 0.017

Note: This table presents the costs and benefits associated with consumer water heaters shipped in 2030–2059. These results include benefits to consumers which accrue after 2059 from the products shipped in 2030–2059. The Primary, Low Net Benefits, and High Net Benefits Estimates utilize projections of energy prices from the AEO2023 Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental equipment costs reflect a medium decline rate in the Primary Estimate, a low decline rate in the Low Net Benefits Estimate, and a high decline rate in the High Net Benefits Estimate. The methods used to derive projected price trends are explained in sections IV.F.1 and IV.F.4 of this document. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

* To monetize the benefits of reducing greenhouse gas 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). Climate benefits are calculated using four different estimates of the global SC–GHG (see section IV.L of this document). For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3-percent discount rate are shown, but the Department does not have a single central SC–GHG point estimate, and it emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates.

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

† Total benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate, but the Department does not have a single central SC–GHG point estimate.

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

†† Operating Cost Savings are calculated based on the life cycle costs analysis and national impact analysis as discussed in detail below. See sections IV.F and IV.H of this document. DOE's NIA includes all impacts (both costs and benefits) along the distribution chain beginning with the increased costs to the manufacturer to manufacture the product and ending with the increase in price experienced by the consumer. DOE also separately conducts a detailed analysis on the impacts on manufacturers (the MIA). See section IV.J. In the detailed MIA, DOE models manufacturers' pricing decisions based on assumptions regarding investments, conversion costs, cashflow, and margins. The MIA produces a range of impacts, which is the rule's expected impact on the industry net present value (INPV). The change in industry NPV is the present value of all changes in industry cash flow, including changes in production costs, capital expenditures, and manufacturer profit margins. Change in INPV is calculated using the industry weighted average cost of capital value of 9.6% that is estimated in the manufacturer impact analysis (see chapter 12 of the NOPR TSD for a complete description of the industry weighted average cost of capital). For consumer water heaters, those values are −$21 million and $17 million. DOE accounts for that range of likely impacts in analyzing whether a TSL is economically justified. See section V.A of this document. DOE is presenting the range of impacts to the industry net present value under two markup scenarios: the Preservation of Gross Margin scenario, which is the manufacturer markup scenario used in the calculation of Consumer Operating Cost Savings in this table, and the Preservation of Operating Profit Markup scenario, where DOE assumed manufacturers would not be able to increase per-unit operating profit in proportion to increases in manufacturer production costs. DOE includes the range of estimated INPV in the above table, drawing on the MIA explained further in Section IV.J, to provide additional context for assessing the estimated impacts of this proposal to society, including potential changes in production and consumption, which is consistent with OMB's Circular A–4 and E.O. 12866. If DOE were to include the industry net present value into the net benefit calculation for this proposed rule, the net benefits would range from $13.143 billion to $13.181 billion at 3-percent discount rate and range from $8.854 billion to $8.892 billion at 7-percent discount rate. DOE seeks comment on this approach.

DOE's analysis of the national impacts of the proposed standards is described in sections IV.H, IV.K and IV.L of this document.

D. Conclusion

DOE has tentatively concluded that the proposed standards represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. Specifically, with regards to technological feasibility, products achieving these proposed standard levels are already commercially available for all product classes covered by this proposal. As for economic justification, DOE's analysis shows that the benefits of the proposed standards exceed the burdens of the proposed standards.

Using a 7-percent discount rate for consumer benefits and costs and NO_X and SO_2 reduction benefits, and a 3-percent discount rate case for GHG social costs, the estimated cost of the proposed standards for consumer water heaters is $2,235 million per year in increased product costs, while the

estimated annual benefits are $7,876 million in reduced product operating costs, $1,429 million in monetized climate benefits and $1,805 million in monetized health benefits. The net monetized benefit amounts to $8,875 million per year.

The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.[12] For example, some covered products and equipment have substantial energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis.

As previously mentioned, the standards are projected to result in estimated national energy savings of 27 quad FFC. In addition, they are projected to reduce CO_2 emissions by 501 Mt, the equivalent of the annual CO_2 emissions of 2.1 million homes over 30 years. Based on these findings, DOE has initially determined the energy savings from the proposed standard levels are ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B). A more detailed discussion of the basis for these tentative conclusions is contained in the remainder of this document and the accompanying technical support document (''TSD'').

DOE also considered more-stringent energy efficiency levels as potential standards, and is still considering them in this rulemaking. However, DOE has tentatively concluded that the potential burdens of the more-stringent energy efficiency levels would outweigh the projected benefits.

Based on consideration of the public comments DOE receives in response to this document and related information collected and analyzed during the course of this rulemaking effort, DOE may adopt energy efficiency levels presented in this document that are either higher or lower than the proposed standards, or some combination of level(s) that incorporate the proposed standards in part.

II. Introduction

The following section briefly discusses the statutory authority underlying this proposed rule, as well as some of the relevant historical background related to the establishment of standards for consumer water heaters.

A. Authority

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part B of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include consumer water heaters, the subject of this document. (42 U.S.C. 6292(a)(4))

EPCA prescribed energy conservation standards for these products (42 U.S.C. 6295(e)(1)), and directed DOE to conduct two cycles of rulemakings[13] to determine whether to amend these standards. (42 U.S.C. 6295(e)(4)) EPCA further provides that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (See 42 U.S.C. 6297(d))

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6295(o)(3)(A) and 42 U.S.C. 6295(r)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 42 U.S.C. 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedures for consumer water heaters appear at title 10 of the Code of Federal Regulations (''CFR'') part 430, subpart B, appendix E (''appendix E'').

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including consumer water heaters. Any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary of Energy determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. 6295(o)(3)(B)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3))

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

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

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

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

[12] Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment, 86 FR 70892, 70901 (Dec. 13, 2021).

[13] DOE completed the first of these rulemaking cycles on January 17, 2001, by publishing in the **Federal Register** a final rule amending the energy conservation standards for consumer water heaters. 66 FR 4474. Subsequently, DOE completed the second rulemaking cycle to amend the standards for consumer water heaters by publishing a final rule in the **Federal Register** on April 16, 2010. 75 FR 20112.

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

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

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

(7) Other factors the Secretary of Energy (''Secretary'') considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

Further, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings that the consumer will receive during the first year as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

EPCA also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

Additionally, EPCA specifies requirements when promulgating an energy conservation standard for a covered product that has two or more subcategories. DOE must specify a different standard level for a type or class of product that has the same function or intended use if DOE determines that products within such group: (A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Finally, pursuant to the amendments contained in the Energy Independence and Security Act of 2007 (''EISA 2007''), Public Law 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE's current test procedures for consumer water heaters address standby mode and off mode energy use. In this rulemaking, DOE is proposing to apply the UEF metric (which addresses standby mode and off mode energy use) to all product classes of consumer water heaters, including those product classes for which there are no currently applicable UEF-based standards.

B. Background

1. Current Standards

As directed by EPCA (42 U.S.C. 6295(e)(4)), DOE conducted two cycles of rulemakings to determine whether to amend the statutory standards for consumer water heaters found in 42 U.S.C. 6295(e)(1). The most recent rulemaking from April 2010 resulted in amended standards using the energy factor (''EF'') metric originally prescribed by EPCA with a requirement for compliance starting on April 16, 2015. 75 FR 20112 (the ''April 2010 Final Rule''). Later amendments to EPCA directed DOE to establish a uniform efficiency metric for consumer water heaters (*see* 42 U.S.C. 6295(e)(5)(B)).[14] The Federal test procedure was revised to use a new metric, UEF, in a final rule published on July 11, 2014. 79 FR 40542. In a final rule published in the **Federal Register** on December 29, 2016, the existing EF-based energy conservation standards were then translated from EF to UEF using a ''conversion factor'' method for water heater basic models that were in existence at the time. 81 FR 96204 (''December 2016 Conversion Factor Final Rule'').

These standards are set forth in DOE's regulations at 10 CFR 430.32(d) and are repeated in Table II.1.

TABLE II.1—CURRENT UEF-BASED FEDERAL ENERGY CONSERVATION STANDARDS FOR CONSUMER WATER HEATERS

Product class	Rated storage volume and input rating (if applicable)	Draw pattern *	Uniform energy factor **
Gas-fired Storage Water Heater	≥20 gal and ≤55 gal	Very Small	$0.3456 - (0.0020 \times V_r)$
		Low	$0.5982 - (0.0019 \times V_r)$
		Medium	$0.6483 - (0.0017 \times V_r)$
		High	$0.6920 - (0.0013 \times V_r)$
	>55 gal and ≤100 gal	Very Small	$0.6470 - (0.0006 \times V_r)$
		Low	$0.7689 - (0.0005 \times V_r)$
		Medium	$0.7897 - (0.0004 \times V_r)$
		High	$0.8072 - (0.0003 \times V_r)$
Oil-fired Storage Water Heater	≤50 gal	Very Small	$0.2509 - (0.0012 \times V_r)$
		Low	$0.5330 - (0.0016 \times V_r)$
		Medium	$0.6078 - (0.0016 \times V_r)$
		High	$0.6815 - (0.0014 \times V_r)$
Electric Storage Water Heaters	≥20 gal and ≤55 gal	Very Small	$0.8808 - (0.0008 \times V_r)$
		Low	$0.9254 - (0.0003 \times V_r)$

[14] The requirement for a consumer water heater test procedure using uniform energy factor as a metric, as well as the requirement for DOE to undertake a conversion factor rulemaking to translate existing consumer water heater standards denominated in terms of EF to ones denominated in terms of UEF, were part of the amendments to EPCA contained in the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210 (Dec. 18, 2012).

TABLE II.1—CURRENT UEF-BASED FEDERAL ENERGY CONSERVATION STANDARDS FOR CONSUMER WATER HEATERS—Continued

Product class	Rated storage volume and input rating (if applicable)	Draw pattern *	Uniform energy factor **
		Medium	$0.9307 - (0.0002 \times V_r)$
		High	$0.9349 - (0.0001 \times V_r)$
	>55 gal and ≤120 gal	Very Small	$1.9236 - (0.0011 \times V_r)$
		Low	$2.0440 - (0.0011 \times V_r)$
		Medium	$2.1171 - (0.0011 \times V_r)$
		High	$2.2418 - (0.0011 \times V_r)$
Tabletop Water Heater	≥20 gal and ≤120 gal	Very Small	$0.6323 - (0.0058 \times V_r)$
		Low	$0.9188 - (0.0031 \times V_r)$
		Medium	$0.9577 - (0.0023 \times V_r)$
		High	$0.9884 - (0.0016 \times V_r)$
Instantaneous Gas-fired Water Heater	<2 gal and >50,000 Btu/h	Very Small	0.80
		Low	0.81
		Medium	0.81
		High	0.81
Instantaneous Electric Water Heater	<2 gal	Very Small	0.91
		Low	0.91
		Medium	0.91
		High	0.92
Grid-enabled Water Heater	>75 gal	Very Small	$1.0136 - (0.0028 \times V_r)$
		Low	$0.9984 - (0.0014 \times V_r)$
		Medium	$0.9853 - (0.0010 \times V_r)$
		High	$0.9720 - (0.0007 \times V_r)$

* The draw pattern dictates the frequency and duration of hot water draws during the 24-hour simulated use test, and is an indicator of delivery capacity of the water heater. Draw patterns are assigned based on the first hour rating (''FHR''), for non-flow-activated water heaters, or maximum GPM rating (''Max GPM''), for flow-activated water heaters. For the specific FHR and Max GPM ranges which correspond to each draw pattern, see section 5.4.1 of appendix E to subpart B of 10 CFR part 430.

** V_r is the rated storage volume (in gallons), as determined pursuant to 10 CFR 429.17.

In the December 2016 Conversion Factor Final Rule, DOE declined to develop conversion factors and UEF-based standards for consumer water heaters of certain sizes (by rated storage volume or input rating) and of certain types (*i.e.,* oil-fired instantaneous water heaters) where models did not exist on the market at the time to inform the analysis of the standards conversion. 81 FR 96204, 96210–96211. For consumer water heaters that did not receive converted UEF-based standards, DOE provided its interpretation that the original statutory standards—found at 42 U.S.C. 6295(e)(1) and expressed in terms of the EF metric—still applied; however, DOE would not enforce those statutorily-prescribed standards until such a time conversion factors are developed for these products and they can be converted to UEF. *Id.* Thus, the EF-based standards specified by EPCA apply to any consumer water heaters which do not have UEF-based standards found at 10 CFR 430.32(d). These EF-based standards are set forth at 42 U.S.C. 6295(e)(1) and are repeated in Table II.2.

TABLE II.2—EF-BASED FEDERAL ENERGY CONSERVATION STANDARDS FOR CONSUMER WATER HEATERS

Product class	Energy factor *
Gas water heaters	$0.62 - (0.0019 \times V_r)$
Oil water heaters	$0.59 - (0.0019 \times V_r)$
Electric water heaters	$0.95 - (0.00132 \times V_r)$

* V_r is the rated storage volume (in gallons), as determined pursuant to 10 CFR 429.17.

2. History of the Current Standards Rulemaking for Consumer Water Heaters

On May 21, 2020, DOE initiated the current rulemaking by publishing in the **Federal Register** a request for information (''May 2020 RFI''), soliciting public comment on various aspects of DOE's planned analyses to help DOE determine whether to amend energy conservation standards for consumer water heaters. 85 FR 30853 (May 21, 2020). DOE subsequently published a notice requesting feedback on its preliminary analysis and technical support document (''preliminary TSD'') on March 1, 2022 (the ''March 2022 Preliminary Analysis'') with a 60-day comment period. 87 FR 11327 (Mar. 1, 2022). The comment period was extended by 14 days in a notice published on May 4, 2022. 87 FR 26303. DOE received comments in response to the preliminary analysis notice and accompanying technical support document from the interested parties listed in Table II.3.

On October 21, 2022, DOE received a set of recommendations on amended energy conservation standards for consumer water heaters from a coalition of public- and private-sector organizations, including water heater manufacturers, energy efficiency organizations, environmental groups, and consumer organizations—collectively the Joint Stakeholders. This coalition's submission is herein referred to as the ''Joint Recommendation.'' The Joint Recommendation addressed standards for electric storage water heaters, gas-fired storage water heaters,

and gas-fired instantaneous water heaters and is discussed in further detail in section III.F of this document.

TABLE II.3—PRELIMINARY ANALYSIS AND JOINT RECOMMENDATION COMMENTS

Commenter(s)	Abbreviation	Comment No. in the docket*	Commenter type
American Council for an Energy-Efficient Economy, Appliance Standards Awareness Project, Bradford White Corporation, Consumer Federation of America, Natural Resources Defense Council, Northwest Energy Efficiency Alliance, Rheem Manufacturing Company.	Joint Stakeholders	49	Efficiency Organizations, Manufacturers, Consumer Advocacy Organization.
Air-Conditioning, Heating and Refrigeration Institute	AHRI	20, 31, 42	Trade Association.
Anonymous	Anonymous	19	Individual.
Atmos Energy Corporation	Atmos	27, 38	Utility.
Bradford White Corporation	BWC	32	Manufacturer.
California Investor-Owned Utilities (Pacific Gas and Electric Company, Southern California Edison, San Diego Gas & Electric Company).	CA IOUs	31, 39, 52	Utility Association.
Center for Energy and Environment	CEE	50	Efficiency Organization.
Benjamin Cirker	Cirker	30	Individual.
Edison Electric Institute	EEI	31, 43	Utility Association.
The American Gas Association, American Public Gas Association, National Propane Gas Association, Spire Inc., Spire Missouri Inc., and Spire Alabama Inc..	Gas Association Commenters.	26, 41, 54	Utility Association.
GE Appliances	GEA	46	Manufacturer.
Gas End-Use Advocacy Group	GEAG	36	Utility Association.
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, California Energy Commission, Consumer Federation of America, National Consumer Law Center, Natural Resources Defense Council and Northeast Energy Efficiency Partnerships.	Joint Advocates	34	Efficiency Organization.
Northwest Energy Efficiency Alliance, American Council for an Energy-Efficient Economy, Northwest Power and Conservation Council.	NEEA, ACEEE, and NWPCC.	47	Efficiency Organization.
Northwest Energy Efficiency Alliance	NEEA	31	Efficiency Organization.
Natural Resources Defense Council and Rocky Mountain Institute	NRDC and RMI	37	Efficiency Organization.
National Rural Electric Cooperative Association	NRECA	33	Utility Association.
New York State Energy Research and Development Authority	NYSERDA	35, 51	Efficiency Organization.
ONE Gas Inc	ONE Gas	28, 44	Utility.
Plumbing-Heating-Cooling Contractors Association	PHCC	40	Trade Association.
Rheem Manufacturing Company	Rheem	45	Manufacturer.
Rinnai America Corporation	Rinnai	55	Manufacturer.
Southern Company	Southern Company	31	Manufacturer.
Southwest Energy Efficiency Project	SWEEP	53	Efficiency Organization.
Eriks Mota Vasquez	Vasquez	17	Individual.

*Comment No. 31 denotes comments recorded in the transcript of the public meeting held on April 12, 2022.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[15] To the extent that interested parties have provided written comments that are substantively consistent with any oral comments provided during the April 12, 2022 public meeting, DOE cites the written comments throughout this final rule. Any oral comments provided during the webinar that are not substantively addressed by written comments are summarized and cited separately throughout this final rule.

C. Deviation From Appendix A

In accordance with section 3(a) of 10 CFR part 430, subpart C, appendix A (''appendix A''), DOE has deviated from the provision in appendix A regarding the pre-NOPR stages for an energy conservation standards rulemaking (specifically, the publication of a framework document). As initially discussed in the March 2022 Preliminary Analysis, DOE opted to deviate from this step by publishing a preliminary analysis without a framework document. A framework document is intended to introduce and summarize the various analyses DOE conducts during the rulemaking process and requests initial feedback from interested parties. Prior to the notification of the preliminary analysis DOE published an RFI in which DOE identified and sought comment on the analyses conducted in support of the most recent energy conservation standards rulemakings for water heaters. 87 FR 11327, 11330.

For this NOPR, DOE further notes that it is deviating from the provision in appendix A regarding the NOPR stage for an energy conservation standards rulemaking. Section 6(f)(2) of appendix A specifies that the length of the public comment period for a NOPR will be not less than 75 calendar. For this NOPR, DOE has opted instead to provide a 60-day comment period. DOE is opting to deviate from the 75-day comment period because stakeholders have already been afforded multiple opportunities to provide comments on this rulemaking. As noted previously, DOE requested comment on its planned technical and economic analyses in the May 2020 RFI and provided stakeholders with a 45-day comment period. 85 FR 30853. Additionally, DOE initially provided a 60-day comment period for stakeholders to provide input on the analyses presented in the preliminary TSD. 87 FR 11327. Subsequently, in response to requests from stakeholders, DOE re-opened the comment period for an additional 14 days to provide additional time for stakeholders to provide input on the preliminary analysis. 87 FR 26303 (May 4, 2022). The analytical assumptions and approaches used for the analyses conducted for this NOPR are similar to those used for the preliminary analysis. Therefore, DOE believes a 60-day comment period is appropriate and will provide interested parties with a meaningful opportunity to comment on the proposed rule.

Section 8(d)(1) of appendix A requires that new or amended test procedures

[15] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop energy conservation standards for consumer water heaters. (Docket No. EERE–2017–BT–STD–0019, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

which impact measured energy use or efficiency are finalized at least 180 days prior to the close of comment period for a NOPR proposing new or amended energy conservation standards. However, in a final rule published on December 13, 2021, discussing the provisions of appendix A, DOE noted that this 180-day period may not always be necessary. 86 FR 70892, 70896. The comment period for this NOPR will close on September 26, 2023, which is X days after the date of finalization of the most recent consumer and residential-duty commercial water heaters test procedure final rule, June 21, 2023 (this test procedure final rule is discussed in section III.B of this document). As described in that test procedure final rule, the amendments adopted therein will not alter the measured efficiency of consumer water heaters, or require retesting or recertification solely as a result of DOE's adoption of the amendments to the test procedures. 88 FR 40406, 40412. As such, the test provisions required by the most recent test procedure final rule are expected to be generally understood by stakeholders and would not impact the analysis of this standards rulemaking.

III. General Discussion

DOE developed this proposal after considering oral and written comments, data, and information from interested parties that represent a variety of interests. The following discussion provides a general overview of the approach taken to develop this proposal, with specific discussion of the methodology and comments received in section IV of this document.

A. Scope of Coverage

This NOPR covers those consumer products that meet the definition of ''water heater,'' as codified at 10 CFR 430.2 and as described by EPCA at 42 U.S.C. 6291(27).

Generally, DOE defines a ''water heater,'' consistent with EPCA's definition, as a product which utilizes oil, gas, or electricity to heat potable water for use outside the heater upon demand, including:

(a) Storage type units which heat and store water at a thermostatically controlled temperature, including gas storage water heaters with an input of 75,000 Btu per hour or less, oil storage water heaters with an input of 105,000 Btu per hour or less, and electric storage water heaters with an input of 12 kilowatts or less;

(b) Instantaneous type units which heat water but contain no more than one gallon of water per 4,000 Btu per hour of input, including gas instantaneous water heaters with an input of 200,000 Btu per hour or less, oil instantaneous water heaters with an input of 210,000 Btu per hour or less, and electric instantaneous water heaters with an input of 12 kilowatts or less; and

(c) Heat pump type units, with a maximum current rating of 24 amperes at a voltage no greater than 250 volts, which are products designed to transfer thermal energy from one temperature level to a higher temperature level for the purpose of heating water, including all ancillary equipment such as fans, storage tanks, pumps, or controls necessary for the device to perform its function.

10 CFR 430.2; (42 U.S.C. 6291(27))

In addition, at 10 CFR 430.2, DOE further defines several specific categories of consumer water heaters, as follows:

- ''Electric instantaneous water heater'' means a water heater that uses electricity as the energy source, has a nameplate input rating of 12 kW or less, and contains no more than one gallon of water per 4,000 Btu per hour of input.
- ''Electric storage water heater'' means a water heater that uses electricity as the energy source, has a nameplate input rating of 12 kW or less, and contains more than one gallon of water per 4,000 Btu per hour of input.
- ''Gas-fired instantaneous water heater'' means a water heater that uses gas as the main energy source, has a nameplate input rating less than 200,000 Btu per hour, and contains no more than one gallon of water per 4,000 Btu per hour of input.
- ''Gas-fired storage water heater'' means a water heater that uses gas as the main energy source, has a nameplate input rating of 75,000 Btu per hour or less, and contains more than one gallon of water per 4,000 Btu per hour of input.
- ''Grid-enabled water heater'' means an electric resistance water heater that—
  - Has a rated storage tank volume of more than 75 gallons;
  - Is manufactured on or after April 16, 2015;
  - Is equipped at the point of manufacture with an activation lock; and
  - Bears a permanent label applied by the manufacturer that—
    - Is made of material not adversely affected by water;
    - Is attached by means of non-water-soluble adhesive; and
    - Advises purchasers and end-users of the intended and appropriate use of the product with the following notice printed in 16.5 point Arial Narrow Bold font: ''IMPORTANT INFORMATION: This water heater is intended only for use as part of an electric thermal storage or demand response program. It will not provide adequate hot water unless enrolled in such a program and activated by your utility company or another program operator. Confirm the availability of a program in your local area before purchasing or installing this product.''
- ''Oil-fired instantaneous water heater'' means a water heater that uses oil as the main energy source, has a nameplate input rating of 210,000 Btu/h or less, and contains no more than one gallon of water per 4,000 Btu per hour of input.
- ''Oil-fired storage water heater'' means a water heater that uses oil as the main energy source, has a nameplate input rating of 105,000 Btu/h or less, and contains more than one gallon of water per 4,000 Btu per hour of input.

In the June 2023 Test Procedure Final Rule, DOE amended 10 CFR 430.2 (effective on July 21, 2023), adding the following definitions for circulating, low-temperature, and tabletop water heaters:

- ''Circulating water heater'' means an instantaneous or heat pump-type water heater that does not have an operational scheme in which the burner, heating element, or compressor initiates and/or terminates heating based on sensing flow; has a water temperature sensor located at the inlet or the outlet of the water heater or in a separate storage tank that is the primary means of initiating and terminating heating; and must be used in combination with a recirculating pump and either a separate storage tank or water circulation loop in order to achieve the water flow and temperature conditions recommended in the manufacturer's installation and operation instructions.
- ''Low-temperature water heater'' means an electric instantaneous water heater that is not a circulating water heater and cannot deliver water at a temperature greater than or equal to the set point temperature specified in section 2.5 of appendix E to subpart B of this part when supplied with water at the supply water temperature specified in section 2.3 of appendix E to subpart B of part 430 and the flow rate specified in section 5.2.2.1 of appendix E to subpart B of part 430.
- ''Tabletop water heater'' means a water heater in a rectangular box enclosure designed to slide into a kitchen countertop space with typical dimensions of 36 inches high, 25 inches deep, and 24 inches wide.

As stated in section I of this NOPR, EPCA prescribed energy conservation standards for all consumer water heaters (*i.e.,* those that meet the definition of

''water heater'' above). For the purposes of this NOPR, DOE is considering all consumer water heaters, as defined by EPCA. This includes consumer water heaters for which there are no current UEF-based standards codified at 10 CFR 430.32(d).

However, during this rulemaking, DOE has received inquiries from interested parties regarding the coverage, under current energy conservation standards, of hot water dispensing products. These products are generally used for food preparation (*e.g.,* brewing tea) and are installed in place of portable kettles. A small water-heating tank is connected to a sink's cold water supply to heat the water up to near-boiling temperatures. The hot water is piped out of the tank through a separate hot water faucet[16] specifically for use with this product. These products have very limited storage volume—often less than one gallon. All of the models that DOE has identified are all electric and run on less than 2 kilowatts of power. Note that these products are not to be confused with low-temperature electric instantaneous water heaters or point-of-use electric storage water heaters, both of which generally provide temperatures near or below 125 °F, the nominal delivery temperature in the appendix E test procedure that corresponds to normal household hot water temperatures for washing applications. Hot water dispensing products provide water at scalding-hot temperatures such as 160 °F to 210 °F.

DOE does not currently have energy conservation standards that cover hot water dispensing products and DOE's test procedure is not representative of an average use cycle for these products. Hot water dispensing products operate in a unique manner compared to the other consumer water heaters such as much higher temperatures, have smaller storage capacities, and can provide hot potable water at lower flow rates than typical consumer electric water heaters. While DOE has the authority to set standards for products that meet the definition of a consumer water heater (42 U.S.C. 6292(a)(4)), this rulemaking is not currently considering standards for hot water dispensing products.

See section IV.A.1 of this document for discussion of the product classes analyzed in this NOPR.

[16] ''Low-pressure water dispenser'' means a terminal fitting that dispenses drinking water at a pressure of 105 kPA (15 psi) or less. (10 CFR 430.2) Low-pressure water dispensers operate at lower water pressures than conventional kitchen faucets (by definition) and are used for the purpose of gently filling a relatively small vessel (*e.g.,* a glass).

B. Test Procedure

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6293) Manufacturers of covered products must use these test procedures to certify to DOE that their product complies with energy conservation standards and to quantify the efficiency of their product. DOE's current energy conservation standards for consumer water heaters are expressed in terms of UEF. (*See* 10 CFR 430.32(d)).

DOE recently amended the test procedure for these products at appendix E to subpart B of 10 CFR 430 in the consumer and residential-duty commercial water heater test procedure final rule published on June 21, 2023 (''June 2023 TP Final Rule'') pursuant to the 7-year review requirement as specified by EPCA. (42 U.S.C. 6293(b)(1)(A) and 42 U.S.C. 6314(a)(1)(A)) In the June 2023 TP Final Rule, DOE added definitions and where necessary additional test procedure provisions for circulating water heaters, low-temperature water heaters, and tabletop water heaters, as well as provisions for high temperature testing. DOE also established effective storage volume as a metric and provided additional optional ambient test conditions for heat pump water heaters. The test procedure for consumer water heaters incorporates by reference current versions of industry standards ASHRAE 41.1, ASHRAE 41.6, ASHRAE 118.2, ASTM D2156, and ASTM E97 and harmonizes various aspects of the test procedure with industry test procedures ASHRAE 118.2–2022 and NEEA Advanced Water Heating Specification v8.0. The effective date of the June 2023 TP Final Rule is July 21, 2023, 30 days after the date of its publication in the **Federal Register.** Changes to the test procedure made by the June 2023 TP Final Rule are mandatory for consumer water heater testing starting December 18, 2023, 180 days after publication. Subsequent references in this NOPR to the ''appendix E test procedure'' refer to the test procedure which will go in effect on July 21, 2023.

DOE received comments in response to the March 2022 Preliminary Analysis regarding the consumer water heater test procedure that were relevant to the test procedure rulemaking.

Cirker provided comments suggesting that, based on personal in-home monitoring of three heat pump water heaters, different designs exhibit different performance (*i.e.,* delivery temperature, delivery capacity, and energy consumption) under winter conditions, when the consumer uses a higher setpoint temperature, has a lower ambient temperature, and a lower supply water temperature. Cirker suggested that DOE include a method to determine the efficiency and first hour rating of heat pump water heaters under cold climate conditions. (Cirker, No. 30 at pp. 1–2)

In the June 2023 TP Final Rule, DOE adopted additional test conditions—including those simulating cold climates—for manufacturers to be able to make voluntary optional representations for heat pump water heaters. 88 FR 40406.

NYSERDA commented that rated storage volume is no longer an appropriate representation of the capacity of a storage water heater volume due to the use of mixing valves and higher tank temperatures, suggesting that first hour rating (''FHR'') be used instead. (NYSERDA, No. 35 at p. 6) DOE agreed that increasing the temperature of the water stored in a water heater above the nominal delivery temperature is a way to increase the capacity of the water heater, as the hotter water can be tempered with cool water using a mixing valve to provide a larger volume of hot water than when the water is stored at the relatively cooler nominal temperature. For water heaters that are capable of storing water at such an elevated temperature, the effective storage volume metric represents a measure of the true storage capacity of the water heater based on the maximum temperature at which it can store water, as compared to storing water at the nominal temperature of 125 degrees Fahrenheit (''°F'') specified in appendix E. DOE agreed, therefore, that rated storage volume alone is not an adequate representation of the storage capacity of water heaters that are capable of heating and storing water at high temperatures (*i.e.,* at a temperature well above the typical setpoint temperature of 125 °F), and established effective storage volume to better represent the storage capacity of such water heaters in the June 2023 TP Final Rule. 88 FR 40406. DOE specified in appendix E that effective storage volume is determined by multiplying the measured storage volume by a scaling factor which represents the ratio of the thermal energy stored in the tank when at its maximum storage temperature as compared to the thermal energy stored in the tank when at the nominal temperature of 125 °F. *Id.*

The appendix E test procedure, as amended by the June 2023 TP Final Rule, does not require water heaters to test in the highest heat mode (*i.e.,* the

high temperature test method). In the June 2023 TP Final Rule, DOE deferred the implementation of high temperature testing provisions to this energy conservation standards rulemaking. 88 FR 40406, 40448.

DOE further agrees with NYSERDA that storage volume is not an adequate representation of the storage capacity of water heaters that are capable of heating and storing water at high temperatures (*i.e.,* at a temperature well above the typical setpoint temperature of 125 °F). In the June 2023 TP Final Rule, DOE established effective storage volume as a metric to better represent the storage capacity of such water heaters. 88 FR 40406. Consequently, DOE is now addressing the implementation of effective storage volume provisions in this NOPR. In this NOPR, DOE is proposing that high temperature test provisions be required for electric storage water heaters that have a permanent (*i.e.,* non-temporary) mode or setting to heat and store water above 135 °F and that do not meet the definition of ''heat pump-type'' water heater (*i.e.,* this proposal applies to storage water heaters utilizing only electric resistance technology). Further, these provisions would not apply to water heaters that either store water at an elevated temperature only for a temporary period or to water heaters that are capable of storing at elevated temperatures only in response to instructions from a utility or third-party demand response program. DOE expects that, especially in the case of small electric storage water heaters, these products will be installed at an elevated temperature setpoint with a mixing valve in order to match the performance of larger water heaters. The high temperature test provisions are therefore expected to be representative of the average use cycle of electric resistance water heaters.

DOE's proposal is detailed further in section V.C.1 of this document.

BWC commented in response to the March 2022 Preliminary Analysis regarding product classes for products that do not currently have UEF-based standards, stating that DOE refrain from considering them until the test procedure rulemaking is finalized and DOE determines whether these product classes will be necessary. BWC also noted that a study of the simulated use test completed by Davis Energy Group, Inc. suggests that EF ratings for instantaneous gas-fired water heaters are inflated in comparison to those for gas-fired storage water heaters. BWC acknowledged that this effect should be smaller for UEF ratings, but still urged DOE to consider its potential impact. (BWC, No. 32 at p. 6)

In response to BWC, DOE disagrees that its test procedure provides an unfair advantage to gas-fired instantaneous models over gas-fired storage models. DOE's 24-hour simulated use test, as defined at appendix E, is designed to emulate typical in-field usage patterns for consumer water heaters and includes periods of standby during which no water is being withdrawn from the water heater. Storage water heaters maintain a significant volume of stored water, which loses heat to the cooler surrounding air. This results in the water heater consuming energy to heat the stored water to offset these standby losses, in addition to the energy required to heat the water from the supply water temperature to the setpoint temperature. By contrast, because instantaneous-type water heaters do not typically maintain a significant volume of stored water, the standby losses they experience are generally much lower and do not require additional energy to offset. Instantaneous-type water heaters may therefore achieve higher UEF ratings compared to storage-type water heaters. However, DOE reiterates that this difference in efficiency is not a result of an unfair test procedure, but rather a result of the differences in design between gas-fired storage and gas-fired instantaneous water heaters and is indeed representative of an average use cycle or period of use. See section IV.A.1 of this document for discussion regarding whether storage-type and instantaneous-type product classes should be combined together under uniform standards.

The June 2023 TP Final Rule additionally expanded coverage of the appendix E test procedure to additional consumer water heaters under the scope of coverage of standards. As discussed in that final rule, DOE revised the test procedure to provide additional instructions for testing circulating water heaters and low-temperature water heaters for UEF. 88 FR 40406. A circulating water heater is defined at 10 CFR 430.2 as an instantaneous or heat pump-type water heater that does not have an operational scheme in which the burner, heating element, or compressor initiates and/or terminates heating based on sensing flow; has a water temperature sensor located at the inlet or the outlet of the water heater or in a separate storage tank that is the primary means of initiating and terminating heating; and must be used in combination with a recirculating pump and either a separate storage tank or water circulation loop in order to achieve the water flow and temperature conditions recommended in the manufacturer's installation and operation instructions. A low-temperature water heater is defined at 10 CFR 430.2 as an electric instantaneous water heater that is not a circulating water heater and cannot deliver water at a temperature greater than or equal to the set point temperature specified in section 2.5 of appendix E when supplied with water at the supply water temperature specified in section 2.3 of appendix E and the flow rate specified in section 5.2.2.1 of appendix E.

Treatment of circulating water heaters and low temperature water heaters as potential product classes is discussed in section IV.A.1.a of this document.

In response to the March 2022 Preliminary Analysis, Rinnai provided comments indicating that gas-fired instantaneous water heaters with integrated recirculating pumps may have an additional benefit to water conservation. (Rinnai, No. 55 at pp. 1–2) However, while DOE may consider the energy use associated with increased or decreased water use, DOE does not have the authority to establish water conservation standards for circulating water heaters or instantaneous water heaters. (*See* 42 U.S.C. 6291(6))

C. Technological Feasibility

1. General

In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially-available products or in working prototypes to be technologically feasible. Sections 6(b)(3)(i) and 7(b)(1) of appendix A to 10 CFR part 430 subpart C.

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; (3) adverse impacts on

health or safety; and (4) unique-pathway proprietary technologies. Sections 6(b)(3)(ii)–(v) and 7(b)(2)–(5) of appendix A. Section IV.B of this document discusses the results of the screening analysis for consumer water heaters, particularly the designs DOE considered, those it screened out, and those that are the basis for the standards considered in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the NOPR TSD''.

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt an amended standard for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (''max-tech'') improvements in energy efficiency for consumer water heaters using the design parameters for the most efficient products available on the market or in working prototypes. The max-tech levels that DOE determined for this rulemaking are described in section IV.C.1.a of this proposed rule and in chapter 5 of the NOPR TSD.

D. Energy Savings

1. Determination of Savings

For each trial standard level (''TSL''), DOE projected energy savings from application of the TSL to consumer water heaters purchased in the 30-year period that begins in the year of compliance with the proposed standards (2030–2059).[17] The savings are measured over the entire lifetime of consumer water heaters purchased in the previous 30-year period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for a product would likely evolve in the absence of amended energy conservation standards.

DOE used its national impact analysis (''NIA'') spreadsheet model to estimate national energy savings (''NES'') from potential amended or new standards for consumer water heaters. The NIA spreadsheet model (described in section IV.H of this document) calculates energy savings in terms of site energy, which is the energy directly consumed by products at the locations where they are used. For electricity, DOE reports national energy savings in terms of primary energy savings, which is the savings in the energy that is used to generate and transmit the site electricity. For natural gas, the primary energy savings are considered to be equal to the site energy savings. DOE also calculates NES in terms of FFC energy savings. The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy conservation standards.[18] DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or equipment. For more information on FFC energy savings, see section IV.H.1 of this document.

2. Significance of Savings

To adopt any new or amended standards for a covered product, DOE must determine that such action would result in significant energy savings. (42 U.S.C. 6295(o)(3)(B))

The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.[19] For example, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis, taking into account the significance of cumulative FFC national energy savings, the cumulative FFC emissions reductions, and the need to confront the global climate crisis, among other factors. DOE has initially determined the energy savings from the proposed standard levels are ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B).

E. Economic Justification

1. Specific Criteria

As noted previously, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)) The following sections discuss how DOE has addressed each of those seven factors in this proposed rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of a potential amended standard on manufacturers, DOE conducts an MIA, as discussed in section IV.J of this document. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include (1) INPV, which values the industry on the basis of expected future cash flows, (2) cash flows by year, (3) changes in revenue and income, and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and PBP associated with new or amended standards. These measures are discussed further in the following section. 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.

An anonymous commenter indicated that the benefits of making water heaters more energy-efficient would likely outweigh the costs. The commenter stated that many households have either

[17] Each TSL is composed of specific efficiency levels for each product class. The TSLs considered for this NOPR are described in section V.A of this document. DOE conducted a sensitivity analysis that considers impacts for products shipped in a 9-year period.

[18] The FFC metric is discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51282 (Aug. 18, 2011), as amended at 77 FR 49701 (Aug. 17, 2012).

[19] The numeric threshold for determining the significance of energy savings established in a final rule published on February 14, 2020 (85 FR 8626, 8670), was subsequently eliminated in a final rule published on December 13, 2021 (86 FR 70892, 70906).

very old water heaters or water heaters that consume a significant amount of energy, and that energy conservation standards can be helpful in guiding customer choices. (Anonymous, No. 19)

b. Savings in Operating Costs Compared to Increase in Price (LCC and PBP)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of a product (including its installation) and the operating expense (including energy, maintenance, and repair expenditures) discounted over the lifetime of the product. The LCC analysis requires a variety of inputs, such as product prices, product energy consumption, energy prices, maintenance and repair costs, product lifetime, and discount rates appropriate for consumers. To account for uncertainty and variability in specific inputs, such as product lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value.

The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost due to a more-stringent standard by the change in annual operating cost for the year that standards are assumed to take effect.

For its LCC and PBP analysis, DOE assumes that consumers will purchase the covered products in the first year of compliance with new or amended standards. The LCC savings for the considered efficiency levels are calculated relative to the case that reflects projected market trends in the absence of new or amended standards. DOE's LCC and PBP analysis is discussed in further detail in section IV.F of this document.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section III.D of this document, DOE uses the NIA spreadsheet models to project national energy savings.

d. Lessening of Utility or Performance of Products

In establishing product classes and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) Based on data available to DOE, the standards proposed in this document would not reduce the utility or performance of the products under consideration in this rulemaking.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a proposed standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) EPCA also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(ii)) DOE will transmit a copy of this proposed rule to the Attorney General with a request that the Department of Justice (''DOJ'') provide its determination on this issue. DOE will publish and respond to the Attorney General's determination in the final rule. DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. In addition, stakeholders may also provide comments separately to DOJ regarding these potential impacts. See the **ADDRESSES** section for information to send comments to DOJ.

f. Need for National Energy Conservation

DOE also considers the need for national energy and water conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) The energy savings from the proposed standards are likely to provide improvements to the security and reliability of the Nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the Nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the Nation's needed power generation capacity, as discussed in section IV.M of this document.

DOE maintains that environmental and public health benefits associated with the more efficient use of energy are important to take into account when considering the need for national energy conservation. The proposed standards are likely to result in environmental benefits in the form of reduced emissions of air pollutants and 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 of this document; the estimated emissions impacts are reported in section V.X of this document. DOE also estimates the economic value of emissions reductions resulting from the considered TSLs, as discussed in section IV.L of this document.

g. Other Factors

In determining whether an energy conservation standard is economically justified, DOE may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) To the extent DOE identifies any relevant information regarding economic justification that does not fit into the other categories described previously, DOE could consider such information under ''other factors.''

2. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii), EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the effects that proposed energy conservation standards would have on the payback period for consumers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the Nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE's evaluation of the economic justification

for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section IV.X of this proposed rule.

F. Interested Party Recommendations

As discussed in section II.B.2 of this document, DOE received a Joint Stakeholder Recommendation for amended standards pertaining to electric storage water heaters, gas-fired storage water heaters, and gas-fired instantaneous water heaters. Specifically, the Joint Stakeholder Recommendation recommended that DOE adopt the standards shown in Table III.1 through Table III.3. (Joint Stakeholders, No. 49 at pp. 9–10)

TABLE III.1—JOINT STAKEHOLDER RECOMMENDATION LEVELS FOR ELECTRIC STORAGE WATER HEATERS

Draw pattern	First hour rating (FHR)	DOE rated storage volume			
		≥20 to ≤30 gallons	>30 to ≤35 gallons	>35 to ≤55 gallons	>55 to 120 gallons
Low	≥18 to <51 gallons	Current Standard*	Height ≤36 inches: Current Standard*	2.3 UEF	2.5 UEF
			Height >36 inches: 2.0 UEF.		
Medium	≥51 to <75 gallons	2.0 UEF	2.0 UEF.		
High	≥75 gallons.				

*Current Standard: UEF = 0.9254 − 0.0003 × V_r, where V_r is the DOE rated storage volume.

TABLE III.2—JOINT RECOMMENDATION RECOMMENDED LEVELS FOR GAS-FIRED STORAGE WATER HEATERS

Draw pattern	First hour rating (FHR)	DOE rated storage volume ≥20 to ≤55 gallons
Low	≥18 to <51 gallons	UEF = 0.6451 − 0.0019 * V_r
Medium	≥51 to <75 gallons	UEF = 0.7046 − 0.0017 * V_r
High	≥75 gallons	UEF = 0.7424 − 0.0013 * V_r

Note: V_r = DOE rated storage volume. These recommended levels are for gas-fired storage water heaters including standard, low NO_X, and ultra-low NO_X burners. The levels shown are equivalent to DOE's preliminary TSD Efficiency Level 2 (EL2).

TABLE III.3—JOINT RECOMMENDATION RECOMMENDED LEVELS FOR GAS-FIRED INSTANTANEOUS WATER HEATERS

Draw pattern	Recommended efficiency level
Medium	0.91 UEF
High	0.93 UEF

Note: These recommended levels are for gas-fired instantaneous water heaters with a DOE rated storage volume of <2 gallons and an input rating of >50,000 BTU per hour. The levels shown are equivalent to DOE's preliminary TSD Efficiency Level 2 (EL2).

In support of the recommended levels, the Joint Stakeholders stated that, if adopted, the recommendation would transition the majority of electric water heaters to heat pump technology and make incremental steps to improve gas-fired water heater efficiency. The Joint Stakeholders also stated that the recommended levels would provide significant reductions in national water heating energy use and their associated greenhouse gas emissions, save consumers money on their utility bills, provide manufacturers more business certainty with room to innovate, and offer manufacturers, consumers, and professional installers flexibility for certain applications where heat pump technology is not currently a viable replacement option. (Joint Stakeholders, No. 49 at p. 1 and pp. 5–6)

DOE has included an analysis of the benefits and burdens of the Joint Stakeholder Recommendation as part of its analyses of amended energy conservation standards for this NOPR. The Joint Stakeholder Recommendation is discussed in further detail, as applicable, throughout section IV of this document. Following the submission by the Joint Stakeholders, three other commenters, SWEEP, CEE and NYSERDA, submitted comments in support of the efficiency level proposals recommended by the Joint Stakeholders. (SWEEP, No. 53 at p. 1; CEE, No. 50 at p. 1; NYSERDA, No. 51 at pp. 1–2)

The CA IOUs provided a recommendation similar to the Joint Stakeholder Recommendation, suggesting that all electric storage water heaters between 20 and 120 gallons in rated storage volume would have to meet heat pump standards roughly equivalent to Efficiency Level (''EL'') 2 analyzed in the March 2022 Preliminary Analysis, except for products 20–30 gallons in the low draw pattern (based on FHR). The CA IOUs justified their recommendation by stating that it sought to maximize the share of the future residential water heater market that will be high-efficiency, while allowing less-efficient products to fill applications that are challenging for currently available heat pump water heaters. (CA IOUs, No. 52 at p. 6–7) The CA IOUs' recommendation is shown in Table III.4.

TABLE III.4—CA IOUs RECOMMENDED LEVELS FOR ELECTRIC STORAGE WATER HEATERS

Draw pattern	First hour rating (FHR)	Rated storage volume	
		≥20 to ≤30 gallons	>30 to ≤120 gallons
Low	≥18 to <51 gallons	0.93 UEF	3.30 UEF
Medium	≥51 to <75 gallons	3.35 UEF	
High	≥75 gallons	3.47 UEF	

The Gas Association Commenters submitted a request for DOE to follow the normal notice and comment procedure for proposing standards prior to a final rule, rather than promulgating a direct final rule in response to the Joint Stakeholder Recommendation and the CA IOUs recommendation. The Gas Association Commenters suggested that DOE publish an advance notice of proposed rulemaking (''ANOPR'') prior to a NOPR in order to solicit feedback. The Gas Association Commenters also argued that DOE does not have the grounds for utilizing the direct final rule process based on the provisions in EPCA and relevant precedent. (Gas Association Commenters, No. 54 at pp. 2–3)

To this, DOE notes that it is proposing standards for consumer water heaters and seeking public comment. As for issuing an ANOPR to solicit feedback, DOE has already solicited public comment through the May 2020 RFI and the March 2022 Preliminary Analysis. Further, the March 2022 Preliminary Analysis details the analytical methods and preliminary results DOE has used in this NOPR. As such, DOE does not believe an ANOPR is necessary or appropriate.

NYSERDA agreed with DOE's analysis that supports heat pump water heater (''HPWH'') technology. NYSERDA noted that the HPWH market has seen significant improvement in cost and efficiency in the last decade, and they are pleased to see this reflected through DOE's analysis as part of this rulemaking. (NYSERDA, No. 35 at p.2) NYSERDA also recommended that all products use condensing and heat pump technology as justified and appropriate based on DOE's final analysis. (NYSERDA, No. 35 at p. 6) In response, DOE notes that most energy conservation standard levels proposed for electric storage water heaters in this NOPR effectively require the use of heat pump technology. However, DOE cannot and does not establish standards to explicitly require certain technologies. All standards proposed by DOE must be both technologically feasible and economically justified, and the standards proposed in this NOPR are consistent with that requirement.

Rheem urged DOE to propose and then finalize an EL for gas-fired storage water heaters that requires electricity and is achievable with a Category I venting solution to moderate the installation costs associated with this rulemaking, as well as the next, in anticipation of future electrification efforts. Rheem argued that doing so would ensure that 120 V electrical power already exists at the water heater for the next replacement and provide consumers with the option of choosing a drop-in 120 V heat pump water heater replacement or high efficiency condensing water heater. (Rheem, No. 45 at p. 4) In addition, Rheem stated that it did not recommend amending the standard for gas-fired instantaneous water heaters to EL 3. (Rheem, No. 45 at p. 7) Rinnai recommended that gas-fired storage water heater standards be set at 0.80 UEF [20] because this efficiency level appears to be feasible and could result in significant energy savings because gas-fired storage water heaters may comprise 42 percent of the overall market. Rinnai stated that EL 2 would continue to allow lower efficiency products to be used in the market. (Rinnai, No. 55 at p. 1)

After weighing the benefits and burdens of various potential standard levels, DOE is proposing to amend the standards to those in trial standard level 2, which consists of efficiency level 2 for both gas-fired storage water heaters and gas-fired instantaneous water heaters. Additional discussion of DOE's rationale is discussed in section V.C of this document.

One Gas and the Gas Association Commenters strongly endorse use of non-regulatory alternatives as a means for addressing energy efficiency and greenhouse gas emissions from gas-fired consumer appliances such as the current review of ENERGY STAR for consumer water heaters. One Gas also recognizes that the non-regulatory alternatives available to the Department provide it with the most efficient and effective means of addressing most market failure causes, such as purchase decisions not being made available to consumers inhabiting a dwelling. (ONE Gas, No. 44 at p. 8; Gas Association Commenters, No. 41, attachment 6, at p. 11) A full discussion of the non-regulatory alternatives considered by DOE is presented in chapter 17 of the TSD for this proposed rule. DOE is required to establish amended energy conservation standards for consumer water heaters if an amended standard would result in significant conservation of energy and would be both technologically feasible and economically justified.

BWC strongly discourages DOE from considering regional standards or specifications as part of their analysis. While these are employed in certain parts of the U.S., they encompass non-energy efficiency related elements but do not account for all product types or approach things from a national perspective. (BWC, No.32 at p.6) DOE is not proposing any regional standards in this NOPR.

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this rulemaking with regard to consumer water heaters. Separate paragraphs address each component of DOE's analyses.

DOE used several analytical tools to estimate the impact of the standards proposed in this document. The first tool is a spreadsheet that calculates the LCC savings and PBP of potential amended or new energy conservation standards. The national impacts analysis uses a second spreadsheet set that provides shipments projections and calculates national energy savings and net present value of total consumer costs and savings expected to result from potential energy conservation standards. DOE uses the third spreadsheet tool, the Government Regulatory Impact Model (''GRIM''), to assess manufacturer impacts of potential standards. These three spreadsheet tools

[20] In the March 2022 Preliminary Analysis, 0.80 was the UEF value for EL 4 for a representative 48-gallon gas-fired storage water heater in the high draw pattern.

are available on the DOE website for this proposed rulemaking: *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=32*. Additionally, DOE used output from the latest version of the Energy Information Administration's (''EIA's'') *Annual Energy Outlook* (''*AEO*''), a widely known energy projection for the United States, for the emissions and utility impact analyses.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly-available information. The subjects addressed in the market and technology assessment for this rulemaking include (1) a determination of the scope of the rulemaking and product classes, (2) manufacturers and industry structure, (3) existing efficiency programs, (4) shipments information, (5) market and industry trends; and (6) technologies or design options that could improve the energy efficiency of consumer water heaters. The key findings of DOE's market assessment are summarized in the following sections. See chapter 3 of the NOPR TSD for further discussion of the market and technology assessment.

In the preliminary analysis, DOE sought comment on whether the manufacturer model counts from publicly available databases accurately reflect manufacturer market shares on a model- or sales-weighted basis. In response, AHRI and Rheem indicated that manufacturer model counts in publicly available databases do not accurately reflect manufacturer market shares. (AHRI, No. 31 at p. 16; Rheem, No. 45 at pp. 3–4) AHRI commented that the model count in a certification directory does not reflect sales volume and will provide an inaccurate view of the market. AHRI added that a manufacturer with a large number of models does not necessarily have a larger market share compared to a manufacturer with a smaller number of models. (AHRI, No. 42 at p. 2) DOE agrees with these comments and therefore did not consider database model counts alone to be representative of manufacturer market share in this NOPR's analyses. DOE considered market research [21] as well as market share feedback from confidential interviews with manufacturers to determine more accurate values. Additional details can be found in chapter 3 of the TSD.

During a public meeting held on April 12, 2022, related to this rulemaking, NEEA noted that UEF ratings have increased over the last decade in products ranging from 40 to 80 gallons. (NEEA, No. 31, p. 7–8) DOE agrees that UEF ratings have generally increased over the last decade, and the latest efficiency distribution data were used to inform this NOPR analysis.

1. Product Classes

When evaluating and establishing energy conservation standards, DOE shall establish separate standards for a group of covered products (*i.e.,* establish a separate product class) if DOE determines that separate standards are justified based on the type of energy used, or if DOE determines that the group of covered products has a capacity or other performance-related feature that other products do not have and such feature justifies a different standard. (42 U.S.C. 6295(q)) In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE determines are appropriate. (*Id.*)

EPCA, as amended by the National Appliance Energy Act (NAECA; Pub. L. 100–12), established initial energy conservation standards, expressed as EF, that were based on three product classes differentiated by fuel type: (1) gas-fired, (2) oil-fired, and (3) electric. (42 U.S.C. 6295(e)(1)) These standards applied to consumer water heaters manufactured on or after January 1, 1990.

DOE subsequently amended these EF standards twice, most recently in the April 2010 Final Rule. 75 FR 20112. In the April 2010 Final Rule, DOE further divided consumer water heaters into product classes based on fuel type (gas-fired, oil-fired, or electric), product type (storage, instantaneous, tabletop), storage volume, and input rate.

The Energy Efficiency Improvement Act of 2015 (''EEIA 2015'') (Pub. L. 114–11), enacted on April 30, 2015, added a definition of ''grid-enabled water heater'' and a standard in terms of EF for such products to EPCA's energy conservation standards. (42 U.S.C. 6295(e)(6)(A)(ii)) DOE codified the definition for grid-enabled water heater and the associated energy conservation standards in a final rule published on August 11, 2015. 80 FR 48004.

Most recently, the December 2016 Conversion Factor Final Rule translated the EF-based standards to UEF-based standards for certain classes of consumer water heaters, which are shown in Table IV.1. Although the classes of consumer water heaters with UEF-based standards have limitations on the stored volume and (if applicable) fuel input rate, as discussed in that final rule, the standards established in EPCA do not place any limitation on the storage volume of consumer water heaters and do not define a minimum fuel input rate for gas-fired instantaneous water heaters. Therefore, the original standards established by EPCA in terms of EF remain applicable to all products without UEF-based standards. 81 FR 96204, 96209–96211.

The 36 product classes for which DOE has currently established UEF-based standards are summarized in Table IV.1. The product classes without UEF-based standards, for which EF-based standards from EPCA apply, are shown in Table IV.2.

TABLE IV.1—CONSUMER WATER HEATER PRODUCT CLASSES WITH CURRENT UEF-BASED STANDARDS

Product type	Rated storage volume and input rating (if applicable)	Draw patterns
Gas-Fired Storage Water Heater	≥20 gal and ≤55 gal	Very Small, Low, Medium, High.
Gas-Fired Storage Water Heater	>55 gal and ≤100 gal	Very Small, Low, Medium, High.
Oil-Fired Storage Water Heater	≤50 gal	Very Small, Low, Medium, High.
Electric Storage Water Heater	≥20 gal and ≤55 gal	Very Small Low, Medium, High.
Electric Storage Water Heater	>55 gal and ≤120 gal	Very Small, Low, Medium, High.

[21] Market shares data were found from Statista report *Residential water heater market share by vendor in the United States from 2018 to 2021,* available online at: *www.statista.com/statistics/700257/us-residential-water-heater-market-share/* (Last accessed May 1, 2023).

TABLE IV.1—CONSUMER WATER HEATER PRODUCT CLASSES WITH CURRENT UEF-BASED STANDARDS—Continued

Product type	Rated storage volume and input rating (if applicable)	Draw patterns
Tabletop Water Heater	≥20 gal and ≤120 gal	Very Small, Low, Medium, High.
Instantaneous Gas-Fired Water Heater	<2 gal and >50,000 Btu/h	Very Small, Low, Medium, High.
Instantaneous Electric Water Heater	<2 gal	Very Small, Low, Medium, High.
Grid-Enabled Water Heater	>75 gal	Very Small, Low, Medium, High.

TABLE IV.2—CONSUMER WATER HEATER PRODUCT CLASSES WITHOUT CURRENT UEF-BASED STANDARDS

Product class	Rated storage volume and input rating (if applicable)
Gas-fired Storage	<20 gal.
	>100 gal.
Oil-fired Storage	>50 gal.
Electric Storage	<20 gal.
	>120 gal
Tabletop	<20 gal.
	>120 gal.
Gas-fired Instantaneous	<2 gal and ≤50,000 Btu/h.
	≥2 gal.
Oil-fired Instantaneous	<2 gal.
	≥2 gal.
Electric Instantaneous	≥2 gal.

In the March 2022 Preliminary Analysis, DOE used the conversion factor calculations applied in the December 2016 Conversion Factor Final Rule to translate EPCA's EF-based standards to equivalent UEF-based standards for the product classes in Table IV.2. The methodology and assumptions used for this conversion are described in detail in the preliminary TSD and in the NOPR TSD (see chapter 5). DOE is proposing to adopt UEF-based standards for these classes, which is further discussed in section IV.C.2 of this document.

a. Circulating Water Heater and Low-Temperature Water Heaters

As discussed in section III.B of this document, in the June 2023 TP Final Rule, DOE established definitions for ''circulating water heater'' and ''low temperature water heater'' in 10 CFR 430.2, and also established test procedures to determine the UEF of these types of water heaters. 88 FR 40406. DOE has identified three potential classes of circulating water heater based on fuel type, which are shown in Table IV.3. The input ratings associated with each product class are derived from the instantaneous water heater definitions in EPCA for each fuel type. (42 U.S.C. 6291(27))

TABLE IV.3—PROPOSED CLASSES OF CIRCULATING WATER HEATERS

Product class	Characteristics
Gas-fired Circulating Water Heater	A circulating water heater with a nominal input of 200,000 Btu/h or less; contains no more than one gallon of water per 4,000 Btu/h of input.
Oil-fired Circulating Water Heater	A circulating water heater with a nominal input of 210,000 Btu/h or less; contains no more than one gallon of water per 4,000 Btu/h of input.
Electric Circulating Water Heater	A circulating water heater with an input of 12 kW or less; contains no more than one gallon of water per 4,000 Btu/h of input (including heat pump-only units with power inputs of no more than 24 A at 250 V).

DOE is proposing to add these terms (''gas-fired circulating water heater,'' ''oil-fired circulating water heater,'' and ''electric circulating water heater'') to the definitions found at 10 CFR 430.2.

As discussed in the June 2023 TP Final Rule, DOE has determined that circulating water heaters with input ratings below 200,000 Btu/h (for gas-fired), 210,000 Btu/h (for oil-fired), or 12 kW (for electric) meet the definitional criteria for instantaneous consumer water heaters. As such, these products are subject to the applicable energy conservation standards; however, DOE previously provided an enforcement policy for circulating water heaters.[22] Because an amended test procedure that includes new provisions for testing circulating water heaters was recently finalized in the June 2023 TP Final Rule, DOE is proposing to establish updated UEF standards that reflect the new test method as discussed further in section IV.C.2 of this document. DOE did not consider amended standards for such products as part of this NOPR analysis in order to allow manufacturers time to test their products according to the updated test method and to develop sufficient data upon which to base future rulemaking analysis. As discussed in section V of this document,

[22] Prior to the June 2023 TP Final Rule, DOE became aware of gas-fired instantaneous water heaters meeting the definition of consumer water heaters which operated differently than those DOE had previously considered in test procedure rulemakings. On September 5, 2019, DOE issued an enforcement policy for consumer water heaters meeting the definition of gas-fired ''circulating water heater'' as described in said enforcement policy in which DOE stated that it would not seek civil penalties for failing to certify these products, or if these products failed to comply with applicable standards, on or before December 31, 2021. The June 2023 TP Final Rule has since addressed this issue by establishing test procedures to determine UEF ratings for circulating water heaters.

DOE proposes to update the standards for other types of gas-fired instantaneous water heaters. Therefore, DOE also proposes to establish separate classes for circulating water heaters in order to maintain the standards at their current stringency.

AHRI expressed concern regarding DOE's coverage of gas-fired circulating water heaters as consumer products, stating that most are used in commercial applications. AHRI requested that DOE reinstate the enforcement policy on circulating water heaters, which was issued on September 5, 2019, and expired on December 31, 2021. (AHRI, No. 42 at pp. 5–6)

As discussed, DOE has previously determined that these products are appropriately classified under EPCA as consumer water heaters. In addition, as discussed in the June 2023 TP Final Rule, DOE has identified circulating water heaters compatible with residential applications, and the establishment of a test method to determine the UEF of these products removes the need for any further enforcement policy. 88 FR 40406.

DOE requests comment on its proposed deferral of consideration of amended, more-stringent standards for circulating water heaters.

Regarding low temperature water heaters, DOE notes that they are covered as electric instantaneous water heaters. As discussed in section III.A of this document, DOE is not considering updated standards for electric instantaneous water heaters for this NOPR. Therefore, although low temperature water heaters are tested in a slightly different manner as other electric instantaneous water heaters, DOE is proposing to maintain low temperature water heaters within the broader electric instantaneous water heater product class and is not proposing a separate class for them at this time.

b. Storage-Type and Instantaneous-Type Product Classes

In the March 2022 Preliminary Analysis, DOE addressed comments received in response to the May 2020 RFI that suggested that DOE should consider eliminating the separate product classes for instantaneous water heaters. For the preliminary analysis, DOE analyzed separate classes for instantaneous water heaters, but sought feedback from stakeholders on whether storage-type and instantaneous-type water heaters product classes should be combined. (See section 2.3 of the preliminary TSD.)

In response, AHRI, BWC, and Rheem urged DOE not to combine storage and instantaneous product classes, commenting that this would be inconsistent with EPCA. (AHRI, No. 31 at p. 15; AHRI, No. 42 at p. 2; BWC, No. 32 at p. 1; Rheem, No. 45 at p. 2) AHRI stated that storage and instantaneous water heaters each provide unique utility to consumers due to their smaller footprint, and storage water heaters provide unique utility in that they allow consumers to participate in demand-response programs. AHRI asserted that combining the two product classes could decrease consumer utility if standards were set such that either storage or instantaneous water heaters were precluded from the market. (AHRI, No. 42 at p. 2) BWC requested that DOE not merge the storage and instantaneous product classes of gas-fired water heaters because they have different installation requirements and are useful in different situations. (BWC, No. 32 at p. 1) BWC stated that instantaneous water heaters are typically wall-hung, reducing the required floor space, and models are available for installation outdoors. BWC stated that storage water heaters, unlike instantaneous water heaters, maintain a volume of water available use immediately once a draw commences (whereas instantaneous water heaters take additional time to heat the water). BWC asserted that storage water heaters also provide hot water utility for applications which require large ''dump loads'' such as large tubs or multiple, concurrent, hot water draws by baths, showers, laundry, and/or dishes. Lastly, BWC also noted that storage water heaters can be utilized in demand response programs to store hot water for use when utility rates are high. (*Id.*)

Rheem suggested that combining storage and instantaneous product classes will lead to UEF standards that are not technologically feasible for some volume and input ranges because the standard cannot be lowered. Rheem also stated that combining storage and instantaneous water heaters into the same products class could result in one type of water heater being regulated out of existence or prevent DOE from amending standards to the maximum technologically feasible and economically justified level. (Rheem, No. 45 at p. 2) Rheem stated that the ability to store heated water is a performance-related feature that justifies a separate analysis for storage and instantaneous due to differences in operation, installation, and application. Rheem cited electric instantaneous as an example of a product ideal for hand-washing and low continuous flow point-of-use applications, while electric storage water heaters are better suited for higher flow rates with shorter draws such as to fill a bathtub or supply a shower. Rheem also noted that electric instantaneous water heaters require significant electrical panel capacity to serve an entire home, whereas electric storage water heaters use a much lower panel capacity. Finally, Rheem noted that the ability of storage water heaters to operate in thermal storage programs further differentiates their utility from instantaneous water heaters. (*Id.*)

DOE has tentatively determined that the existing separate product classes for storage and instantaneous water heaters—both electric and gas-fired—should be maintained. Storage and instantaneous water heaters offer distinct utilities to a consumer. For example, instantaneous water heaters provide a continuous supply of hot water, up to the maximum flow rate, while storage water heaters are often better suited to handle large initial demands for hot water as opposed to continuous draws. The ability of an instantaneous water heater to supply hot water continuously is directly attributed to its input rate and storage volume (*i.e.,* the input rate to storage volume ratio). Statutorily, consumer storage water heaters are limited to ratios of no more than 4,000 Btu/h per gallon and consumer instantaneous water heaters are greater than 4,000 Btu/h per gallon. 42 U.S.C. 6291(27)(B). Therefore, instantaneous water heaters possess an inherently distinct capacity to provide a continuous supply of hot water to the consumer. Additionally, storage water heaters have associated standby energy losses that instantaneous water heaters do not. Due to these differences in consumer utility and operational characteristics, DOE has tentatively determined that different product classes and standards for storage and instantaneous water heaters are necessary.

c. Gas-Fired Water Heaters

In response to the March 2022 Preliminary Analysis, several interested parties provided recommendations for the product classes for gas-fired water heaters.

Atmos urged DOE to consider the impact that not distinguishing between condensing and non-condensing water heaters will have on whether Category I venting [23] water heaters remain on the

[23] A Category I vented appliance is defined by the National Fire Protection Association (NFPA) and the American National Standards Institute (ANSI) in chapter 3 of NFPA 54–2021/ANSI Z223.1, the National Fuel Gas Code, as ''an appliance that operates with a nonpositive vent static pressure and

market. (Atmos, No. 38 at p. 5) The Gas Association Commenters urged DOE to reconsider the conclusions reached in the December 2021 Venting Interpretive Final Rule,[24] specifically with regard to gas-fired instantaneous water heaters, for which a condensing-level standard may be economically justifiable. The Gas Association Commenters Indicated that a condensing-level standard would lead to product unavailability for atmospherically vented gas-fired water heaters. (Gas Association Commenters, No. 41 at pp. 3–4)

ONE Gas recommended DOE maintain its breakout of the gas-fired storage water heater analysis in the preliminary TSD by Category I, III, and IV [25] products and consider subdividing analysis of Category I into subcategories that require electric power (such as for induced draft and power damper models) and those that do not, as this split in the analysis would support compliance with 42 U.S.C. 6295(q)(1). ONE Gas also requested that DOE clarify why gas-fired products which require electricity to operate are not considered to ''consume a different kind of energy.'' (ONE Gas, No. 44 at p. 8) The Gas Association Commenters urged DOE to consider separate product classes for gas-fired water heaters that do not require an external electrical power supply, which they claimed could be eliminated by amended energy conservation standards achievable only by condensing products. The Gas Association Commenters added that all products which do not require electricity have a standing pilot and are noncondensing, and hence would become unavailable. These commenters also indicated that such products have a unique utility to be able to operate during outages or entirely off the grid. (Gas Association Commenters, No. 41 at p. 4)

As discussed at the beginning of this section, DOE shall establish separate product classes for a covered product based on: (1) fuel source; and (2) whether a type of product offers a unique capacity or other performance-related feature that justifies a different standard. (*See* 42 U.S.C. 6295(q)(1))

In response to commenters' suggestions that DOE further consider whether to distinguish between non-condensing and condensing water heaters (or associated venting) for the purposes of establishing a separate product class, DOE reiterates its position stated in the March 2022 preliminary analysis that, consistent with the December 2021 Venting Interpretive Final Rule, non-condensing technology does not constitute a performance-related ''feature'' that provides a distinct utility to consumers as prescribed by EPCA at 42 U.S.C. 6295(q)(1). (*See* chapter 2 of the preliminary analysis TSD; 86 FR 73947.) In short, the type of technology (non-condensing or condensing) or venting used by the appliance, does not provide any utility to the consumer that is accessible to the layperson, which is based upon the consumer's operation of or interaction with the appliance. Therefore, there is no difference in the utility derived from the appliance based on these factors. 86 FR 73947, 73951, 73953. As explained in the Venting Interpretive Final Rule, DOE considers any additional costs associated with venting as part of its determination that an energy conservation standard is economically justified. *Id.* at 86 FR 73960. Because neither non-condensing operation, nor atmospheric, category I venting (which is associated with non-condensing operation) meet the requirements to be considered a performance-related ''feature'' as outlined at 42 U.S.C. 6295(q)(1), DOE is not proposing separate product classes specifically to preserve this capability in gas-fired water heaters. DOE similarly finds that other venting categories (*e.g.,* category IV venting) are also not a performance-related feature under EPCA.

Regarding the recommendations that DOE separate product classes based on whether or not a gas-fired water heater uses auxiliary electricity, DOE has long held that use of auxiliary electric power in gas-fired products does not constitute ''consuming a different kind of energy'' from those that do not use auxiliary electric power under EPCA. EPCA defines ''energy'' as meaning electricity, or fossil fuels.[26] (42 U.S.C. 6291(3))

EPCA initially separated water heaters by fuel type into only gas-fired, oil-fired, and electric water heaters product classes. (42 U.S.C. 6295(e)(1)) Although commenters have suggested that products that use both gas and electricity could be thought of as being gas-fired water heaters and electric water heaters, the usage of electricity in gas-fired water heaters is only a means to power auxiliary components and not to heat the water. Therefore, DOE has historically considered these products to be only gas-fired water heaters.

As for whether use of auxiliary electricity constitutes a unique performance-related feature, DOE notes that, in an April 8, 2009 final rule, DOE declined to define separate product classes for gas cooking products that do not require electricity because DOE was unable to identify any unique utility associated with gas cooking products equipped with standing pilot ignition, compared to those with electronic ignition. While DOE considered that the ability to operate in the case of an atypical event such as the loss of line power was of benefit to consumers, DOE determined that battery-powered electronic ignition systems could provide ignition in the absence of line power and noted that such ignition systems already had been implemented in other products including portable gas-fired instantaneous water heaters. As such, consumer water heaters with standing pilot lights are not unique in the ability to operate during outages or entirely off the grid. Thus, DOE has tentatively determined that a separate product class for consumer water heaters with standing pilot lights is not warranted under 42 U.S.C. 6295(q)(1).

d. Electric Storage Water Heaters

In the March 2022 Preliminary Analysis, DOE tentatively determined not to separate heat pump electric storage water heaters from the electric storage water heater product class. DOE noted that to the extent that heat pump electric storage water heaters use electricity to heat, they meet EPCA's definition of an electric storage-type water heater (see 42 U.S.C. 6291(27)(A)) and are subject to the current standards for electric storage water heaters at 10 CFR 430.32(d). (See chapter 2 of the preliminary TSD.) This position is also consistent with the April 2010 Final Rule. In that rule, DOE found that heat pump water electric storage water heaters did not meet the requirements for establishing a separate product class. 75 FR 20112, 20135. As stated previously, DOE establishes separate product classes based on two criteria: (1) fuel source; and (2) whether a type

with a vent gas temperature that avoids excessive condensate production in the vent.''

[24] On December 29, 2021, DOE published a final interpretive rule (''December 2021 Venting Interpretive Final Rule'') reinstating its long-standing interpretation that the heat exchanger technology and associated venting used to supply heated air or hot water is not a performance-related ''feature'' that provides a distinct consumer utility under EPCA. 86 FR 73947.

[25] The National Fuel Gas Code, NFPA 54–2021/ANSI Z223.1, defines a category III vented appliance as ''an appliance that operates with a positive vent static pressure and with a vent gas temperature that avoids excessive condensate production in the vent.'' It defines a category IV vented appliance as ''an appliance that operates with a positive vent static pressure and with a vent gas temperature that can cause excessive condensate production in the vent.''

[26] The definition of ''energy'' also provides that the Secretary may, by rule, include other fuels within the meaning of the term ''energy'' if he determines that such inclusion is necessary or appropriate to carry out the purposes of this chapter. (42 U.S.C. 6291(3))

of product offers a unique capacity or other performance-related feature that justifies a different standard. (*See* 42 U.S.C. 6295(q)(1)) In the April 2010 Final Rule, DOE noted that both heat pump electric storage water heaters and electric resistance storage water heaters use electricity as the fuel source. 75 FR 20112, 20135. As for capacity, DOE observed that heat pump electric storage water heaters were being offered as direct replacements for electric resistance storage water heaters. *Id.* DOE also noted that rated storage volumes and first hour ratings of heat pump electric storage water heaters were comparable to electric resistance storage water heaters. *Id.* Finally, DOE did not identify any other performance-related features that were unique to either heat pump electric storage water heaters or electric resistance storage water heaters. *Id.*

EEI disagreed with DOE's decision in the preliminary analysis not to create a separate product class for heat pump electric storage water heaters and expressed concern over expanding heat pump-level standards to more electric storage water heaters than they currently apply to. (EEI, No. 31 at p. 35)

Cirker also commented that DOE should consider separating out product classes for electric resistance storage water heaters from heat pump electric storage water heaters on the basis of personal experience with three heat pump water heaters installed within the commenter's home exhibiting a wider range of performance characteristics, including, at times, lower delivery capacity. (Cirker, No. 30 at p. 1)

Based on its current market assessment, DOE has tentatively determined that the conclusions reached in the April 2010 Final Rule remain valid. Heat pump electric storage water heaters and electric resistance water heaters use electricity as the fuel source. They both offer similar capacities as evidenced by first hour ratings certified to DOE, which range between 29 gallons and 80 gallons for electric resistance storage water heaters and between 41 gallons and 95 gallons for heat pump electric storage water heaters. Finally, DOE has not identified any unique performance-related features offered by either heat pump electric storage water heaters or electric resistance storage water heaters. As discussed in the Venting Interpretive Final Rule, DOE considers performance-related features to be those aspects of the appliance with which the consumer interacts during operation of the product. 86 FR 73947, 73955.

For consumer water heaters, which are products that traditionally do not receive daily consumer interaction, storage capacity and delivery capacity are the main performance features that impact consumer utility. Water heater capacity reflects that amount of hot water available to the consumer for use, and this also impacts the efficiency of the product. Hence, DOE has currently-established standards which take into account capacity ranges for consumer water heaters. On the other hand, the technology used to heat the water, heat pump or electric resistance, is not something a consumer would interact with during operation of the water heater. As a result, DOE maintains its position from the April 2010 Final Rule and the March 2022 Preliminary Analysis that heat pump electric storage water heaters and electric resistance storage water heaters do not warrant separate product classes.

Plug-In and Split-System Heat Pump Electric Storage Water Heaters

While DOE has tentatively determined that heat pump electric storage water heaters do not warrant their own product class, NYSERDA also recommended that DOE create additional definitions and product classes for plug-in (120 volt (V)/15 ampere (A)) and split-system heat pump electric storage water heaters to allow these products to enter the market and increase market share. (NYSERDA, No. 35 at pp. 6–7) NEEA, ACEEE, and NWPCC also urged DOE to consider plug-in heat pump water heaters in its analysis and to consider whether a separate standard for them would be warranted, given that they are expected to be commercially available by the end of 2022. (NEEA, ACEEE, and NWPCC, No. 47 at p. 7) The CA IOUs requested DOE create a separate product class (or lower efficiency levels if a separate product class is not possible) for split-system heat pump water heaters and plug-in heat pump water heaters because of their unique ability to serve installation scenarios that would be difficult or impossible for unitary (240 V) heat pump water heaters. (CA IOUs, No. 39 at p. 2)

In response to these comments, DOE first notes that it did not consider plug-in heat pump water heaters in the March 2022 Preliminary Analysis as they were not commercially available in the U.S. market at the time. (*See* Chapter 2 of the preliminary TSD). While there are now a limited number of plug-in heat pump water heaters available in the U.S. market, DOE still does not have sufficient information to determine how use of plug-in voltage (120 V) and current (15 A) affects performance and efficiency. As a result, even if DOE were to make a determination that use of plug-in voltage and current constitutes a unique performance-related feature, the Department would be unable to make the necessary finding that a higher or lower efficiency standard is justified for these types of water heaters. DOE may consider establishing a separate product class for plug-in heat pump electric storage water heaters in a future rulemaking.

With respect to establishing a separate product class for split-system heat pump electric storage water heaters, DOE notes the analysis is very similar to what was discussed for heat pump electric storage water heaters. Split-system heat pump water heaters use the same fuel source, electricity, as other electric storage water heaters. DOE also has not identified any unique performance-related features offered by split-system heat pump water heaters that would warrant a separate product class consideration at this time. And, as DOE stated previously, the type of technology used to heat the water, in this case a split-system heat pump, is not something a consumer would interact with during operation of the water heater.

Grid-Enabled Water Heaters

NYSERDA urged DOE to further define grid-enabled water heaters for consistency on connectedness. (NYSERDA, No. 35 at p. 7) In response, DOE notes that grid-enabled water heaters are defined in EPCA. (see 42 U.S.C. 6295(e)(6)(A)(ii)) DOE has not found it necessary at this time to further define connectivity.

Small Electric Storage Water Heaters and Tabletop Water Heaters

Current product classes for electric storage water heaters are based on rated storage volume (capacity) and draw pattern. *See* 10 CFR 430.32(d). There are product classes for electric storage water heaters with storage volumes greater than 20 gallons and less than or equal to 55 gallons, and product classes for electric storage water heaters with storage volumes greater than 55 gallons and less than or equal to 120 gallons. As discussed in section III.F of this document, DOE received a Joint Stakeholder Recommendation for amended water heater standards, that included recommended standard levels for electric storage water heaters. In particular, the Joint Stakeholder Recommendation suggested setting different standards for smaller electric storage water heaters.

In response, DOE notes that the efficiency of an electric storage water heaters is typically increased by adding

insulation to the water heater or by incorporating a new technology into the design, such as a heat pump. When implementing these technology options, the water heater's outer dimensions typically are increased to maintain the same internal tank size (and hold the same volume of water). DOE reviewed its existing product classes for electric storage water heaters with storage volumes less than or equal to 55 gallons and greater than 20 gallons to determine whether further subdividing these product classes is warranted. DOE's market data for electric storage water heaters suggests there is a certain category of electric storage water heaters that are limited in their physical size due to the places they are typically installed. Some of these water heaters are commonly referred to as ''lowboy'' water heaters and have restrictions on their physical size to facilitate installation in crawl spaces, in attics, and under staircases, which have finite space constraints that define physical size limitations for the water heater. The physical size limitation of the unit restricts the amount of hot water that can be provided to the household.

In order to determine how to best characterize these ''small water heaters,'' DOE looked at the amount of hot water they produce and their effective storage volumes. DOE found that most ''small electric storage water heaters'' in the market today offer an effective storage volume greater than or equal to 20 gallons and less than or equal to 35 gallons and deliver first-hour ratings less than 51 gallons. Due to their low capacities ''small electric storage water heaters'' fall into the very small or low usage draw patterns.

Thus, DOE tentatively concludes that this restriction is a performance-related feature affecting energy efficiency that would warrant a separate product class. In addition, the physical size limitation constrains the technology options that can be considered to increase the efficiency of these water heaters. For example, the maximum technologically feasible efficiency level for electric storage water heater utilizes heat pump water heater technology. For those water heaters that are physically space-constrained, the max-technology efficiency level must be a split-system heat pump water heater since integrating the heat pump into the top of the tank is physically prohibited by the constraints of the installation. This is discussed further in sections IV.C.1.a and IV.C.1.b of this NOPR.

In this proposed rulemaking, DOE has analyzed splitting the existing 20–55 gallon product classes for electric storage water heaters by establishing new ''small electric storage water heater'' product classes.

The proposed electric storage product classes would be: (1) electric storage water heaters with an effective storage volume greater than or equal to 20 gallons and less than or equal to 35 gallons, with first-hour ratings less than 51 gallons (''small electric storage water heaters''); and (2) electric storage water heaters with an effective storage volume greater than or equal to 20 gallons and less than or equal to 55 gallons (excluding small electric storage water heaters). The electric storage product classes analyzed in this NOPR are summarized below in Table IV.4.

TABLE IV.4—ELECTRIC STORAGE WATER HEATER PRODUCT CLASSES

Current Product Class Structure		
≥20 gallons, ≤55 gallons, All draw patterns		>55 gallons, ≤120 gallons, All draw patterns.
New Product Class Structure Being Considered		
Small Electric Storage Water Heaters ≥20 gallons, ≤35 gallons, Very small and low draw patterns*.	≥20 gallons, ≤55 gallons, All draw patterns, excluding ''small electric storage water heaters''.	>55 gallons, ≤120 gallons, All draw patterns.

* These products are collectively referred to as ''small electric storage water heaters.''

Tabletop water heaters, which typically have around 35 gallons of rated storage volume, also have very particular dimensions in order to be used as a kitchen workspace. DOE is not proposing to amend the standards for tabletop water heaters in this rulemaking based on the market assessment for these products (see section IV.C.1.a for details). There are only two basic models of tabletop water heaters on the market currently. Because of the similarities between tabletop water heaters and small electric storage water heaters, DOE is proposing to create alignment between the standards for these types of products. Specifically, in this NOPR, DOE proposes to amend the definition of ''tabletop water heater'' to specify that the tabletop designation of electric storage water heaters is only applicable to products in the very small or low draw pattern. As a result of this proposal (if finalized), any tabletop water heaters in the medium and high draw patterns would henceforth be considered in the broader electric storage water heater product classes. Out of the two basic models of tabletop water heaters certified to DOE, one is in the low draw pattern and will not be affected by the proposal. The other is in the medium draw pattern. DOE expects that this medium draw pattern tabletop model can be redesigned to meet the low draw pattern requirements with limited product conversion cost to the manufacturer.

DOE requests comment on its proposal to limit the tabletop water heater designation to products in the very small and low draw patterns.

2. Technology Options

As described in section III.C.1 of this document, DOE conducts a technology assessment to identify a complete list of technologies for consumer water heaters (''technology options'') with the potential to improve the UEF ratings of products. Section IV.B of this document describes the process by which technology options are screened in a separate screening analysis that aims to determine which technology options could feasibly be adopted based on five screening criteria. Finally, in the engineering analysis (section IV.C of this document), DOE selects the technology options that are most likely to constitute the design pathway to higher efficiency levels in a standards-case scenario (thereafter referred to as ''design options''). Thus, after DOE identifies a comprehensive list of technologies for the technology assessment, the subsequent analysis focuses only on those technologies that are the most likely to be implemented in response to amended standards.

In the preliminary market analysis and technology assessment, DOE

identified numerous technology options that would be expected to improve the efficiency of consumer water heaters, as measured by the DOE test procedure. These technology options were presented in chapter 3 of the preliminary TSD. DOE requested feedback on the technology options identified and on whether there are additional technologies available that may improve consumer water heater performance.

In response to the March 2022 Preliminary Analysis, the Joint Advocates requested that DOE evaluate 120 V/15 A heat pump water heaters because their commercial availability is expected to increase throughout 2022. (Joint Advocates, No. 34 at pp. 2–3) Rheem commented that there will be 120 V electric water heaters, including heat pump water heaters, on the market during the 30-year analysis timeframe. (Rheem, No. 45 at p. 4) In response, DOE has included 120 V HPWHs in its technology assessment for electric storage heat pump water heaters in this NOPR. However, as described further in chapter 3 of the NOPR TSD, there are currently very few models of 120 V heat pump water heaters available on the market, and DOE has not analyzed these designs directly in the engineering analysis due to the lack of information on these models and whether these designs would constitute the most cost-effective pathway to improved energy efficiency for electric storage water heaters. DOE's initial findings on the potential efficiency of 120 V heat pump water heaters are detailed in chapter 3 of the NOPR TSD.

DOE requests comment on the outlook for the emergence of 120 V heat pump water heaters, information regarding how their design and operation may differ from 240 V heat pump water heaters, and data on performance characteristics and efficiencies.

Rheem recommended DOE add an inlet damper to the list of technology options but indicated that this technology option may not be suitable for the entire gas-fired storage water heater product class. Rheem stated that it has concerns that the technology may have limitations for some installation applications. (Rheem, No. 45 at p. 3) Based on its independent research and discussions with manufacturers, DOE understands the technology in question to be gas-actuated flue dampers, which are installed at the air intake inlet (hence the term used by the commenter, ''inlet damper''). The Joint Advocates urged DOE to evaluate gas-actuated, non-powered dampers, which require no external power source and instead use a self-powered gas valve to generate the power needed to operate, for gas-fired storage water heaters as a potentially lower-cost alternative to other damper technology options. (Joint Advocates, No. 34 at p. 2) As discussed further in chapter 3 of the NOPR TSD, DOE agrees with Rheem and the Joint Advocates that gas-actuated flue dampers are a viable technology option for gas-fired storage water heaters and has therefore included them in its updated analyses for this NOPR.

AHRI and BWC opposed DOE's inclusion of modulating burners as a technology option for gas-fired storage, oil-fired storage, and gas-fired instantaneous water heaters because modulating burners are, to their knowledge, used only in gas-fired instantaneous water heaters in the consumer market. (AHRI, No. 42 at p. 3; BWC, No. 32 at p. 3) BWC added that adjusting the fuel-to-air ratio is typically done only in commercial applications (with the possible exception of consumer gas-fired instantaneous water heaters) as it is very sophisticated and costly. (BWC, No. 32 at p. 3)

In response to comments from AHRI and BWC, DOE notes that it is technologically feasible to use modulating burners in fossil fuel-fired products, and therefore, it has been included in the list of technology options available for consumer water heaters. However, in the engineering analysis of the March 2022 Preliminary Analysis, which constructs the main design option pathway for efficiency improvements, DOE had tentatively determined that modulating burners were likely to be used as part of the technology pathway for increasing UEF only in instantaneous-type gas-fired water heaters, as commenters have suggested. Accordingly, in this NOPR, as in the March 2022 Preliminary Analysis, DOE has analyzed modulating burners only for gas-fired instantaneous water heaters in the engineering analysis (see section IV.C.1.a of this document for additional discussion).

The technology options found in this NOPR for improving UEF in consumer water heaters, are listed in Table IV.5 and described in chapter 3 of the NOPR TSD.

TABLE IV.5—POTENTIAL TECHNOLOGIES FOR INCREASING EFFICIENCY

Technology option
Heat traps.
Improved insulation:
Increased thickness.
Insulation on tank bottom.
Less conductive tank materials (*e.g.,* plastic).
Foam insulation.
Pipe and fitting insulation.
Advanced insulation types:
Aerogel.
Vacuum panels.
Inert gas-filled panels.
Electronic ignition systems:
Direct spark ignition.
Intermittent pilot ignition.
Hot surface ignition.
Improved burners:
Pulse combustion.
Pressurized combustion.
Side-arm heating.
Two-phase thermosiphon technology.
Modulating burners.
Reduced burner size (slow recovery).
Heat exchanger improvements:
Increased heat exchanger surface area.

TABLE IV.5—POTENTIAL TECHNOLOGIES FOR INCREASING EFFICIENCY—Continued

Technology option
Enhanced flue baffle.
Submerged combustion chamber.
Multiple flues.
Alternative flue geometry (Helical).
U-Tube.
Condensing technology.
Induced-draft (negative vent pressure) heat exchanger.
Direct-fired heat exchange.
Improved venting:
Flue damper:
Externally-powered.
Thermopile-operated (non-powered).
Gas-actuated (non-powered).
Buoyancy-operated (non-powered).
Concentric direct venting.
Power vent.
Improved heat pump water heater components:
Compressor improvements:
Increased capacity.
Increased efficiency.
Variable-speed drive.
Fan improvements:
High-efficiency fan motors.
High-efficiency fan blades.
Expansion device improvements.
Increased evaporator surface area.
Increased condenser surface area.
Gas-fired absorption heat pump water heaters.
Gas-fired adsorption heat pump water heaters.
Carbon dioxide heat pump water heaters.
Thermophotovoltaic and thermoelectric generators.
Improved controls:
Modulating controls.

B. Screening Analysis

DOE uses the following five screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in commercially viable, existing prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production of a technology in commercial products and reliable installation and servicing of the technology could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility.* If a technology is determined to have a significant adverse impact on the utility of the product to subgroups of consumers, or results in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

(4) *Safety of technologies.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.

(5) *Unique-pathway proprietary technologies.* If a technology has proprietary protection and represents a unique pathway to achieving a given efficiency level, it will not be considered further, due to the potential for monopolistic concerns.

Sections 6(b)(3) and 7(b) of appendix A.

In summary, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed five criteria, it will be excluded from further consideration in the engineering analysis. The reasons for eliminating any technology are discussed in the following sections.

The subsequent sections include 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

The following paragraphs describe the technologies that DOE eliminated for failure to meet one of the following five factors: (1) technological feasibility; (2) practicability to manufacture, install, and service; (3) impacts on equipment utility or equipment availability; (4) adverse impacts on health or safety; and (5) unique-pathway proprietary technologies.

In the preliminary analysis, DOE eliminated the following technology options from further consideration based on the above criteria: advanced insulation types, condensing pulse combustion, side-arm heating, two-phase thermosiphon technology, reduced burner size (slow recovery), direct-fired heat exchange, dual fuel heat pumps, buoyancy-operated flue dampers, gas-fired absorption and adsorption heat pump water heaters, and U-tube flues. Each of these technology options and the reasons for which they were screened out are discussed in detail in the preliminary TSD.

BWC commented that some technology options listed in Table 2.3.3

of the preliminary TSD cannot necessarily be easily implemented in residential products without significant investments. (BWC, No. 32 at p. 2) BWC did not specify which technologies were the subject of their comment.

AHRI suggested DOE's consideration of internationally available technologies as feasible for this rulemaking is inappropriate because internationally available technologies conform to different standards than those used in the United States, which does not guarantee that these technologies can be certified in the United States. (AHRI, No. 42 at p. 3)

As previously discussed, DOE evaluates all technology options identified in the technology assessment, including those that may be internationally available, according to the screening criteria enumerated in sections 6(b)(3) and 7(b) of appendix A to 10 CFR part 430 subpart C. If a specific technology option passes all the screening criteria, it is retained as a design option for the engineering analysis. DOE notes that all of the remaining technology options that were not proposed to be screened out are already available in the United States.

BWC suggested that it is too early for DOE to consider gas-fired heat pump water heaters in its analysis, noting that they are not currently available in the consumer market and the technology has not been demonstrated to be easily and cost-effectively manufactured at large scale to meet the demands of the consumer water heater market. (BWC, No. 32 at p. 3) The Joint Advocates, however, urged DOE to evaluate gas-fired heat pump water heaters as the max-tech level for gas-fired storage water heaters because gas-fired heat pump technology is commercially available in other product types, has been used in some demonstrations for water heaters, and may soon be commercially available for water heaters. (Joint Advocates, No. 34 at p. 2)

In response to these comments, DOE notes that it is not statutorily restricted to technologies that are currently on the market when conducting its analyses and considering standards; however, DOE is required to screen out technologies which are not practicable to manufacture at the scale necessary to serve the relevant market at the time of the projected compliance date of any amended standards (see section 6(b)(3)(i)–(ii) of appendix A and section IV.B of this document). Because there are no commercially available gas-fired heat pump water heaters on the market yet, DOE has no data or information that would suggest that gas-fired heat pump technology will be practicable to manufacture at the necessary scale upon the compliance date expected for this rulemaking. Therefore, DOE proposes to screen out this technology option from further consideration.

AHRI requested that DOE remove millivolt-powered (*i.e.,* thermopile-operated) flue dampers in the screening analysis because they are not used in consumer products. (AHRI, No. 42 at p. 3) Rheem recommended that the thermopile-operated flue damper technology option be screened out due to technological feasibility, agreeing with AHRI that this technology option is not incorporated in commercialized products. (Rheem, No. 45 at p. 3) BWC also urged DOE not to consider millivolt-powered dampers as a technology option for consumer water heaters as they are not used domestically in consumer products. (BWC, No. 32 at p. 2)

DOE reviewed product literature for water heaters which have thermopile-operated flue dampers. These water heaters convert thermal energy from a standing pilot light into electricity to operate a damper, but such thermopiles are found only in commercial water heaters, which typically have substantially higher input rate standing pilot lights. Manufacturers generally agreed during interviews that the standing pilot lights in consumer water heaters are not large enough to power flue dampers. Consequently, DOE screened this design option out because it has tentatively determined that thermopile-operated flue dampers are not technologically feasible for consumer water heaters. (As discussed in section IV.C.1.a of this document, DOE is now considering gas-actuated flue dampers as a design option for reaching EL 2 without use of external electricity, as this technology has been demonstrated in consumer water heaters that are currently on the market.)

2. Remaining Technologies

Through a review of each technology, DOE tentatively concludes that all of the other identified technologies listed in section IV.A.2 of this document met all five screening criteria to be examined further as design options in DOE's NOPR analysis. In summary, DOE did not screen out the following technology options listed in Table IV.6. These technology options are shown from left to right from broader categories to specific design options.

TABLE IV.6—REMAINING TECHNOLOGY OPTIONS AS IDENTIFIED IN THE NOPR ANALYSIS

Technology option
Improved insulation:
Increased thickness.
Insulation on tank bottom.
Less conductive tank materials (*e.g.,* plastic).
Foam insulation.
Pipe and fitting insulation.
Electronic ignition systems:
Direct spark ignition.
Intermittent pilot ignition.
Hot surface ignition.
Burner improvements:
Pressurized combustion.
Modulating burners.
Gas-fired and Oil-fired Heat exchanger improvements:
Increased heat exchanger surface area.
Enhanced flue baffle.
Submerged combustion chamber.
Multiple flues.
Alternative flue geometry (Helical).
Condensing technology.
Induced-draft (negative vent pressure) heat exchanger.
Improved venting:

TABLE IV.6—REMAINING TECHNOLOGY OPTIONS AS IDENTIFIED IN THE NOPR ANALYSIS—Continued

Technology option
Flue damper:
Externally-powered.
Gas-actuated (non-powered).
Power vent.
Concentric direct venting.
Improved heat pump water heater components:
Compressor improvements:
Increased capacity.
Increased efficiency.
Variable-speed drive.
Fan Improvements:
High-efficiency fan motors.
High-efficiency fan blades.
Expansion device improvements.
Increased evaporator surface area.
Increased condenser surface area.
Carbon dioxide (alternative refrigerant) heat pump water heaters.
Improved controls:
Modulating controls.
Heat traps (all types)

DOE has initially determined that these technology options are technologically feasible because they are being used or have previously been used in commercially-available products or working prototypes. DOE also finds that all of the remaining technology options meet the other screening criteria (*i.e.,* practicable to manufacture, install, and service and do not result in adverse impacts on consumer utility, product availability, health, or safety, unique-pathway proprietary technologies). For additional details, see chapter 4 of the NOPR TSD.

BWC stated that direct vent technology severely limits how much products can be improved due to safety-related combustion requirements. (BWC, No. 32 at p. 2) DOE notes that there are numerous consumer water heaters currently on the market using direct vent technology, which demonstrates that the technology can be used safely. However, though direct vent technology was not screened out, it has been identified as not significantly improving the UEF rating and therefore DOE did not consider it as a design option in its engineering analysis. Section IV.C.1.b of this document and chapter 5 of the TSD have additional details regarding DOE's projected design pathway for improving UEF.

NRECA commented that heat pump water heaters currently do not provide the same functionality as electric resistance water heaters in demand response programs, do not perform as well in certain regions of the country, and have no alternative for consumers without access to natural gas in their homes. NRECA suggested that heat pump water heaters would not be suited for programs in which the water heater is controlled to stop or start operating at different times of the day and sometimes for multiple on/off cycles per day or per hour, because these ''short cycles'' would reduce component lifetimes and reliability. NRECA also noted that heat pump water heaters require a specific minimum area to function properly, and many homes have a water heater located in a closet or small area and do not have the large space needed for the heat pump to operate effectively. (NRECA, No. 33 at p. 2)

The most recent market assessment has found several commercially-available demand-response heat pump water heaters, suggesting that manufacturers are developing ways to implement control strategies in heat pump water heaters which allow them to meet the needs of utility demand-response programs. Additionally, as discussed, heat pump water heaters currently available on the market typically have backup electric resistance elements which may activate during a grid-signaled event if necessary and can allow the water heater to function similarly to an electric resistance water heater when needed. With regards to NRECA's concern about short-cycling, DOE expects that heat pump water heaters would be less likely to undergo shorter recovery periods than electric resistance water heaters. Heat pump water heaters take more time to recover when using only the compressor because the refrigeration cycle requires time to stabilize and begin transferring heat at a high output rate. The condenser coils of heat pump water heaters may also not be in direct contact with the water. By contrast, electric resistance elements are directly submerged in water and are capable of heating water faster because the electrical power is immediately converted into heat output. With respect to NRECA's concerns about space constraints, DOE notes that other options are available to consumers, such as utilizing a louvered door or ducting air to and from the water heater, and these options were considered as part of the installation cost analysis (see section IV.F.2). Finally, DOE agrees that air-source heat pump performance will vary depending on the region of the country due to varying the air conditions at the evaporator. To account for such differences, in the June 2023 TP Final Rule, DOE adopted optional metrics that manufacturers may use to make voluntary representations for heat pump water heaters at a range of alternative ambient and outdoor air conditions. As a result of these considerations, DOE did not screen out heat pump technology as a technology option for improving the UEF of electric storage water heaters.

GEA and Rheem urged DOE to further evaluate the impact of ongoing refrigerant regulations on the viability, availability, and cost of heat pump water heaters. (GEA, No. 46 at p. 2; Rheem, No. 45 at p. 5) BWC urged DOE to consider the fact that alternative refrigerants can be extremely flammable, may have charge limits, operate at high pressures, and are often costly. BWC also noted that there is only one residential heat pump water heater product line on the market today that

utilizes CO_2 [27] as a refrigerant. (BWC, No. 32 at pp. 2–3) Southern Company indicated different refrigerants may be in use for heat pump water heaters by the implementation date of this rulemaking and requested that DOE account for their higher prices. (Southern Company, No. 31 at pp. 27–28)

Based on information gathered from manufacturers in confidential interviews after the March 2022 Preliminary Analysis, DOE has tentatively determined that alternative refrigerants with low global warming potentials (''GWP'') will be made available for use in heating products if refrigerant regulations that apply to heat pump water heaters are promulgated by the Environmental Protection Agency (''EPA''). While BWC appeared to be alluding to potential issues with hydrocarbon refrigerants, other more viable options include drop-in replacements, with very similar performance characteristics as R134A (which is a non-flammable hydrofluorocarbon blend), the primary refrigerant used today in heat pump water heaters. Because the future of refrigerant regulations remains uncertain at this time, in this NOPR, DOE has assumed the continued use of R134A for heat pump components. Hence, DOE has not screened out R134A in this analysis. DOE tentatively did not screen out R744 (CO_2) in this analysis because there is no clear evidence that this constitutes a unique-pathway proprietary technology,[28] as BWC appears to suggest. However, as discussed in the engineering analysis, DOE has not assumed the use of R744 systems in order to meet the efficiency levels analyzed for heat pump water heaters because DOE does not expect this to be the most likely design pathway that manufacturers would take.

C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of consumer water heaters. There are two elements to consider in the engineering analysis: the selection of efficiency levels to analyze (*i.e.,* the ''efficiency analysis'') and the determination of product cost at each efficiency level (*i.e.,* the ''cost analysis''). In determining the performance of higher-efficiency products, DOE considers technologies and design option combinations not eliminated by the screening analysis. For each product class, DOE estimates the baseline cost, as well as the incremental cost for the product at efficiency levels above the baseline. The output of the engineering analysis is a set of cost-efficiency ''curves'' that are used in downstream analyses (*i.e.,* the LCC and PBP analyses and the NIA).

As discussed in section IV.A.1 of this document, certain classes of consumer water heaters currently have UEF-based standards, while for others EPCA's EF-based standards apply. For this NOPR, DOE analyzed amended UEF standards for the product classes that currently have standards in terms of UEF. For the product classes with EF-based standards, DOE developed translated standards in terms of UEF for use in the analysis.

In this NOPR, DOE has analyzed standards with respect to the effective storage volume metric, which is described in section III.B of this document. Compared to rated storage volume and FHR, effective storage volume is a superior descriptor of the thermal energy stored in the hot water of the water heater, which can be made immediately available for consumer use, for the following reasons. The rated storage volume does not account for additional energy that could be stored due to an increase in storage tank temperature. The FHR metric is similar to effective storage volume; however, the FHR test allows the water heater to be energized and actively heating the water; therefore, it is not an appropriate measure of the stored energy. There are two types of water heaters which can cause the system to store more energy than would be otherwise determined by the rated storage volume, as discussed in the June 2023 TP Final Rule: water heaters capable of operating with an elevated tank temperature, and circulating water heaters. In the June 2023 TP Final Rule, DOE established that compliance with the effective storage volume provisions (and, relatedly, high temperature testing method and testing with separate storage tanks for circulating water heaters) would not be required until compliance with amended standards. For circulating water heaters, the effective storage volume of the water heater is determined by the measured storage volume of the separate storage tank used in testing because these types of water heaters are designed to operate with a volume of stored water in the field. 88 FR 40406, 40461–40462. Section V.C.1 of this document discusses the proposed approach to consider efficiency determinations for water heaters tested using the high temperature testing method.

In this NOPR, DOE has initially determined not to propose amended standards for gas-fired storage water heaters (55 gal < V_{eff} ≤ 100 gal), tabletop water heaters (20 gal ≤ V_{eff} ≤ 120 gal), electric instantaneous water heaters (V_{eff} < 2 gal), and grid-enabled water heaters at this time based on the results of the market and technology assessment, screening analysis, interviews with manufacturers, and comments from interested parties. The market assessment indicates that there are no consumer gas-fired storage water heaters certified with storage volumes between 55 gallons and 100 gallons in any draw patterns and that the market has shifted towards smaller storage volumes (between 20 gallons and 55 gallons). The market assessment also shows that there are only two basic models of tabletop water heaters certified at this time, and this segment of the market is not expected to grow. Electric instantaneous water heaters with storage volumes less than 2 gallons have very low standby losses (due to the small storage volume) and have recovery efficiencies of 98 percent. At this time, heat pump technology has not been demonstrated as being technologically feasible for electric instantaneous water heaters (excluding circulating heat pump water heaters, which are designed differently to operate with a large, stored volume of water). Thus, the technological feasibility of improved efficiencies for this product class remains uncertain. Details of these assessments are discussed in chapters 3 and 5 of the NOPR TSD.

In response to the March 2022 Preliminary Analysis, Rheem agreed with DOE that heat pump technology cannot be considered to increase the efficiency of grid-enabled water heaters. Rheem stated that there is an opportunity to increase the efficiency of grid-enabled water heaters with an increase in insulation thickness but noted that the energy savings do not appear to be economically justified at this time. (Rheem, No. 45 at pp. 7–8) BWC, however, commented that the efficiency levels for grid-enabled water heaters are difficult to achieve with the technology options listed in Table ES.3.9 of the preliminary TSD and questioned the feasibility of the efficiency level above baseline. (BWC, No. 32 at p. 2)

Because grid-enabled water heaters are statutorily defined as having electric resistance technology (see 42 U.S.C 6295(e)(6)(A)(ii)), heat pump technology is not applicable as a technology option for these water heaters and DOE has tentatively determined that the only technologically feasible means to further

[27] Commercially referred to as R744.

[28] R744 is also used in some water chiller systems developed by other manufacturers.

improve these products would be to use thicker insulation. However, increased insulation offers diminishing returns for improved UEF, and DOE has tentatively determined that the insulation levels used in some models on the market are the highest that are technologically feasible at this time, and that further increases would not significantly improve UEF. Thus, DOE has not analyzed amended UEF standards for grid-enabled water heaters.

Table IV.7 presents the consumer water heater product classes along with the approach to analyzing them for this NOPR.

TABLE IV.7—ANALYSIS APPROACH BY PRODUCT CLASS

Product category	Distinguishing characteristics (effective storage volume and input rating)	Proposed analysis
Gas-fired Storage Water Heater	<20 gal	Converting EF-based standards to UEF-based standards.
	≥20 gal and ≤55 gal	Amending UEF-based standards.
	>55 gal and ≤100 gal	No amendments proposed.
	>100 gal	Converting EF-based standards to UEF-based standards.
Oil-fired Storage Water Heater	≤50 gal	Amending UEF-based standards.
	>50 gal	Converting EF-based standards to UEF-based standards.
Electric Storage Water Heater	<20 gal	Converting EF-based standards to UEF-based standards.
	≥20 gal and ≤35 gal, FHR <51 gal (Small electric storage water heaters).	Amending UEF-based standards.
	≥20 gal and ≤55 gal, excluding small electric storage water heaters.	Amending UEF-based standards.
	>55 gal and ≤120 gal	Amending UEF-based standards.
	>120 gal	Converting EF-based standards to UEF-based standards.
Tabletop Water Heater	<20 gal	Converting EF-based standards to UEF-based standards.
	≥20 gal and ≤120 gal	No amendments proposed.
Gas-fired Instantaneous Water Heater	<2 gal and ≤50,000 Btu/h	Converting EF-based standards to UEF-based standards.
	<2 gal and >50,000 Btu/h	Amending UEF-based standards.
	≥2 gal and ≤200,000 Btu/h	Converting EF-based standards to UEF-based standards.
Electric Instantaneous Water Heater (including Low-Temperature Water Heaters).	<2 gal	No amendments proposed.
	≥2 gal	Converting EF-based standards to UEF-based standards.
Grid-enabled Water Heater	>75 gal	No amendments proposed.
Gas-fired Circulating Water Heater	≤200,000 Btu/h	Amending UEF-based standards to reflect updates to the test procedure.
Oil-fired Circulating Water Heater	≤210,000 Btu/h	Amending UEF-based standards to reflect updates to the test procedure.
Electric Circulating Water Heater	≤12 kW; for heat pump type units ≤24 A at ≤250 V.	Amending UEF-based standards to reflect updates to the test procedure.

1. Product Classes With Current UEF-Based Standards

For product classes where DOE has analyzed amended UEF-based standards, DOE conducted an efficiency level analysis and a manufacturing cost analysis to generate cost-efficiency relationships that reflect the industry average manufacturing costs associated with each efficiency level analyzed. The following paragraphs of this document summarize the methodology used in these steps.

a. Efficiency Analysis

DOE typically uses one of two approaches to develop energy efficiency levels for the engineering analysis: (1) relying on observed efficiency levels in the market (*i.e.,* the efficiency-level approach), or (2) determining the incremental efficiency improvements associated with incorporating specific design options to a baseline model (*i.e.,* the design-option approach). Using the efficiency-level approach, the efficiency levels established for the analysis are determined based on the market distribution of existing products (in other words, based on the range of efficiencies and efficiency-level ''clusters'' that already exist on the market). Using the design option approach, the efficiency levels established for the analysis are determined through detailed engineering calculations and/or computer simulations of the efficiency improvements from implementing specific design options that have been identified in the technology assessment. DOE may also rely on a combination of these two approaches. For example, the efficiency-level approach (based on actual products on the market) may be extended using the design-option approach to ''gap fill'' levels (to bridge large gaps between other identified efficiency levels) and/or to extrapolate to the max-tech level (particularly in cases where the max-tech level exceeds the maximum efficiency level currently available on the market).

In the March 2022 Preliminary Analysis, DOE developed efficiency levels with a combination of the efficiency-level and design-option approaches. DOE conducted a market analysis of currently available models listed in DOE's Compliance Certification Database (''CCD'') to determine which efficiency levels were most representative of the current

distribution of consumer water heaters available on the market. DOE also completed physical teardowns of commercially available units to determine which design options manufacturers may use to achieve certain efficiency levels for each water heater category analyzed. DOE requested comments from stakeholders and conducted interviews with manufacturers concerning these initial efficiency levels, which have been updated in this NOPR based on the feedback DOE received.

The efficiency levels for storage water heater classes presented in the March 2022 Preliminary Analysis are linear equations of UEF as a function of rated storage volume, while for this NOPR DOE has analyzed efficiency levels for UEF that are a function of effective storage volume (with the exception of certain levels which were analyzed in response to the Joint Stakeholder Recommendation). For products with substantial storage volumes, the UEF is expected to decrease with higher volumes because standby losses (*i.e.,* energy lost from the stored water to the surroundings when the water heater is not actively heating water) are related to the temperature of the water stored and the size of the tank.[29] The efficiency levels analyzed in this rulemaking assume that the relationships between standby losses and storage volume for baseline products (*i.e.,* the slopes of the current standards equations) would remain consistent for higher efficiency levels. In other words, the higher efficiency levels are linear equations that are parallel to the current standards. The exception to this is for DOE's analysis of the Joint Stakeholder Recommendation, which included certain efficiency levels that were not specified as a function of storage volume (see Table III.1).

In response to the efficiency levels presented in the March 2022 Preliminary Analysis, NYSERDA stated that reducing standards by rated storage volume is unnecessary and recommended that DOE's proposed standard levels either not change or increase by capacity, as it is more typical of appliance standards and there are models at larger volumes with higher UEFs. (NYSERDA, No. 35 at p. 6) NEEA, ACEEE, and NWPCC urged DOE to consider whether less stringent standards for gas-fired storage water heaters with larger storage volumes are justified, given that smaller gas-fired storage water heaters can meet similar FHRs. (NEEA, ACEEE, and NWPCC, No. 47 at p. 7)

As discussed, larger storage water heaters are more susceptible to standby losses due to the increased surface area of the storage tank when compared to smaller storage water heaters with the same design options. Standards that stay the same do not account for this fact; DOE therefore maintained its current approach and analyzed efficiency levels that are equations that decrease linearly as effective storage volume increases for all levels except those suggested by the Joint Stakeholder Recommendation (because the Joint Stakeholder Recommendation explicitly suggested flat-line standards for electric storage water heaters). Further, DOE understands NYSERDA's reference to ''capacity'' to refer to delivery capacity of the water heater—which is either FHR or Maximum GPM. Draw patterns, which are described in section IV.A.1 of this document, are bins of delivery capacity ranging from very small to high delivery capacity. DOE's current standards already increase in stringency with draw pattern (*see* 10 CFR 430.32(d)), and this increase in stringency was retained in the efficiency level analyses of the March 2022 Preliminary Analysis and this NOPR.

In this NOPR, DOE has revised the efficiency levels analyzed in the March 2022 Preliminary Analysis for electric storage water heaters, gas-fired storage water heaters, and gas-fired instantaneous water heaters. The details of the efficiency level analysis are presented in chapter 5 of the NOPR TSD, and a summary of these updates is discussed here. For electric storage water heaters, DOE has included additional levels for heat pump water heaters based on the standard levels recommended in the Joint Stakeholder Recommendation. For gas-fired storage water heaters, DOE revised its max-tech efficiency levels after conducting an updated market assessment for the NOPR analysis. DOE has tentatively determined that it is possible for gas-fired storage water heaters to surpass the max-tech levels chosen in the March 2022 Preliminary Analysis. Thus, DOE selected revised max-tech efficiency levels for this NOPR based on new product certifications and confidential manufacturer feedback. For gas-fired instantaneous water heaters, DOE analyzed an additional efficiency level for this NOPR that was not evaluated in the March 2022 Preliminary Analysis. In the updated market assessment for this NOPR, DOE observed a greater number of models at the levels specified in the ENERGY STAR v5.0 specification[30] than at the time of the March 2022 Preliminary Analysis; thus, efficiency levels corresponding to the ENERGY STAR v5.0 specification were added. DOE also reduced its max-tech efficiency levels based on feedback from stakeholders and a review of the current market and technologies at the time of this NOPR analysis.

These changes to the efficiency levels are discussed in further detail in the sub-sections that follow.

Baseline Efficiency

For each product class, DOE generally selects a baseline model as a reference point for each class and measures changes resulting from potential energy conservation standards against the baseline. The baseline model in each product class represents the characteristics of a product/equipment typical of that class (*e.g.,* capacity, physical size). Generally, a baseline model is one that just meets current energy conservation standards, or, if no standards are in place, the baseline is typically the most common or least efficient unit on the market. For this NOPR, the baseline efficiency levels for product classes with current UEF-based standards are equal to the current energy conservation standards (see Table II.1).

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, the max-tech efficiency levels generally corresponded to the maximum available efficiency level on the market. DOE also analyzed multiple intermediate efficiency levels between the baseline and max-tech in order to develop the cost-efficiency relationship for each product class. Intermediate efficiency levels were chosen based on the market assessment where there were clear groupings in the market's efficiency distribution. In some cases, efficiency levels were observed for one draw pattern but not the others.

In response to the March 2022 Preliminary Analysis, BWC requested

[29] As discussed in section III.B of this document, the effective storage volume metric accounts for both temperature and tank size, whereas rated storage volume alone only accounts for tank size.

[30] EPA's ENERGY STAR v5.0 specification is available online at: *www.energystar.gov/sites/default/files/asset/document/ENERGY%20STAR%20Residential%20Water%20Heaters%20Version%205%20Specification%20and%20Partner%20Commitments.pdf* (Last accessed on April 1, 2023).

DOE clarify how max-tech levels were determined for draw patterns where products do not yet exist. (BWC, No. 32 at p. 2)

In this NOPR, DOE has constructed cost versus efficiency curves for the representative capacities and representative draw patterns which exist on the market today, as opposed to directly analyzing every possible draw pattern. However, DOE is proposing to increase stringency of standards for draw patterns where products do not currently exist in order to match the stringency of standards for draw patterns where products in the same category do exist, in the event that products become available with draw patterns not currently on the market.

For these cases, DOE estimated these max-tech levels using existing relationships between efficiency levels observed in other draw patterns where products do exist. Products in different draw patterns are typically differentiated by rated storage volume and heating capacity (burner input rate, compressor capacity, or element wattage), and the design options used to improve UEF in one draw pattern can generally also be applied to water heaters of the same type in a different draw pattern. For the cases where products at additional intermediate efficiency levels were observed in the market at one draw pattern but not the others, DOE estimated efficiency levels in the other draw patterns based on what was observed for the one available draw pattern. The approach took into account how each product type's efficiency correlates to its delivery capacity (*i.e.,* either FHR or maximum GPM, the delivery capacity metrics assigned for non-flow-activated water heaters and flow-activated water heaters, respectively), recovery efficiency, and technological feasibility of design option implementation. A detailed discussion of efficiency level selection on a product-class by product-class basis is provided in chapter 5 of the NOPR TSD.

The following paragraphs provide additional discussion of the comments received in response to the efficiency levels analyzed in the March 2022 Preliminary Analysis and any updates made to the NOPR efficiency level analysis to address stakeholder concerns. Interested parties provided comments on electric storage water heaters, gas-fired storage water heaters, and gas-fired instantaneous water heaters.

i. Electric Storage Water Heaters

The efficiency levels above the baseline that were analyzed in the March 2022 Preliminary Analysis are shown in Table IV.8.

TABLE IV.8—MARCH 2022 PRELIMINARY ANALYSIS EFFICIENCY LEVELS FOR ELECTRIC STORAGE WATER HEATERS

EL	Draw pattern			
	Very small	Low	Medium	High
Rated Storage Volume (V_r) Greater Than or Equal to 20 Gallons and Less Than or Equal to 55 Gallons			
1	N/A	$0.9381 - 0.0003 \times V_r$	$0.9390 - 0.0002 \times V_r$	$0.9450 - 0.0001 \times V_r$
2	N/A	$3.3048 - 0.0003 \times V_r$	$3.3590 - 0.0002 \times V_r$	$3.4742 - 0.0001 \times V_r$
3	N/A	$3.7048 - 0.0003 \times V_r$	$3.7590 - 0.0002 \times V_r$	$3.8742 - 0.0001 \times V_r$
V_r Greater than 55 Gallons and Less Than or Equal to 120 Gallons				
1	N/A	N/A	$3.4133 - 0.0011 \times V_r$	$3.5380 - 0.0011 \times V_r$
2	N/A	N/A	$3.9633 - 0.0011 \times V_r$	$4.0880 - 0.0011 \times V_r$

EEI expressed concern that some UEF requirements analyzed in the March 2022 Preliminary Analysis are too high for electric resistance water heaters with rated storage volumes less than 55 gallons, stating that there is a large difference between EL 1 and EL 2 in the preliminary analysis and there may be many water heaters between these levels. (EEI, No. 31 at pp. 34–35) NEEA, ACEEE, and NWPCC urged DOE to create a new heat pump efficiency level between the preliminary analysis EL 2 and EL 3 for electric storage water heaters between 20 and 55 gallons, because many such models are currently available between these two efficiency levels. NEEA, ACEEE, and NWPCC specifically recommended a new efficiency level at a UEF of 3.50 for a representative storage volume of 45 gallons in the medium draw pattern. (NEEA, ACEEE, and NWPCC, No. 47 at p. 7) Then, as discussed in section III.F of this document, the Joint Stakeholders recommended that DOE analyze specific efficiency levels for electric storage water heaters, some of which were not evaluated for the preliminary analysis (at 2.0, 2.3, and 2.5 UEF depending on the draw pattern, storage volume and height). (Joint Stakeholders, No. 49 at p. 2)

In this NOPR, DOE has revised EL 1 for electric storage water heaters with effective storage volumes between 20 and 55 gallons (excluding small electric storage water heaters). In the March 2022 Preliminary Analysis, EL 1 represented an incremental improvement in efficiency over the baseline through the implementation of increased insulation thickness to reduce standby losses. However, DOE received feedback from multiple sources indicating that increasing the thickness may not be practical in the manufacturing process because the R-value of polyurethane diminishes when the compound is blown into larger cavities, and the increase in thickness does not offset the increase in water heater surface area (which will increase standby losses). Thus, in this NOPR, DOE considered a different stringency for EL 1 for electric storage water heaters, which would be more representative of the next level up from baseline and would currently be met using heat pump technology. Specifically, DOE considered the efficiency level recommended in the Joint Stakeholder Recommendation as EL 1 for the NOPR, a UEF of 2.30.

On July 18, 2022, EPA published a final draft of the ENERGY STAR v5.0 specifications for water heaters, which went into effect on April 18, 2023. The UEF requirements for ENERGY STAR v5.0 can only be met by heat pump technology. For integrated 240 V heat pump water heaters, the minimum UEF must be 3.30. This stringency generally corresponds to EL 2 in this NOPR analysis. For integrated 120 V heat pump water heaters and split-system heat pump water heaters, the minimum UEF must be 2.20, which is similar to the efficiency level recommended by the Joint Stakeholders.

DOE is aware that ongoing State efforts to decarbonize heating appliances may lead to an increased demand for 120 V heat pump water heaters, which do not need a 240 V electrical connection in order to transition from a gas-fired storage water heater to an electric one. As indicated by comments from interested parties that are discussed in section IV.A.2 of this document, multiple manufacturers are developing 120 V heat pump water heaters, and these products are now close to becoming commercially-available.[31] However, as suggested by ENERGY STAR's less stringent requirement for 120 V and split-system heat pump water heaters, these types of heat pump water heaters may not be able to achieve the same efficiencies as 240 V integrated heat pump water heaters. Reasons for this are discussed further in chapter 3 of the TSD. In its updated market assessment, DOE observed that currently certified 120 V heat pump water heaters can meet the ENERGY STAR v5.0 criteria, and a UEF of 2.20 generally aligns with the lowest heat pump water heaters efficiencies available. DOE has tentatively determined that the efficiency levels proposed by the Joint Stakeholders would not prevent novel 120 V products from entering the market based on the UEF efficiencies these products are reported to attain in CCD and ENERGY STAR certification databases.

Therefore, the redefinition of EL 1 from an electric resistance efficiency level to a low-efficiency heat pump efficiency level reduces the difference in stringency between EL 1 and EL 2, which may address the concern raised by EEI.

For small electric storage water heaters, limitations in split-system heat pump technology result in a lower max-tech efficiency level than for the non-small classes. DOE analyzed one efficiency level above the baseline (which is also the max-tech efficiency level) that corresponds to a UEF of 2.00. This efficiency level was suggested by the Joint Stakeholders. DOE verified that this level was representative of a split-system heat pump small electric storage water heater based on teardown data as well as market data on the performance of other heat pump water heaters on the market today (this is discussed further in chapter 5 of the TSD).

In response to the comment by NEEA, ACEEE, and NWPCC, DOE has not been able to determine whether there are any substantial differences in design options for 45-gallon electric storage water heaters rated at 3.35 UEF versus 3.50 UEF. In this NOPR, DOE has tentatively determined that the use of an electronic expansion valve, electronically commutated fan motors (''ECM'' fans), and appreciable increases in heat exchanger surface areas can allow the majority of the market to achieve a UEF of 3.35 for a 45-gallon product in the medium draw pattern and a UEF of 3.47 for a 55-gallon product in the high draw pattern.

DOE seeks further information that would assist in potentially re-evaluating the stringency of EL 2, especially data regarding the technologies employed in 45-gallon medium draw pattern products at a UEF of 3.50.

NEEA, ACEEE, and NWPCC reiterated that, in establishing the max-tech level, the statute does not require DOE to consider only technologies that are commercially available. Therefore, NEEA, ACEEE, and NWPCC recommended that DOE consider establishing a ''heat pump-only'' level, which would exclude the use of electric resistance elements, as max tech for heat pump water heaters. NEEA, ACEEE, and NWPCC added that the majority of heat pump water heaters already offer a ''heat pump-only mode'' and that this design change would improve in-field efficiency simply through the removal of the resistance element. (NEEA, ACEEE, and NWPCC, No. 47 at pp. 7–8)

In response, DOE notes that its own test data indicate that heat pump water heaters with backup electric resistance elements typically do not use the elements during DOE's 24-hour simulated use test. Therefore, adding an efficiency level that corresponds to a ''heat-pump only'' design option as max tech would not be expected to change the UEF.

AHRI and BWC requested that DOE specifically include ''lowboy''[32] electric storage water heaters in addition to short and tall models in its analysis. (AHRI, No. 42 at p. 4; BWC, No. 32 at pp. 1–2) Rheem expressed concern that lowboy electric storage water heaters were not properly addressed and requested that DOE separately examine lowboy electric storage water heaters. Rheem specifically requested that DOE include low-income consumers in the consumer subgroup analysis with a focus on how the removal of lowboy water heaters through the standards process will affect this group. (Rheem, No. 45 at pp. 5–6) Rheem suggested DOE's provided shipping dimensions for short electric storage water heaters do not align with typical dimensions for lowboy water heaters in medium and high draw patterns for EL 2. Rheem added that, for the low draw pattern, however, the height and diameter DOE provided (when accounting for shipping materials) is within the range of typical dimensions for lowboy water heaters. (Rheem, No. 45 at p. 6)

Lowboy water heaters are suitable for an installation arrangement commonly found in apartments and condominiums. In order to store a volume of water that is similar to the volume of a non-lowboy water heater, lowboy water heaters typically have a much wider aspect ratio as compared to non-lowboy water heaters, while still maintaining diameters that can fit through standard doorways. In the March 2022 Preliminary Analysis, DOE did not analyze lowboy aspect ratios for every draw pattern. Instead, the approach focused on ''tall'' and ''short'' aspect ratios—where ''short'' aspect ratios included some lowboy water heaters but also other mid-height products. In this NOPR, DOE revised its analysis to consider lowboy water heaters as the representative design aspect ratio for small electric storage water heaters. DOE developed efficiency levels and manufacturer production costs (''MPCs'') to specifically reflect lowboy water heaters for that product class given the prevalence of these designs as small electric storage water heaters. (Chapter 3 and Appendix 3A to the NOPR TSD provides additional details on the market distribution of lowboy water heaters.)

Rheem noted that for the medium and high draw patterns, efficiency levels that would require the use of heat pump technology appear to be appropriate for ''short'' and ''tall'' aspect ratios but would not be possible for lowboy water heaters due to the physical limitations of the installation space. Rheem added that there are no commercially available heat pump water heaters in the low draw pattern capable of being installed in space-constrained applications and for direct replacement of lowboy water heaters. (Rheem, No. 45 at pp. 6–7) Rheem suggested that if DOE were to amend the electric storage water heater standards to a level that would require heat pump technology and did not create a separate product class for lowboy water heaters, then replacements would likely be electric instantaneous water heaters, which would not result in efficiency gains and would increase the cost of water heating

[31] EPA's ENERGY STAR qualified product database includes listings for 120 V heat pump water heaters. This database can be accessed online at *www.energystar.gov/productfinder/product/certified-water-heaters/results* (Last accessed on Jan. 24, 2023).

[32] Lowboy water heaters are electric storage water heaters which are typically under 36 inches tall, with fittings considered.

for customers switching from lowboy water heaters. (Rheem, No. 45 at p. 7) The Joint Stakeholders recommended DOE maintain an electric resistance-level standard for electric storage water heaters that are between 30 and 35 gallons in storage volume and under 36 inches in height. (Joint Stakeholders, No. 49 at p. 2)

As discussed in section IV.A.1.d of this NOPR, DOE is considering a separate product class for small electric storage water heaters. DOE recognizes the specific design considerations of small electric storage water heaters and has updated its analyses to account for a unique design option pathway for these water heaters. For this NOPR engineering analysis, DOE considered lowboy designs to be representative models for the small electric storage water heater product class. As Rheem suggests, the typical application of lowboy water heaters may prohibit the use of an integrated heat pump design wherein the heat pump components sit on top of the water tank (these components typically add around 12 inches to the height of a water heater). However, an alternative to integrating the heat pump components into the tank would be a split-system heat pump where the heat pump is located somewhere other than on top of the tank. In its market assessment, and as discussed in the June 2023 TP Final Rule, DOE identified circulating heat pump water heaters designed to be paired with a storage-type water heater in the field (resulting in a split-system heat pump water heater). Details of these products can be found in chapter 3 of the NOPR TSD. DOE expects that split-system heat pump designs could be used in applications with the height restrictions that are currently served by lowboy water heaters because the heat pump componentry can be located remotely from the storage tank. Therefore, in this NOPR engineering analysis, DOE tentatively determined that the design pathways for small electric storage water heaters would use split-system heat pump designs, whereas other electric storage water heaters could achieve higher efficiency levels using integrated heat pump designs. However, DOE's analyses of circulating heat pump water heaters have led the Department to initially determine that such split-system heat pump water heaters may have efficiency limitations due to piping losses, limited heat transfer surface area, and pump operation. Therefore, the max-tech efficiency of a split-system heat pump water heater is expected to be lower than that of an integrated heat pump water heater. Based on its market assessment, only one efficiency level above baseline was analyzed for small electric storage water heaters. There are very few split-system designs on the market today, so DOE requests additional information from commenters on these types of designs and the potential UEFs that can be achieved.

DOE requests comment on the potential design specifications, manufacturing processes, and efficiencies of split-system heat pump water heaters.

ii. Gas-Fired Storage Water Heaters

The higher efficiency levels analyzed in the March 2022 Preliminary Analysis are shown in Table IV.9.

TABLE IV.9—MARCH 2022 PRELIMINARY ANALYSIS EFFICIENCY LEVELS FOR GAS-FIRED STORAGE WATER HEATERS

EL	Draw pattern			
	Very small	Low	Medium	High
1	N/A	$0.6251 - 0.0019 \times V_r$	$0.6646 - 0.0017 \times V_r$	$0.7024 - 0.0013 \times V_r$
2	N/A	$0.6451 - 0.0019 \times V_r$	$0.7046 - 0.0017 \times V_r$	$0.7424 - 0.0013 \times V_r$
3	N/A	$0.6551 - 0.0019 \times V_r$	$0.7146 - 0.0017 \times V_r$	$0.7524 - 0.0013 \times V_r$
4	N/A	$0.7651 - 0.0019 \times V_r$	$0.8146 - 0.0017 \times V_r$	$0.8624 - 0.0013 \times V_r$
5	N/A	$0.8251 - 0.0019 \times V_r$	$0.8746 - 0.0017 \times V_r$	$0.9224 - 0.0013 \times V_r$

NEEA, ACEEE and NWPCC urged DOE to consider gas-fired heat pump water heaters as the basis for the max-tech efficiency level because they are technologically feasible and are expected to be commercially available by 2025. NEEA, ACEEE and NWPCC also added that the statute requires DOE to consider max-tech as the maximum technologically feasible technology that has been shown to achieve high levels of efficiency under field conditions but does not limit DOE to commercially available products. (NEEA, ACEEE, and NWPCC, No. 47 at p. 11)

As discussed in section IV.B.1 of this document, DOE has tentatively determined that gas-fired heat pump water heaters do not meet the screening criteria and as such has screened them out for this NOPR analysis. Consequently, the max-tech efficiency level does not reflect use of gas-fired heat pump water heater technology.

Rheem recommended that EL 3 for gas-fired storage water heaters include the electric flue damper, fan-assist, and power vent technology options and increase the UEF of EL 3 to 0.63, 0.68, and 0.70 for the low, medium, and high draw patterns, respectively. (Rheem, No. 45 at p. 4) In response, DOE determined the efficiency levels for gas-fired storage water heaters based on common design options manufacturers use to increase efficiency and achieve incremental gains in UEF. The UEF levels DOE analyzed for EL 3 for gas-fired storage water heaters correspond with the specified representative effective storage volumes for each draw pattern, which were determined based on the distribution of storage volumes observed in units currently available on the market; DOE notes that Rheem did not specify what storage volumes its suggested UEF levels for EL 3 are based on.

Rheem recommended that DOE remove the thermopile flue damper technology option from EL 2 or replace it with an inlet damper. (Rheem, No. 45 at p. 4) AHRI stated that millivolt-powered dampers are not used in consumer products and questioned the validity of the MPCs developed for EL 2 of gas-fired storage water heaters, given that this efficiency level includes millivolt-powered dampers in its design. (AHRI, No. 42 at p. 3) NEEA, ACEEE, and NWPCC urged DOE to consider gas pressure-actuated non-powered dampers in its list of technology options to reach EL 2 for storage water heaters because they could be a lower cost pathway than the other technologies considered for EL 2. NEEA, ACEEE, and NWPCC added that testing performed by The Gas Technology Institute (''GTI'') indicates the incremental cost of such technology is $38.43. (NEEA, ACEEE, and NWPCC, No. 47 at p. 11)

As discussed previously in section IV.B.1of this document, DOE agrees with these commenters that millivolt and thermopile flue dampers are not applicable to consumer water heaters and has thus screened them out from further analysis in this NOPR. Instead, DOE has implemented the gas-actuated damper technology option for EL 2 for gas-fired storage water heaters.

Additionally, in the March 2022 Preliminary Analysis, DOE presented three different design option pathways to achieve EL 2 for gas-fired storage water heaters. These three pathways account for potential differences in installation requirements, such as the requirement to have electricity supply or a need for induced-draft ventilation to compensate for longer vent lengths. However, in this NOPR, DOE has removed the pathway consisting of an induced-draft ventilation system due to the technological similarities between such an approach and the design options most likely to be implemented for EL 3. Further details of this change are provided in chapter 5 of the NOPR TSD.

iii. Gas-Fired Instantaneous Water Heaters

The higher efficiency levels analyzed in the March 2022 Preliminary Analysis are shown in Table IV.9.

TABLE IV.9—MARCH 2022 PRELIMINARY ANALYSIS EFFICIENCY LEVELS FOR GAS-FIRED INSTANTANEOUS WATER HEATERS

EL	Draw pattern			
	Very small	Low	Medium	High
1	N/A	N/A	0.87	0.89
2	N/A	N/A	0.91	0.93
3	N/A	N/A	0.96	0.97

In response to the March 2022 Preliminary Analysis, the Joint Stakeholders suggested DOE analyze an EL 2 for gas-fired instantaneous water heaters that is the same as was evaluated in the March 2022 Preliminary Analysis. (Joint Stakeholders, No. 49 at p. 2) The efficiency level recommended by the Joint Stakeholders has been analyzed as EL 2 in this NOPR.

Rheem suggested that the UEF levels at EL 3 should be reduced to 0.93 and 0.96 for the medium and high draw patterns, respectively, as these would be more representative of the maximum UEF levels currently available on the market. (Rheem, No. 45 at p. 7)

Based on its review of the CCD, DOE tentatively agrees that the UEF levels suggested by Rheem are more representative of currently available products and notes that it has updated its proposed UEF levels for gas-fired instantaneous water heaters at max-tech to the maximum-available UEF levels found on the market.

In the ENERGY STAR v5.0 specification for water heaters, gas-fired instantaneous water heaters must have UEF greater than or equal to 0.95, provide a maximum GPM rating of at least 2.8 gpm over a 67 °F temperature rise, and meet other warranty and safety criteria to meet the ENERGY STAR v5.0 specification. A maximum GPM rating of 2.8 gpm and above corresponds to the medium and high draw patterns in Table II of the appendix E test procedure. For this NOPR, DOE analyzed a 0.95 UEF efficiency level for the high draw pattern (EL 3), which corresponds to the ENERGY STAR level, as DOE expects that ENERGY STAR will drive a significant portion of the market to this level. However, through DOE's market and technology assessment, supplemented by feedback from confidential manufacturer interviews, the Department has tentatively determined that a UEF of 0.95 is currently not technologically feasible for gas-fired instantaneous water heaters in the medium draw pattern. Through teardown analyses (discussed in chapter 5 of the NOPR TSD), DOE has observed that the efficiency for these products is closely correlated to the heat exchanger surface area. Yet, as the surface area increases, so does the delivery capacity. As a result, the highest-efficiency gas-fired instantaneous water heaters (*i.e.,* those at 0.95 UEF or higher) are in the high draw pattern. Therefore, DOE did not analyze a UEF level of 0.95 for the medium draw pattern. Rather, at EL 3 for the medium draw pattern, DOE analyzed 0.92 UEF, which reflects a more achievable efficiency for this product class and requires the use of analogous technology as for the ENERGY STAR efficiency level of 0.95 UEF for the high draw pattern product class.

Efficiency Levels by Product Class

DOE's NOPR analysis for efficiency levels above baseline is discussed in more detail in chapter 5 of the NOPR TSD. Efficiency levels, including baseline and higher efficiencies, across all product classes are listed in the tables that follow. The efficiency levels which correspond closely to the Joint Stakeholder Recommendation are indicated with ''JSR''.

TABLE IV.10—GAS-FIRED STORAGE: 20 gal $\leq V_{eff} \leq$55 gal, STANDARD, LOW, AND ULTRA LOW NO_X

Efficiency level	UEF			
	Very small *	Low	Medium	High
0 (Baseline)	$0.3456 - (0.0020 \times V_{eff})$	$0.5982 - (0.0019 \times V_{eff})$	$0.6483 - (0.0017 \times V_{eff})$	$0.6920 - (0.0013 \times V_{eff})$
1	$0.3725 - (0.0020 \times V_{eff})$	$0.6251 - (0.0019 \times V_{eff})$	$0.6646 - (0.0017 \times V_{eff})$	$0.7024 - (0.0013 \times V_{eff})$
2 (JSR)	$0.3925 - (0.0020 \times V_{eff})$	$0.6451 - (0.0019 \times V_{eff})$	$0.7046 - (0.0017 \times V_{eff})$	$0.7424 - (0.0013 \times V_{eff})$
3	$0.4025 - (0.0020 \times V_{eff})$	$0.6551 - (0.0019 \times V_{eff})$	$0.7146 - (0.0017 \times V_{eff})$	$0.7524 - (0.0013 \times V_{eff})$
4	$0.5125 - (0.0020 \times V_{eff})$	$0.7651 - (0.0019 \times V_{eff})$	$0.8146 - (0.0017 \times V_{eff})$	$0.8624 - (0.0013 \times V_{eff})$
5 (Max-Tech)	$0.5725 - (0.0020 \times V_{eff})$	$0.8251 - (0.0019 \times V_{eff})$	$0.8746 - (0.0017 \times V_{eff})$	$0.9424 - (0.0013 \times V_{eff})$

* No products exist in the very small draw pattern at the time of this analysis. DOE applied the differences in efficiency levels from the low draw pattern to define the Efficiency Levels 1 through 5 for the very small draw pattern.

TABLE IV.11—OIL-FIRED STORAGE: V_{eff} ≤50 gal

Efficiency level	UEF			
	Very small *	Low *	Medium *	High
0 (Baseline)	$0.2509 - (0.0012 \times V_{eff})$	$0.5330 - (0.0016 \times V_{eff})$	$0.6078 - (0.0016 \times V_{eff})$	$0.6815 - (0.0014 \times V_{eff})$
1	$0.2709 - (0.0012 \times V_{eff})$	$0.5530 - (0.0016 \times V_{eff})$	$0.6278 - (0.0016 \times V_{eff})$	$0.7015 - (0.0014 \times V_{eff})$
2 (Max-Tech)	$0.2909 - (0.0012 \times V_{eff})$	$0.5730 - (0.0016 \times V_{eff})$	$0.6478 - (0.0016 \times V_{eff})$	$0.7215 - (0.0014 \times V_{eff})$

* No products exist in these draw patterns at the time of this analysis. DOE applied the differences in efficiency levels from the high draw pattern to define the Efficiency Levels 1 and 2 for the other draw patterns.

TABLE IV.12—SMALL ELECTRIC STORAGE: 20 gal ≤V_{eff} ≤35 gal, FHR <51 gal

Efficiency level	UEF	
	Very mmall †	Low
0 (Baseline)	$0.8808 - (0.0008 \times V_{eff})$	$0.9254 - (0.0003 \times V_{eff})$
1 (JSR)	2.00 *	2.00

* DOE applied the Joint Stakeholder Recommendation for low draw pattern units to the very small draw pattern in its analysis.
† No products exist in the very small draw pattern at the time of this analysis.

TABLE IV.13—ELECTRIC STORAGE: 20 gal ≤V_{eff} ≤55 gal, EXCLUDING SMALL ELECTRIC STORAGE

Efficiency level	UEF			
	Very small **	Low	Medium	High
0 (Baseline)	$0.8808 - (0.0008 \times V_{eff})$	$0.9254 - (0.0003 \times V_{eff})$	$0.9307 - (0.0002 \times V_{eff})$	$0.9349 - (0.0001 \times V_{eff})$
1 (JSR)	2.30 *	2.30	2.30	2.30
2	$3.2602 - (0.0008 \times V_{eff})$ †	$3.3048 - (0.0003 \times V_{eff})$	$3.3590 - (0.0002 \times V_{eff})$	$3.4742 - (0.0001 \times V_{eff})$
3 (Max-Tech)	$3.6602 - (0.0008 \times V_{eff})$ †	$3.7048 - (0.0003 \times V_{eff})$	$3.7590 - (0.0002 \times V_{eff})$	$3.8742 - (0.0001 \times V_{eff})$

* DOE applied the Joint Stakeholder Recommendation for low draw pattern units to the very small draw pattern in its analysis.
** No products exist in the very small draw pattern at the time of this analysis.
† DOE applied the differences in efficiency levels from the low draw pattern to define the Efficiency Levels 2 and 3 for the very small draw pattern.

TABLE IV.14—ELECTRIC STORAGE: 55 gal <V_{eff} ≤120 gal

Efficiency Level	UEF			
	Very small **	Low **	Medium	High
0 (Baseline)	$1.9236 - (0.0011 \times V_{eff})$	$2.0440 - (0.0011 \times V_{eff})$	$2.1171 - (0.0011 \times V_{eff})$	$2.2418 - (0.0011 \times V_{eff})$
1 (JSR)	2.50 *	2.50	2.50	2.50
2	$3.2198 - (0.0011 \times V_{eff})$ †	$3.3402 - (0.0011 \times V_{eff})$ †	$3.4133 - (0.0011 \times V_{eff})$	$3.5380 - (0.0011 \times V_{eff})$
3 (Max-Tech)	$3.7698 - (0.0011 \times V_{eff})$ †	$3.8902 - (0.0011 \times V_{eff})$ †	$3.9633 - (0.0011 \times V_{eff})$	$4.0880 - (0.0011 \times V_{eff})$

* DOE applied the Joint Stakeholder Recommendation for low draw pattern units to the very small draw pattern in its analysis.
** Only one product exists in the low draw pattern at the time of this analysis. No products exist in the very small draw pattern at the time of this analysis.
† DOE applied the differences in efficiency levels from the medium draw pattern and high draw pattern to define the Efficiency Levels 2 and 3 for the very small draw pattern and the low draw pattern.

TABLE IV.15—GAS-FIRED INSTANTANEOUS: V_{eff} <2 gal, RATED INPUT >50,000 Btu/h

Efficiency level	UEF			
	Very small *	Low *	Medium	High
0 (Baseline)	0.80	0.81	0.81	0.81
1	† 0.86	† 0.87	0.87	0.89
2 (JSR)	† 0.89	† 0.91	0.91	0.93
3	† 0.90	† 0.92	0.92	0.95
4 (Max-Tech)	† 0.91	† 0.93	0.93	0.96

* Only one brand has commercially-available products in the very small draw pattern and low draw pattern at the time of this analysis.
† DOE applied the differences in efficiency levels from the medium draw pattern to define the Efficiency Levels 1 through 4 for the very small draw pattern and the low draw pattern.

b. Design Options

Based on its teardown analyses and feedback provided by manufacturers in confidential interviews, DOE tentatively determined the technology options that are most likely to constitute the pathway to achieving the efficiency levels assessed. These technology options are referred to as ''design options.'' While manufacturers may achieve a given efficiency level using more than one design strategy, the selected design options reflect what DOE expects to be the most likely approach for the market in general in a standards-case scenario. Further details are provided in chapter 5 of the NOPR TSD.

BWC stated that electric water heaters with 2-inch insulation cavities are used mainly for space-constrained installations and water heaters with 3-inch insulation cavities would be more representative of baseline for non-space-constrained installations. (BWC, No. 32 at p. 2) DOE also acknowledges that 3 inches of insulation is more representative of baseline electric storage water heaters and has therefore updated EL 0 to reflect this.

BWC indicated that gas-fired storage water heaters can achieve the current standards with 1 inch of insulation only if they are designed for space-constrained applications, and in this case, the burner is downsized, resulting in a lower FHR. BWC stated that EL 0 is commonly met with 2 inches of insulation. BWC also noted that some of the specified technology options are only used in certain kinds of installations with specific constraints. (BWC, No. 32 at p. 2) DOE acknowledges that a downsized burner results in a lower FHR, which is why burner derating is screened out as a technology option (see section IV.B.1 of this document and chapter 4 of the NOPR TSD for details). In this NOPR, DOE used the 1-inch insulation design option for baseline gas-fired storage water heaters in the low and medium draw patterns. For the high draw pattern, where the FHR must be higher, DOE has updated the design options for baseline gas-fired storage water heaters to reflect the use of 1.5 inches of insulation based on teardown data.

Table IV.16 through Table IV.20 show the design options at each UEF level analyzed for the NOPR.

TABLE IV.16—DESIGN OPTIONS FOR GAS-FIRED STORAGE: 20 gal $\leq V_{eff} \leq$55 gal

EL	Standard and low NO_X design options	Ultra-low NO_X design options
0	Standard burner; Standing pilot; 1″ side/1″ top insulation *; Cat I venting (atmospheric); Straight flue.	Ultra-Low NO_X premix burner; Standing pilot; 1″ side/1″ top insulation *; Cat I venting (atmospheric); Straight flue.
1	2″ side/2″ top insulation	2″ side/2″ top insulation.
2A	Cat I venting (gas-actuated flue damper)	Cat I venting (gas-actuated flue damper).
2B	Electronic ignition; Cat I venting (electric flue damper)	Electronic ignition; Cat I venting (electric flue damper).
3	Electronic ignition Cat III venting (power venting) Increased heat exchanger baffling.	Electronic ignition Cat III venting (power venting) Increased heat exchanger baffling.
4	Cat IV venting (power venting) Condensing helical flue	Cat IV venting (power venting) Condensing helical flue.
5	Increased heat exchanger surface area	Increased heat exchanger surface area.

* 1.5″ side/1.5″ top insulation was used for the high draw pattern.

TABLE IV.17—DESIGN OPTIONS FOR OIL-FIRED STORAGE: V_{eff} >50 gal

EL	Design options
0	Single flue heat exchanger; Foam Insulation—1″ side/1.5″ top insulation.
1	Foam Insulation—2″ side/2.5″ top insulation.
2	Multi-flue heat exchanger.

TABLE IV.18—DESIGN OPTIONS FOR SMALL ELECTRIC STORAGE: 20 gal $\leq V_{eff} \leq$35 gal, FHR <51 gal

EL	Design options
0	3″ side/3″ top insulation; Lowboy aspect ratio (less than 36 inches in height).
1	Split-system R134A rotary compressor; Capillary expansion device; Counterflow condenser design; Tube-and-fin evaporator design; SPM evaporator fan; 2″ side/2″ top insulation.

TABLE IV.19—DESIGN OPTIONS FOR ELECTRIC STORAGE: 20 gal $\leq V_{eff} \leq$55 gal, EXCLUDING SMALL ELECTRIC STORAGE

EL	Design options
0	3″ side/3″ top insulation; Short aspect ratio for products ≤35 gal or in the low draw pattern, tall aspect ratio for products >35 gal and in the medium or high draw patterns.
1	Integrated R134A rotary compressor; Capillary expansion device; Hotwall condenser; Tube-and-fin evaporator design; SPM evaporator fan; 2″ side/2″ top insulation.
2	Electronic expansion valve; Larger condenser; Larger evaporator; ECM evaporator fan.
3	Larger condenser; Larger evaporator; Insulated sealed system; High efficiency fan blades.

TABLE IV.20—DESIGN OPTIONS FOR ELECTRIC STORAGE: 55 gal $\leq V_{eff} \leq$120 gal

EL	Design options
0	Integrated R134A rotary compressor; Electronic expansion valve; Hotwall condenser design; Tube-and-fin evaporator design; SPM evaporator fan; 2″ side/2″ top insulation.

TABLE IV.20—DESIGN OPTIONS FOR ELECTRIC STORAGE: 55 gal ≤V_{eff} ≤120 gal—Continued

EL	Design options
1	Larger evaporator.
2	Higher efficiency compressor; Larger condenser; Larger evaporator; ECM evaporator fan.
3	Higher efficiency compressor; Larger condenser; Larger evaporator; High efficiency fan blades.

TABLE IV.21—DESIGN OPTIONS FOR GAS-FIRED INSTANTANEOUS: V_{eff} <2 gal, RATED INPUT >50,000 Btu/h

EL	Design options
0	Step modulating burner; Non-condensing tube-and-fin heat exchanger.
1	Condensing tube heat exchanger.
2	Larger condensing heat exchanger.
3	Fully modulating burner; Larger condensing heat exchanger.
4	Larger condensing heat exchanger.

c. Cost Analysis

The cost analysis portion of the engineering analysis is conducted using one or a combination of cost approaches. The selection of cost approach depends on a suite of factors, including the availability and reliability of public information, characteristics of the regulated product, the availability and timeliness of purchasing the product on the market. The cost approaches are summarized as follows:

• *Physical teardowns:* Under this approach, DOE physically dismantles a commercially available product, component-by-component, to develop a detailed bill of materials for the product.

• *Catalog teardowns:* In lieu of physically deconstructing a product, DOE identifies each component using parts diagrams (available from manufacturer websites or appliance repair websites, for example) to develop the bill of materials for the product.

• *Price surveys:* If neither a physical nor catalog teardown is feasible (for example, for tightly integrated products such as fluorescent lamps, which are infeasible to disassemble and for which parts diagrams are unavailable) or cost-prohibitive and otherwise impractical (*e.g.,* large commercial boilers), DOE conducts price surveys using publicly available pricing data published on major online retailer websites and/or by soliciting prices from distributors and other commercial channels.

In this proposed rulemaking, DOE utilizes a combination of the physical and catalog teardown approaches to develop estimates of the MPC at each UEF efficiency level analyzed. Data from the teardowns were used to create bills of materials (''BOMs'') that capture all of the materials, components, and manufacturing processes necessary to manufacture products that achieve each UEF level. DOE used the BOMs along with publicly available material and component cost data as the basis for estimating the MPCs. DOE refined its cost estimates and its material and component cost data based on feedback received during confidential manufacturer interviews.

DOE received several comments in response to the cost analysis presented in the March 2022 Preliminary Analysis.

BWC expressed concern that DOE's analysis does not reflect this costs, which are very different from costs 2 years ago. BWC added that DOE's analysis also fails to account for future costs and prices. (BWC, No. 32 at p. 3) BWC also commented that some material costs stated in the preliminary TSD were inaccurate compared to both current costs and BWC's estimates of 5-year average costs and requested a confidential interview to provide detailed feedback. (BWC, No. 32 at p. 3) Rheem suggested that gas-fired storage water heater MPCs are underestimated, especially for condensing options. Rheem also suggested that MPCs associated with implementation of heat pump technology across the electric storage product class will be significant and are not fully reflected in DOE's estimates and requested a confidential interview with DOE consultants to provide feedback. (Rheem, No. 45 at pp. 4, 5)

DOE notes that its consultants routinely conduct confidential manufacturer interviews to gather feedback on various analytical inputs, which are then aggregated for use in the analysis. In preparation for this NOPR, DOE's consultants conducted such interviews with manufacturers in which DOE requested and received feedback on the MPCs as estimated in the March 2022 Preliminary Analysis, as well as on the underlying component and material costs. DOE has updated its cost analyses where appropriate, based on this feedback. In addition, due to the volatility of metal prices, DOE uses 5-year average metal prices to minimize the impact of large fluctuations in metal prices. DOE's 5-year average metal cost data have been updated to reflect prices for the most recent 5-year period ending September 2022. For all other material and component prices, DOE used the most recent prices available at the time of the analysis (*i.e.,* September 2022). DOE notes that there have been significant increases in material and component prices in comparison to those observed in September 2021, which were the basis of the MPCs estimated in the March 2022 Preliminary Analysis. As a result, the MPCs presented in this NOPR are higher, consistent with the feedback provided by commenters.

d. Shipping Costs

Shipping costs for storage-type consumer water heater product classes were determined based on the area of floor space occupied by the unit, including packaging. Instantaneous-type consumer water heaters have far less storage volume and have shipping costs based on weight limitations rather than space occupied. Most consumer water heaters cannot be shipped in any orientation other than vertical and are too tall to be double-stacked in a vertical fashion, though some units analyzed by DOE can be double stacked. For those units that can be double-stacked, including gas-fired instantaneous water heaters, lowboy electric storage water heaters, and non-lowboy electric storage water heaters less than or equal to 35 gallons in storage volume, the floor area available effectively doubles, reducing the overall shipping cost compared to taller products. DOE also accounted for electric storage water heaters sold as split-system heat pumps stacking the heat pump assembly atop the tank assembly. DOE research suggests that consumer water heaters are usually shipped together in nearly fully loaded trailers, rather than in less than

truckload (''LTL'') configurations, where the consumer water heaters only occupy a portion of the trailer volume. Therefore, shipping costs have been calculated assuming fully loaded trailers; however, DOE applied an assumption that each truckload would only consist of one type of water heater, which may result in a conservative estimate of shipping costs.

To calculate the shipping costs, DOE estimated the cost per trailer based on standard trailer sizes, shipping the products between the middle of the country to the coast, using 2022 as the reference year for prices. Next, DOE estimated the shipped size (including packaging) of products in each product class at each efficiency level and, for each product class and efficiency level, determined the number of units that would fit in a trailer. DOE then calculated the average shipping cost per unit by dividing the cost per trailer load by the number of units that would fit per trailer (either by space limitation for storage-type water heaters or by weight limitation for instantaneous-type water heaters), for each product class and efficiency level.

DOE requests comment on the analysis assumptions used to estimate shipping costs for consumer water heaters.

e. Cost-Efficiency Results

The results of the engineering analysis are reported as cost-efficiency data in the form of MPCs and shipping costs calculated for each efficiency level of each product class for which DOE is proposing amended UEF-based standards. As discussed previously in section IV.C.3 of this NOPR, DOE determined these costs by developing BOMs based on a combination of physical and catalog teardowns and using information in the BOMs along with component and material price data to estimate MPCs. The results of DOE's analysis are listed in Table IV.22 through Table IV.29; see chapter 5 of the NOPR TSD for more details concerning these results.

DOE requests comment on the cost-efficiency results in this engineering analysis.

TABLE IV.22—ENGINEERING ANALYSIS RESULTS FOR GAS-FIRED STORAGE: 20 gal $\leq V_{eff} \leq$55 gal, STANDARD AND LOW NO_X

EL	UEF				MPC (2022$)	Shipping (2022$)
	Very small	Low 29 gal	Medium 38 gal	High 48 gal		
0	N/A	0.54	0.58	0.63	Low: 175.45, Med: 203.24, High: 236.63.	Low: 29.64, Med: 32.81, High: 49.00.
1	N/A	0.57	0.60	0.64	Low: 196.56, Med: 226.18, High: 249.17.	Low: 32.81, Med: 35.34, High: 51.04.
2A	N/A	0.59	0.64	0.68	Low: 250.46, Med: 280.09, High: 303.08.	Low: 32.81, Med: 35.34, High: 51.04.
2B	N/A	0.59	0.64	0.68	Low: 282.20, Med: 311.57, High: 334.26.	Low: 32.81, Med: 35.34, High: 51.04.
3	N/A	0.60	0.65	0.69	Low: 292.63, Med: 322.71, High: 347.45.	Low: 32.81, Med: 35.34, High: 51.04.
4	N/A	0.71	0.75	0.80	Low: 405.24, Med: 434.10, High: 464.66.	Low: 32.81, Med: 35.34, High: 51.04.
5	N/A	0.77	0.81	0.88	Low: 421.93, Med: 456.34, High: 492.47.	Low: 35.34, Med: 51.04, High: 55.68.

TABLE IV.23—ENGINEERING ANALYSIS RESULTS FOR GAS-FIRED STORAGE: 20 gal $\leq V_{eff} \leq$55 gal, ULTRA LOW NO_X

EL	UEF				MPC (2022$)	Shipping (2022$)
	Very small	Low 29 gal	Medium 38 gal	High 48 gal		
0	N/A	0.54	0.58	0.63	Low: 257.65, Med: 290.09, High: 329.11.	Low: 29.64, Med: 32.81, High: 49.00.
1	N/A	0.57	0.60	0.64	Low: 279.31, Med: 313.57, High: 341.91.	Low: 32.81, Med: 35.34, High: 51.04.
2A	N/A	0.59	0.64	0.68	Low: 333.21, Med: 367.47, High: 395.81.	Low: 32.81, Med: 35.34, High: 51.04.
2B	N/A	0.59	0.64	0.68	Low: 364.95, Med: 399.04, High: 427.07.	Low: 32.81, Med: 35.34, High: 51.04.
3	N/A	0.60	0.65	0.69	Low: 379.31, Med: 414.41, High: 444.31.	Low: 32.81, Med: 35.34, High: 51.04.
4	N/A	0.71	0.75	0.80	Low: 495.30, Med: 527.85, High: 562.68.	Low: 32.81, Med: 35.34, High: 51.04.
5	N/A	0.77	0.81	0.88	Low: 512.00, Med: 550.08, High: 590.49.	Low: 35.34, Med: 51.04, High: 55.68.

TABLE IV.24—ENGINEERING ANALYSIS RESULTS FOR OIL-FIRED STORAGE: $V_{eff} \leq$50 gal

EL	UEF				MPC (2022$)	Shipping (2022$)
	Very small	Low	Medium	High 30 gal		
0	N/A	N/A	N/A	0.64	932.84	35.34

TABLE IV.24—ENGINEERING ANALYSIS RESULTS FOR OIL-FIRED STORAGE: V_{eff} ≤50 gal—Continued

EL	UEF				MPC (2022$)	Shipping (2022$)
	Very small	Low	Medium	High 30 gal		
1	N/A	N/A	N/A	0.66	964.62	51.04
2	N/A	N/A	N/A	0.68	1054.22	51.04

TABLE IV.25—ENGINEERING ANALYSIS RESULTS FOR SMALL ELECTRIC STORAGE: 20 gal ≤V_{eff} ≤35 gal, FHR <51 gal

EL	UEF			MPC (2022$) Draw Pattern ($V_{eff}$)	Shipping, (2022$) Draw Pattern ($V_{eff}$)
	Very small	Low 26 gal	Low 35 gal		
0	N/A	0.92	0.91	Low (26): 161.74, Low (35): 183.73	Low (26): 18.56, Low (35): 29.17.
1	N/A	2.00	2.00	Low (26): 500.60, Low (35): 518.84	Low (26): 55.68, Low (35): 58.34.

TABLE IV.26—ENGINEERING ANALYSIS RESULTS FOR ELECTRIC STORAGE: 20 gal ≤V_{eff} ≤55 gal, EXCLUDING SMALL ELECTRIC STORAGE

EL	UEF						MPC (2022$) Draw Pattern ($V_{eff}$)	Shipping (2022$) Draw Pattern ($V_{eff}$)
	Very small	Low 36 gal	Medium 30 gal	Medium 36 gal	Medium 45 gal	High 55 gal		
0	N/A	0.91	0.92	0.92	0.92	0.93	Low (36): 184.99, Med (30): 171.49, Med (36): 189.77, Med (45): 205.75, High (55): 221.86.	Low (36): 49.00, Med (30): 25.52, Med (36): 34.04, Med (45): 35.34, High (55): 53.26.
1	N/A	2.30	2.30	2.30	2.30	2.30	Low (36): 397.67, Med (30): 276.12, Med (36): 400.31, Med (45): 416.25, High (55): 425.70.	Low (36): 49.00, Med (30): 51.04, Med (36): 34.03, Med (45): 35.34, High (55): 53.26.
2	N/A	3.29	3.35	3.35	3.35	3.47	Low (36): 419.64, Med (30): 406.39, Med (36): 422.26, Med (45): 438.79, High (55): 456.64.	Low (36): 49.00, Med (30): 51.04, Med (36): 34.03, Med (45): 35.34, High (55): 53.26.
3	N/A	3.69	3.75	3.75	3.75	3.87	Low (36): 482.54, Med (30): 471.60, Med (36): 486.16, Med (45): 504.95, High (55): 510.83.	Low (36): 49.00, Med (30): 51.04, Med (36): 34.03, Med (45): 35.34, High (55): 53.26.

TABLE IV.28—ENGINEERING ANALYSIS RESULTS FOR ELECTRIC STORAGE: 55 gal <V_{eff} ≤120 gal

EL	UEF				MPC (2022$)	Shipping (2022$)
	Very small	Low	Medium 58 gal	High 80 gal		
0	N/A	N/A	2.05	2.15	Med: 448.22, High: 477.46	Med: 51.04, High: 55.68.
1	N/A	N/A	2.50	2.50	Med: 454.94, High: 482.60	Med: 51.04, High: 55.68.
2	N/A	N/A	3.35	3.45	Med: 476.54, High: 495.66	Med: 51.04, High: 55.68.
3	N/A	N/A	3.90	4.00	Med: 540.27, High: 562.95	Med: 51.04, High: 55.68.

TABLE IV.29—ENGINEERING ANALYSIS RESULTS FOR GAS-FIRED INSTANTANEOUS: V_{eff} <2 gal, RATED INPUT >50,000 Btu/h

EL	UEF				MPC (2022$)	Shipping (2022$)
	Very small	Low	Medium 120,000 Btu/h	High 199,000 Btu/h		
0	N/A	N/A	0.81	0.81	Med: 253.68, High: 276.61	Med: 6.93, High: 11.70.
1	N/A	N/A	0.87	0.89	Med: 374.33, High: 394.00	Med: 10.83, High: 14.54.
2	N/A	N/A	0.91	0.93	Med: 380.81, High: 402.38	Med: 15.60, High: 17.55.
3	N/A	N/A	0.92	0.95	Med: 390.21, High: 410.00	Med: 16.60, High: 17.55.
4	N/A	N/A	0.93	0.96	Med: 396.07, High: 423.26	Med: 15.60, High: 17.55.

2. Product Classes Without Current UEF-Based Standards

In the December 2016 Conversion Factor Final Rule, DOE established that EF-based standards as established by EPCA are applicable to consumer water heaters but would not be enforced until conversion factors and converted standards are adopted. 81 FR 96204, 96209–96211. To convert these EF-based standards to UEF-based standards, DOE first developed conversion factors that convert tested values measured under the DOE test procedure in effect prior to the July 2014 TP Final Rule (which produces the EF metric) to values found under the current DOE test procedure (which produces the UEF metric). DOE then applied these conversion factors to representative baseline models and derived the UEF-based energy conservation standards from the resulting UEF values.

Circulating water heaters are covered by the existing standards for instantaneous water heaters; however these standards have not been enforced for circulating water heaters because of differences in how circulating water heaters operate resulting in difficulty determining UEF ratings under the previously applicable test procedure. Prior to the publication of the June 2023 TP Final Rule, the test procedure did not provide sufficient clarity regarding how these products should be tested, and the June 2023 TP Final Rule established a new method of testing circulating water heaters with separate storage tanks (see section 4.10 of appendix E) to represent how these products are used in the field. As a result of this method of testing, the efficiency ratings for circulating water heaters will reflect the standby losses incurred by the separate storage tank. In order to determine applicable UEF-based standards for circulating water heaters based on use of the newly established test procedure, DOE used the existing UEF-based standards for gas-fired instantaneous water heaters and electric instantaneous water heaters at 10 CFR 430.32(d) as the starting point for gas-fired circulating water heaters and electric circulating water heaters. DOE used the converted UEF-based standards for oil-fired instantaneous water heaters as the starting point for oil-fired circulating water heaters. As discussed previously in section III.C of this document, the effective storage volume of a circulating water heater is equal to the measured storage volume of the separate storage tank used for testing, so to account for these standby losses, DOE is proposing that the standards decrease linearly as a function of this effective storage volume. According to section 4.10 of appendix E, gas-fired circulating water heaters, oil-fired circulating water heaters, and electric resistance circulating water heaters (which would be considered the baseline type of electric circulating water heaters) are to be tested with unfired hot water storage tanks (''UFHWSTs'') with measured volumes between 80 and 120 gallons. DOE has tentatively determined that the relationship between standby losses and storage volume is similar for electric storage water heaters above 55 gallons and for UFHWSTs. Thus, DOE adjusted the UEF-based standards for instantaneous water heaters by applying the linear decreases in the currently applicable standards for electric storage water heaters greater than 55 gallons in rated storage volume to result in the converted standards for circulating water heaters. See chapter 5 of the NOPR TSD for further details describing this analysis.

DOE requests comment on the analytical approach used to determine equivalent baseline standards for circulating water heaters.

The proposed UEF-based standards that were translated from EF-based standards and the updated UEF standards for circulating water heaters that reflect the new test procedure are listed below in Table IV.30. See chapter 5 of the NOPR TSD for more detail concerning how UEF-based standards were determined.

TABLE IV.30—TRANSLATED UEF-BASED ENERGY CONSERVATION STANDARDS FOR PRODUCT CLASSES WITHOUT ESTABLISHED UEF-BASED STANDARDS

Product class	Nominal input	Effective storage volume	Draw pattern	Uniform energy factor
Gas-fired Storage Water Heater	≤75,000 Btu/h	<20 gal	Very Small	$0.2062 - (0.0020 \times V_{eff})$
			Low	$0.4893 - (0.0027 \times V_{eff})$
			Medium	$0.5758 - (0.0023 \times V_{eff})$
			High	$0.6586 - (0.0020 \times V_{eff})$
		>100 gal	Very Small	$0.1482 - (0.0007 \times V_{eff})$
			Low	$0.4342 - (0.0017 \times V_{eff})$
			Medium	$0.5596 - (0.0020 \times V_{eff})$
			High	$0.6658 - (0.0019 \times V_{eff})$
Oil-fired Storage Water Heater	≤105,000 Btu/h	>50 gal	Very Small	$0.1580 - (0.0009 \times V_{eff})$
			Low	$0.4390 - (0.0020 \times V_{eff})$
			Medium	$0.5389 - (0.0021 \times V_{eff})$
			High	$0.6172 - (0.0018 \times V_{eff})$
Electric Storage Water Heaters	≤12 kW	<20 gal	Very Small	$0.5925 - (0.0059 \times V_{eff})$
			Low	$0.8642 - (0.0030 \times V_{eff})$
			Medium	$0.9096 - (0.0020 \times V_{eff})$
			High	$0.9430 - (0.0012 \times V_{eff})$
		>120 gal	Very Small	$0.3574 - (0.0012 \times V_{eff})$
			Low	$0.7897 - (0.0019 \times V_{eff})$
			Medium	$0.8884 - (0.0017 \times V_{eff})$
			High	$0.9575 - (0.0013 \times V_{eff})$
Tabletop Water Heater	≤12 kW	<20 gal	Very Small	$0.5925 - (0.0059 \times V_{eff})$
			Low	$0.8642 - (0.0030 \times V_{eff})$
Instantaneous Gas-fired Water Heater	≤50,000 Btu/h	<2 gal	Very Small	0.64
			Low	0.64
			Medium	0.64
			High	0.64
	≤200,000 Btu/h	≥2 gal	Very Small	$0.2534 - (0.0018 \times V_{eff})$
			Low	$0.5226 - (0.0022 \times V_{eff})$

TABLE IV.30—TRANSLATED UEF-BASED ENERGY CONSERVATION STANDARDS FOR PRODUCT CLASSES WITHOUT ESTABLISHED UEF-BASED STANDARDS—Continued

Product class	Nominal input	Effective storage volume	Draw pattern	Uniform energy factor
			Medium	$0.5919 - (0.0020 \times V_{eff})$
			High	$0.6540 - (0.0017 \times V_{eff})$
Instantaneous Oil-fired Water Heater	≤210,000 Btu/h	<2 gal	Very Small	0.61
			Low	0.61
			Medium	0.61
			High	0.61
		≥2 gal	Very Small	$0.2780 - (0.0022 \times V_{eff})$
			Low	$0.5151 - (0.0023 \times V_{eff})$
			Medium	$0.5687 - (0.0021 \times V_{eff})$
			High	$0.6147 - (0.0017 \times V_{eff})$
Instantaneous Electric Water Heater	≤12 kW	≥2 gal	Very Small	$0.8086 - (0.0050 \times V_{eff})$
			Low	$0.9123 - (0.0020 \times V_{eff})$
			Medium	$0.9252 - (0.0015 \times V_{eff})$
			High	$0.9350 - (0.0011 \times V_{eff})$
Gas-fired Circulating Water Heater	≤200,000 Btu/h	All	Very Small	$0.8000 - (0.0011 \times V_{eff})$
			Low	$0.8100 - (0.0011 \times V_{eff})$
			Medium	$0.8100 - (0.0011 \times V_{eff})$
			High	$0.8100 - (0.0011 \times V_{eff})$
Oil-fired Circulating Water Heater	≤210,000 Btu/h	All	Very Small	$0.6100 - (0.0011 \times V_{eff})$
			Low	$0.6100 - (0.0011 \times V_{eff})$
			Medium	$0.6100 - (0.0011 \times V_{eff})$
			High	$0.6100 - (0.0011 \times V_{eff})$
Electric Circulating Water Heater	≤12 kW; for heat pump type units ≤24 A at ≤250 V.	All	Very Small	$0.9100 - (0.0011 \times V_{eff})$
			Low	$0.9100 - (0.0011 \times V_{eff})$
			Medium	$0.9100 - (0.0011 \times V_{eff})$
			High	$0.9200 - (0.0011 \times V_{eff})$

BWC requested clarification on DOE's methods to convert EF standards to UEF standards without an applicable test procedure to verify that the EF-based standards are appropriate in the first place. (BWC, No. 32 at p. 3) Rheem recommended that technologies used at the baseline for product classes with UEF-based standards also be used for the new volume and input rate ranges being covered. (Rheem, No. 45 at p. 9) BWC also suggested that increasing standards for electric storage water heaters with a volume of less than 20 gallons could preclude many existing models from the market, which BWC added serve a unique utility for very space-constrained installations. (BWC, No. 32 at p. 4)

The Department's detailed methodology for performing the conversion factor analysis on these product classes was provided in chapter 5 of the preliminary TSD and is also described in chapter 5 of the NOPR TSD. In summary, DOE used the conversion parameters from the December 2016 Conversion Factor Final Rule which corresponded to the product types most closely related to the product classes in question. DOE began with the EF-based standards equations prescribed at 42 U.S.C. 6295(e)(1) as a representation of the distribution of baseline-efficiency models in each product class. Considering all of the combinations of rated storage volumes and input rates which could yield baseline-efficiency models in each product class, DOE converted the EF rating to an estimated UEF rating. Once the UEF was determined for every model in this hypothetical population of all possible baseline EF models, DOE determined the most stringent UEF versus rated storage volume relationship (*i.e.,* the smallest-magnitude slope) that would allow the entire population to pass. These relationships were presented in Table 5.15.6 of the preliminary TSD. In this NOPR, DOE additionally assumed that the effective storage volume of each model would be equal to its rated storage volume. Thus, DOE replaced the rated storage volume term in these equations with effective storage volume for the proposed standards for these product classes.

In response to Rheem's suggestion, DOE was unable to clearly determine whether the baseline technologies used in product classes with UEF-based standards also apply to the most similar product classes with EF-based standards, especially in light of BWC's comment indicating that these products may be designed differently for unique applications. Additionally, because the storage volumes and input rates of the product classes with EF-based standards are different from the storage volumes and input rates of the product classes with UEF-based standards, DOE expects that manufacturers may implement different baseline technologies for models that do not have current UEF-based standards. As discussed in section II.B of this document, the current UEF-based standards are the result of two cycles of rulemakings that increased the stringency of the original statutory standards and also the December 2016 Conversion Factor Final Rule (converting the more-stringent EF-based standards into UEF-based standards). For example, in this NOPR, DOE estimates that electric storage water heaters between 20 and 55 gallons might typically use 3 inches of polyurethane foam in order to meet the current UEF standards; however, it is not clear whether this much insulation is being used for much smaller electric storage water heaters—such as those with only 2 gallons of rated storage volume. In some cases, such as oil-fired instantaneous water heaters, there are no current UEF-based standards from which to ascertain any baseline technologies.

In section 5.15 of chapter 5 of the preliminary TSD, DOE discussed that it performed testing of 19 water heater models covering a variety of classes and characteristics to confirm that the UEF energy conservation standards would be achievable by the consumer water heaters available on the market. In

response, AHRI, BWC, and Rheem requested a list of the models tested when determining UEF-based standards for products that do not currently have them. (AHRI, No. 42 at p. 5; BWC, No. 32 at p. 3; Rheem, No. 45 at p. 9) To clarify, DOE's testing was limited to models available on the market that fell within these product classes. DOE was able to obtain and perform UEF testing on: 17 electric storage water heaters ranging from 1.8 gallons to 19.9 gallons of rated storage volume (with the average rated storage volume in the sample being approximately 8.7 gallons), 1 electric storage water heater with 158 gallons of rated storage volume, and 1 oil-fired instantaneous water heater with 5.3 gallons of rated storage volume.

Rheem supported DOE establishing realistic UEF-based standards for consumer water heaters currently without them as long as installation flexibility is maintained, but noted its concern that the establishment of these new standards could increase manufacturer burden. (Rheem, No. 45 at p. 9) In response, DOE reiterates that the stringency of these standards is not increasing as a result of the conversion, and therefore, manufacturers should not need to redesign their products to meet the UEF-based standards, if adopted.

DOE seeks comment from interested parties regarding the appropriateness of the converted UEF-based standards presented in Table IV.30 and whether products on the market can meet or exceed the proposed levels. If products are found to generally exceed the proposed levels, the Department requests information and data on the UEF of products within these product classes.

3. Manufacturer Selling Price

To account for manufacturers' non-production costs and profit margin, DOE applies a multiplier (the manufacturer markup) to the MPC. The resulting manufacturer selling price (''MSP'') is the price at which the manufacturer distributes a unit into commerce. DOE developed an average manufacturer markup by examining the annual Securities and Exchange Commission (''SEC'') 10–K reports filed by publicly traded manufacturers that produce consumer water heaters, the manufacturer markups from the April 2010 Final Rule, and feedback from confidential manufacturer interviews. 75 FR 20112. See chapter 12 of the NOPR TSD for additional detail on the manufacturer markup.

D. Markups Analysis

The markups analysis develops appropriate markups (*e.g.,* retailer markups, distributor markups, contractor markups) in the distribution chain and sales taxes to convert the MSP estimates derived in the engineering analysis to consumer prices, which are then used in the LCC and PBP analysis and in the manufacturer impact analysis. At each step in the distribution channel, companies mark up the price of the product to cover business costs and profit margin.

For consumer water heaters, the main parties in the distribution chain are: (1) manufacturers, (2) wholesalers or distributors, (3) retailers, (4) plumbing contractors, (5) builders, (6) manufactured home manufacturers, and (7) manufactured home dealers/retailers. See chapter 6 and appendix 6A of the NOPR TSD for a more detailed discussion about parties in the distribution chain.

For this NOPR, DOE characterized how consumer water heater products pass from the manufacturer to residential and commercial consumers [33] by gathering data from several sources, including consultant report (available in appendix 6A of the NOPR TSD), 2022 BRG report,[34] and 2020 Clear Seas Research Water Heater contractor survey [35] to determine the distribution channels and fraction of shipments going through each distribution channel. The distribution channels for replacement or new owner of consumer water heaters in residential applications (not including mobile homes) are characterized as follows: [36]

Manufacturer → Wholesaler → Plumbing Contractor → Consumer
Manufacturer → Retailer → Consumer
Manufacturer → Retailer → Plumbing Contractor → Consumer

For mobile home replacement or new owner applications, there is one additional distribution channel where manufacturers sell to mobile home dealer/retail outlet that then sells to the customer.[37]

Mainly for consumer water heaters in commercial applications, DOE considers an additional distribution channel for which the manufacturer sells the equipment to the wholesaler and then to the consumer through a national account in both replacement and new construction markets.

The new construction distribution channel includes an additional link in the chain—the builder. The distribution channels for consumer water heaters in new construction [38] in residential applications (not including mobile homes) are characterized as follows: [39]

Manufacturer → Wholesaler → Plumbing Contractor → Builder → Consumer
Manufacturer → Wholesaler → Builder → Consumer
Manufacturer → Wholesaler (National Account) → Consumer

For new construction, all mobile home GSWHs and ESWHs are sold as part of mobile homes in a specific distribution chain characterized as follows:

Manufacturer → Mobile Home Manufacturer → Mobile Home Dealer → Consumer

DOE developed baseline and incremental markups for each actor in the distribution chain. Baseline

[33] DOE estimates that 2 percent of gas-fired storage heaters (GSWHs), 25 percent of oil-fired storage water heaters (OSWHs), 11 percent of electric storage water heaters (ESWHs), and 9 percent of gas-fired instantaneous water heaters (GIWHs) will be shipped to commercial applications in 2030.

[34] BRG Building Solutions, The North American Heating & Cooling Product Markets (2022 Edition) (Available at: *www.brgbuildingsolutions.com/reports-insights*) (Last accessed May 1, 2023).

[35] Clear Seas Research, 2020 Mechanical System—Water Heater (Available at: *https://clearseasresearch.com/reports/industries/mechanical-systems/*) (Last accessed May 1, 2023).

[36] Based on available data, DOE assumed that the consumer water heater goes through the: wholesaler/contractor 50 percent of the time for GSWHs, 90 percent of the time for OSWHs, 45 percent of the time for ESWHs, and 55 percent of the time for GIWHs; directly form the retailer 45 percent of the time for GSWHs, 5 percent of the time for OSWHs, 50 percent of the time for ESWHs, and 40 percent of the time for GIWHs, and retailer/contractor 5 percent of the time for GSWHs, OSWHs, ESWHs, and GIWHs.

[37] Based on available data, DOE assumed that the consumer water heater in mobile homes goes through the: wholesaler/contractor 5 percent of the time for GSWHs, 90 percent of the time for OSWHs, 5 percent of the time for ESWHs, and 55 percent of the time for GIWHs; directly form the retailer 10 percent of the time for GSWHs, 5 percent of the time for OSWHs, 25 percent of the time for ESWHs, and 40 percent of the time for GIWHs; retailer/contractor 5 percent of the time for GSWHs, OSWHs, ESWHs, and GIWHs; and directly through mobile home retailer 80 percent of the time for GSWHs, 0 percent of the time for OSWHs, 65 percent of the time for ESWHs, and 0 percent of the time for GIWHs.

[38] DOE estimates that 10 percent of gas-fired storage heaters (GSWHs), 2 percent of oil-fired storage water heaters (OSWHs), 14 percent of electric storage water heaters (ESWHs), and 32 percent of gas-fired instantaneous water heaters (GIWHs) will be shipped to new construction applications in 2030.

[39] DOE believes that many builders are large enough to have a master plumber and not hire a separate contractor, and assigned about half of water heater shipments to new construction to this channel. DOE estimated that in the new construction market, 90 percent of the residential (not including mobile homes) and 80 percent in commercial applications goes through a wholesalers to builders channel and the rest go through national account distribution channel.

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.[40]

PHCC stated that they do not believe that the mark-ups and incremental mark-ups of water heaters are similar to consumer electronics or real estate. PHCC believes that mark-ups may be trimmed in competitive bidding situations, but in the typical replacement market, consumers generally take the price of the serviceman who is ready to restore their hot water. Regarding the TSD references to the construction industry not being more profitable now than it has been for decades, PHCC added that this may be true in percentage terms, but as costs have gone up, the real profits have increased. (PHCC, No.40 at p. 2) In contrast, CA IOUs stated that DOE's analysis regarding the incremental cost associated with ELs for electric storage water heaters is consistent with their understanding of the typical markup practices. (CA IOUs, No. 39, p. 2)

The concept of DOE's incremental markup approach is based on a simple notion that an increase in profitability, which is implied by keeping a fixed markup when the product price goes up, is not likely to be viable over time in a business that is reasonably competitive. DOE discusses the consumer electronics and real estate industries as examples of this notion. DOE's analysis necessarily considers a simplified version of the world of water heater manufacturers and contractors: namely, a situation in which nothing changes except for those changes in water heater offerings that occur in response to amended standards.

DOE recognizes that manufacturers and contractors are likely to seek to maintain the same markup on water heaters if the price they pay goes up as a result of appliance standards, but it believes that over time adjustment is likely to occur due to competitive pressures. Other manufacturers and contractors may find that they can gain sales by reducing the markup and maintaining the same per-unit operating profit. Additionally, DOE contends that pricing is more complicated than a simple fixed profit margin.

DOE acknowledges that its approach to estimating manufacturer and contractor markup practices after amended standards take effect is an approximation of real-world practices that are both complex and varying with business conditions. However, DOE continues to maintain that its assumption that standards do not facilitate a sustainable increase in profitability is reasonable. See chapter 6 and appendix 6B of the NOPR TSD for more details about DOE's baseline and incremental markup approach.

To estimate average baseline and incremental markups, DOE relied on several sources, including: (1) form 10–K from U.S. Securities and Exchange Commission (''SEC'') for Home Depot, Lowe's, Wal-Mart, and Costco (for retailers); (2) U.S. Census Bureau 2017 Annual Retail Trade Report for miscellaneous store retailers (NAICS 453) (for online retailers),[41] (3) U.S. Census Bureau 2017 Economic Census data[42] on the residential and commercial building construction industry (for builder, plumbing contractor, mobile home manufacturer, mobile home retailer/dealer); and (4) the U.S. Census Bureau 2017 Annual Wholesale Trade Report data[43] (for wholesalers). DOE assumes that the markups for national account is half of the value of wholesaler markups. In addition, DOE used the 2005 Air Conditioning Contractors of America's (''ACCA'') Financial Analysis on the Heating, Ventilation, Air-Conditioning, and Refrigeration (''HVACR'') contracting industry[44] to disaggregate the mechanical contractor markups into replacement and new construction markets for consumer water heaters used in commercial applications.

In addition to the mark-ups, DOE obtained State and local taxes from data provided by the Sales Tax Clearinghouse.[45] These data represent weighted average taxes that include county and city rates. DOE derived shipment-weighted average tax values for each state considered in the analysis.

Chapter 6 of the NOPR TSD provides details on DOE's development of markups for consumer water heaters.

DOE seeks comments about DOE's approach for distribution channels and markup values.

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of consumer water heaters at different efficiencies in representative U.S. single-family homes, mobile homes, multi-family residences, and commercial buildings, and to assess the energy savings potential of increased consumer water heaters efficiency. The energy use analysis estimates the range of energy use of consumer water heaters in the field (*i.e.,* as they are actually used by consumers). The energy use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended or new standards.

DOE estimated the annual energy consumption of consumer water heaters at specific energy efficiency levels across a range of climate zones, building characteristics, and water heating applications. The annual energy consumption includes the natural gas, liquid petroleum gas (''LPG''), and electricity used by the consumer water heater.

Chapter 7 of the NOPR TSD provides details on DOE's energy use analysis for consumer water heaters.

1. Building Sample

To determine the field energy use of consumer water heaters used in homes, DOE established a sample of households using consumer water heaters from EIA's 2015 Residential Energy Consumption Survey (''RECS 2015''), which is the most recent such survey that is currently fully available.[46] The

[40] 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.

[41] U.S. Census Bureau, *2017 Annual Retail Trade Report,* available at *www.census.gov/programs-surveys/arts.html* (last accessed May 1, 2023). Note that the 2017 Annual Retail Trade Report is the latest version of the report that includes detailed operating expenses data.

[42] U.S. Census Bureau, *2017 Economic Census Data.* available at *www.census.gov/programs-surveys/economic-census.html* (last accessed May 1, 2023). Note that the 2017 Economic Census Data is the latest version of this data.

[43] U.S. Census Bureau, *2017 Annual Wholesale Trade Report.* available at *www.census.gov/wholesale/index.html* (last accessed May 1, 2023). Note that the 2017 AWTR Census Data is the latest version of this data.

[44] Air Conditioning Contractors of America (''ACCA''), *Financial Analysis for the HVACR Contracting Industry* (2005), available at *www.acca.org/store#/storefront* (last accessed May 1, 2023). Note that the 2005 Financial Analysis for the HVACR Contracting Industry is the latest version of the report and is only used to disaggregate the mechanical contractor markups into replacement and new construction markets.

[45] Sales Tax Clearinghouse Inc., *State Sales Tax Rates Along with Combined Average City and County Rates* (January 8, 2023) (Available at: *www.thestc.com/STrates.stm*) (Last accessed May 1, 2023).

[46] Energy Information Administration (''EIA''), 2015 Residential Energy Consumption Survey

Continued

RECS data provide information on the vintage of the home, as well as water heating energy use in each household. DOE used the household samples not only to determine water heater annual energy consumption, but also as the basis for conducting the LCC and PBP analyses. DOE projected household weights and household characteristics in 2030, the first year of compliance with any amended or new energy conservation standards for consumer water heaters. To characterize future new homes, DOE used a subset of homes in RECS 2015 that were built after 2000.

To determine the field energy use of consumer water heaters used in commercial buildings, DOE established a sample of buildings using consumer water heaters from EIA's 2018 Commercial Building Energy Consumption Survey (''CBECS 2018''), which is the most recent such survey that is currently fully available.[47] See appendix 7A of the NOPR TSD for details about the CBECS 2018 sample.

AHRI, Rheem, and GE Appliances are concerned with the Department using outdated data for the energy use analysis. They stated that it is not a valid assumption that the market has remained unchanged since 2012 or 2015. In the public meeting on April 12, 2022, the Department stated that they will be updating their analysis to use the CBECS 2018 data. AHRI, Rheem, and GE Appliances urged the Department to update its analysis to use the 2020 RECS data as soon as it becomes available. In addition, they recommended that DOE conduct updated surveys, studies, and analysis where the existing data sources are out of date, some by as much as ten years. (AHRI, No. 42 at p. 4; GEA, No. 46 at p. 1; Rheem, No. 45 at p. 8) In addition, NYSERDA also recommends the use of most current RECS 2020 to better reflect today's conditions and use the most recent data available to understand these dynamics due to the lasting impacts from COVID–19 pandemic on consumer water heater usage including the shift in the hours spent outside the home. They also stated that more people in a household leads to more hot water demand, and eventually more efficient energy use. (NYSERDA, No. 35 at pp. 4–5)

For this NOPR, DOE used the most recent data that was available. While conducting the analysis, RECS 2020 was not fully available and did not have energy consumption estimates. DOE did update the sample weighting based on RECS 2020 data. To confirm sample weighting using RECS 2020, DOE also reviewed trends from multiple sources including RECS, CBECS, Home Innovations data, American Home Comfort Survey data, and American Housing Survey (AHS) to determine any changes in occupant density and types of home, changes in the housing stock by region, new construction trends, and changes in the types of water heater used by region and market segment. DOE also compared its energy use model results to multiple studies including NEEA data, RASS data, Pecan Street data, and multiple other water heater studies. DOE has found that its energy use analysis results are similar to these studies. DOE agrees with NYSERDA that as the number of individuals living in households increases, the typically increases hot water use, but DOE has currently no evidence that individuals living in households is increasing over time. Also, DOE is currently tracking potential long-term impacts of COVID–19 pandemic on residential hot water use, but notes that it appears that a significant fraction of the increased hot water use seen during the COVID–19 pandemic has started to reverse as more people return to the workplace. See chapter 7, appendix 7A and appendix 7B of the NOPR TSD for more details about the building sample and distribution of hot water energy use including results comparison.

NEEA, ACEEE, and NWPCC requested that DOE ignore households that use no water in the analysis. They stated that for households with no hot water use, the cost-effectiveness of owning any water heater is, at best, undefined or zero and accordingly, calculating the cost-effectiveness of incrementally increasing the efficiency of a water heater with no water use is undefined. (NEEA, ACEEE, and NWPCC, No. 47 at p. 8) The LCC analysis accounts for occupied homes and buildings using RECS and CBECS. All these homes and buildings in the LCC analysis have at least some hot water use, so no households have zero hot water use.

2. Consumer Water Heater Sizing and Draw Pattern

Calculating hot water use for each sample household requires assigning the water heater a specific tank size (referred to as rated volume). For each household, RECS reports one of three water heater tank sizes (small, medium, or large), as well as the size range in gallons. ''Typical'' water heater sizes, which are those most common for each fuel type, have the minimum energy factor allowed by current energy conservation standards. These ''typical'' storage tank units have the largest market share in their product class (50 gallon for electric, 40 gallon for natural gas and LPG, and 30 gallon for oil). The sizes are referred to as ''standard'' sizes. In addition, DOE accounted for different draw patterns in the test procedure (*i.e.,* low, medium, and high).

In order to disaggregate the selected sampled water heaters into standard sizes and draw patterns, DOE used a variety of sources including RECS historical data on reported tank sizes, input from an expert consultant, and model data from DOE's public Certification Compliance Management System (''CCMS'')[48] and AHRI certification directory[49] together with other publicly available data from manufacturers' catalogs of consumer water heaters. For gas-fired instantaneous water heaters, DOE also used a combination of confidential data provide by AHRI from 2004–2007.[50] For all product classes, disaggregated shipments data by rated volume from BRG Building Solutions 2022 report from 2007 to 2021[51] and disaggregated based on data from U.S. Census Bureau data (2003–2008).[52] Finally to determine the best product type and size for different applications, DOE used manufacturer-produced consumer water heater sizing guidelines and calculators.

BWC stated that the amount of manufacturer models on public databases used in the analysis does not accurately reflect market shares of particular sizes or groups of models. They stated that multiple models with the same or very similar characteristics are likely attributed to manufacturers

(''RECS'') (Available at: *www.eia.gov/consumption/residential/*) (Last accessed May 1, 2023).

[47] U.S. Department of Energy: Energy Information Administration, Commercial Buildings Energy Consumption Survey (2018) (Available at: *www.eia.gov/consumption/commercial/data/2018/index.php?view=microdata*) (Last accessed May 1, 2023).

[48] U.S. Department of Energy-Appliance & Equipment Standards Program. Compliance Certification Management System (CCMS) for Consumer Water Heaters (Downloaded June 1, 2022). (Available at *www.regulations.doe.gov/certification-data/CCMS-4-Water_Heaters.html#q=Product_Group_s%3A%22Water%20Heaters%22*) (Last accessed May 1, 2023).

[49] Air Conditioning Heating and Refrigeration Institute. Consumer's Directory of Certified Efficiency Ratings for Heating and Water Heating Equipment. June 1, 2022. (Available at *www.ahridirectory.org*) (Last accessed May 1, 2023).

[50] AHRI. Confidential Instantaneous Gas-fired Water Heater Shipments Data from 2004–2007 to LBNL. March 3, 2008.

[51] BRG Building Solutions. The North American Heating & Cooling Product Markets (2022 Edition). 2022.

[52] U.S. Census Bureau. Current Industrial Reports for Major Household Appliances 2003–2008. Washington, DC Report No. MA335F.

that have multiple brand names serving different parts of the market or particular customers. (BWC, No. 32 at p. 5). DOE's unique set of consumer water heater models removes models that have the same characteristics and represent multiple brands. DOE's use of this model dataset is only used when shipment or market data is not available. When the model data is used, consultant input or other available sources are used to try to better reflect the market shares of consumer water heaters at different sizes and characteristics. See appendix 7D of the NOPR TSD for more details about the model database.

NEEA, ACEEE, and NWPCC noted that RECS 2015 data shows that many homes have storage water heaters that are likely oversized for the needs of their occupants. NEEA, ACEEE, and NWPCC stated that DOE should consider that such homes may either choose to downsize equipment when replacing a water heater if it is oversized or choose to purchase an oversized water heater in anticipation of a home sale to new owners with greater hot water needs. (NEEA, ACEEE, and NWPCC, No. 47 at p. 9) DOE agrees that consumers could downsize equipment when replacing a water heater if it is oversized or choose to purchase an oversized water heater in anticipation of a home sale to new owners with greater hot water needs. There is limited historical data to quantify historical trends in the number of cases in the no-new-standards case where households might select a smaller or larger water heater, so DOE kept its equipment sizing methodology for the no-new-standards case. For the NOPR analysis, DOE did estimate that due to higher efficiency standards a fraction of consumers could downsize equipment when replacing a water heater if it is oversized to deal with space constraint installation issues or to downsize to smaller water heater options not impacted by standards (such as below 35 gallons for ESWHs in the proposed efficiency level).

NEEA, ACEEE, and NWPCC recommended that DOE should consider turnover in occupancy that may result in different draw profiles throughout the life of a given water heater. (NEEA, ACEEE, and NWPCC, No. 47 at p. 9) DOE agrees that several factors (such as turnover in occupancy and changes in consumer preference over time) may result in changes in the draw profiles and hot water use throughout the life of a given water heater. Currently, DOE could not find any data to quantify historical trends in draw patterns (such as shifts in the average occupancy per water heater). Therefore, DOE contends that on the overall hot water use averages out over the entire sample, since while some households could increase their hot water use analysis, on average a proportional number of households will decrease their hot water use. Therefore, DOE continued to assign the same draw profiles and hot water use throughout the life of a given water heater in the building sample, since on average energy use results would remain the same.

See appendix 7B of the NOPR TSD for more information about DOE's sizing methodology and comparison to available historical data.

3. Consumer Water Heater Energy Use Determination

To calculate the energy use of consumer water heaters, DOE determined the energy consumption associated with water heating and any auxiliary electrical use. In addition, for heat pump water heaters, DOE also accounted for the indirect effects of heat pump water heaters on heating, cooling, and dehumidification systems to compensate for the effects of the heat pump operation.[53] DOE calculated the energy use of water heaters using a simplified energy equation, the water heater analysis model (''WHAM''). WHAM accounts for a range of operating conditions and energy efficiency characteristics of water heaters. Water heater operating conditions are indicated by the daily hot water draw volume, inlet water temperature, thermostat setting, and air temperature around the water heater (ambient air temperature). To describe energy efficiency characteristics of water heaters, WHAM uses three parameters that also are used in the DOE test procedure: recovery efficiency (*RE*), standby heat-loss coefficient (*UA*), and rated input power (P^{ON}).

The current version of WHAM is appropriate for calculating the energy use of electric resistance storage water heaters. To account for the characteristics of other types of water heaters, energy use must be calculated using modified versions of the WHAM equation. These modified versions are further discussed in chapter 7 and appendix 7B of the NOPR TSD.

The daily hot water draw volume is estimated based on the water heater energy use estimated from RECS 2015 and CBECS 2018. The inlet water temperature is based on weather station temperature data and RECS 2015 ground water temperature data for each household. The consumer water heater thermostat setting is based on multiple sources including contractor survey data and field data. To estimate the air temperature around the water heater (ambient air temperature), DOE assigned the sampled water heaters a water heater installation location including indoors (in the living space, such as an indoor closet), basement, garages, crawlspaces, outdoor closets, attics, etc. (see appendix 7B of this NOPR TSD for the installation fractions for consumer water heaters by installation location). These fractions vary significantly by region and type of home, which matches available survey data. Once the water heater is assigned an installation location, DOE then uses a methodology to determine the surrounding water heater ambient temperature. For example, in indoor locations the temperatures are assumed to be equal to the thermostat temperature. Other locations such as unconditioned attics or unconditioned basements/crawlspaces, outdoor closets, garages could have temperatures that are either lower than 32 deg. or above 100 deg. for a fraction of the year. See appendix 7B and 8D (installation costs) of the NOPR TSD for more details about the installation location methodology and ambient temperature methodology.

ONE Gas and Gas Association Commenters generally supported energy use analysis that is tied to the UEF energy descriptor. Given that DOE and stakeholders went to great lengths to develop and justify the UEF metric upon consumer use assumptions, the resulting consensus behind UEF should serve as the basis for energy use analysis. (One Gas, No. 44, p. 12; Gas Association Commenters, No. 41, Attachment E at p. 15) As explained above, DOE's energy use analysis is based on UEF energy descriptor and test procedure derived parameters (RE, UE, P_{on}). DOE then converts this data to field energy use using modified WHAM equations (see appendix 7B of this NOPR TSD for more details).

4. Heat Pump Water Heater Energy Use Determination

For heat pump water heaters, energy efficiency and consumption are dependent on ambient temperature. To account for this factor, DOE expanded the WHAM to include a heat pump performance adjustment factor. The equation for determining the energy consumption of heat pump water

[53] If the heat pump water heater is installed in a conditioned space and is un-ducted, the cooling byproduct of the heat pump operation could produce a cooling effect that could increase space heating energy use in the heating season and decrease space cooling energy use in the cooling season. In addition, heat pump operation could also produce a dehumidifying effect that could reduce dehumidifier equipment energy use.

heaters is similar to the WHAM equation, but a performance adjustment factor that is a function of the average ambient temperature is applied to adjust *RE.* A heat pump water heater operates either in heat pump or in electric resistance mode. DOE estimated that the electric resistance mode of operation is used 100 percent of the time when the monthly ambient temperature is less than 32 °F or more than 100 °F. A heat pump water heater also operates in the electric resistance mode for part of the time even when the monthly ambient temperature (where the equipment is installed) is between 32 °F and 100 °F, because this product has a slower recovery rate than an electric resistance water heater. DOE determined that, depending on household hot water consumption patterns, the electric resistance mode of operation varies significantly from household to household (on average DOE estimated that electric resistance mode accounts for 10 percent of the heat pump water heater unit's operating time).

NRECA stated that the benefits of using electric hybrid heat pump water heaters in colder climates are significantly less. NRECA stated that the energy savings and costs should be considered region by region, and not averaged nationally, as the impact to individual consumers may vary significantly. (NRECA, No. 33 at p. 3) DOE's energy use model is conducted for a representative sample of households that matches different conditions around the country where the electric water heater is installed as indicated by the RECS and CBECS data. Therefore, the impacts of heat pump water heaters vary for individual consumers. Appendix 7B of the NOPR TSD presents the energy use results for different regions to highlight this aspect of the analysis.

PHCC stated that page 7B–4 of the preliminary analysis TSD has a discussion of heat pump water heaters not operating when ambient temperatures are below 32 °F or above 100 °F and it was unclear what this means. PHCC stated that the TSD infers that the majority of these products will be installed indoors, which would not be in those extreme temperature ranges. (PHCC, No. 40 at p. 2) As previously explained, electric storage water heaters are typically installed in indoors (in the living space, such as an indoor closet), basement, garages, crawlspaces, outdoor closets, attics, *etc.* The installation location fractions vary significantly by region and type of home. Once the water heater is assigned an installation location, DOE then determines the surrounding water heater ambient temperature based on several factors. For example, in indoor locations the temperatures are assumed to be equal to the thermostat temperature. Other locations such as unconditioned attics or unconditioned basements/crawlspaces, outdoor closets, garages could have temperatures that are either lower than 32 °F or above 100 °F for a fraction of the year. For more details on the estimate of water heater ambient temperature, see chapter 7 and appendix 7B of the NOPR TSD.

PHCC stated that DOE's analysis assumes that heat pump water heaters will operate as resistance electric units 10 percent of the time. PHCC believed that given the meager recovery rate typical of heat pump water heaters and their poor performance with cold water below 50 °F, it would seem logical that these products would rely on resistance heat for much more time (30 or perhaps 40 percent of the time). (PHCC, No. 40 at p. 2) DOE notes that the 10 percent value is a national average, which is based on several studies. This value varies significantly by time of year, ambient temperature around water heater, water temperature, installation location and characteristics, hot water usage patterns, etc. For consumer water heaters installed in a location with lower cold water temperatures and lower ambient temperatures, the electric resistance use is closer to 30 percent of the time. For more details see appendix 7B of the NOPR TSD.

Rheem stated that Table 7.4.1 in the preliminary TSD shows that ELs 3 and 4 for electric storage water heaters ≥20 and ≤55 gallons show an increase in fossil-fuel use. Rheem requested clarification on why an electric water heater has fossil-fuel use and why this use is not seen in the >55 to ≤120-gallon range. (Rheem, No. 45 at p. 8) During the winter months, heat pump storage water heaters could impact the space heating load by cooling the surrounding space. Depending on the location of the water heater, this could lead to greater use of the space heating system, which leads to increased fossil fuel energy use for homes that use fossil fuel as the primary space heating source. In the case of >55 gallon sizes, the difference between the baseline and higher efficiency is very small because both are heat pumps. For this NOPR, DOE included the impact for >55 gallon sizes, which shows on average a decrease in cooling impact for higher efficiency HPWHs, due to their fewer compressor operating hours.

NEEA, ACEEE, and NWPCC stated that DOE is likely overestimating the increased space heating system use (and decreased cooling use) due to the impact of heat pump water heater operation in conditioned space. NEEA, ACEEE, and NWPCC pointed out that considerable research by NEEA and others shows that not all the heat extracted from the air (by the heat pump) is subsequently replaced by the space heating system (or counts as an offset to the cooling system) and that, on average, only 65 percent of the heat extracted from the air by the HPWH is replaced by the space heating system. NEEA, ACEEE, and NWPCC provided several references in support of this phenomena. (NEEA, ACEEE, and NWPCC, No. 47 at p. 9) For the preliminary analysis, DOE estimated that two-thirds of heat extracted from the air by the HPWH is replaced by the space conditioning system. DOE reviewed its analysis methodology and assumptions based on the references provided. Based on this data, DOE was able to confirm the estimate.

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 consumer water heaters. 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 consumer water heaters in the absence of new or amended energy conservation standards. In

contrast, the PBP for a given efficiency level is measured relative to the baseline product.

For each considered efficiency level in each product class, DOE calculated the LCC and PBP for a nationally representative set of housing units and commercial buildings. As stated previously, DOE developed household and commercial building samples from RECS 2015 and CBECS 2018. For each sample household and commercial building, DOE determined the energy consumption for the consumer water heaters and the appropriate energy price. By developing a representative sample of households and commercial buildings, the analysis captured the variability in energy consumption and energy prices associated with the use of consumer water heaters.

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.

BWC was concerned about numerous references that are outdated surveys and other data sources of which some sources are 17 years old. BWC stated that today's costs to consumers and manufacturers are significantly beyond what they were a few years ago, which can give the impression that certain Efficiency Levels can be justified. BWC strongly recommended DOE contract surveys or studies on their own to obtain the information necessary to properly inform their major regulatory policy decisions. (BWC, No. 32 at p. 5) DOE always tries to use the most up-to-date data. For this analysis, DOE reviewed all its references and updated them to the latest available as highlighted throughout this NOPR document and the associated TSD. DOE also hired a contractor to supplement and/or validate its review for today's costs and market conditions.

The computer model DOE uses to calculate the LCC relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and consumer water heaters user samples. For this rulemaking, the Monte Carlo approach is implemented in MS Excel together with the Crystal Ball™ add-on.[54] The model calculated the LCC for products at each efficiency level for 10,000 water heater installations in housing and commercial building units per simulation run. The analytical results include a distribution of 10,000 data points showing the range of LCC savings for a given efficiency level relative to the no-new-standards case efficiency distribution. In performing an iteration of the Monte Carlo simulation for a given consumer, product efficiency is chosen based on its probability. If the chosen product efficiency is greater than or equal to the efficiency of the standard level under consideration, the LCC calculation reveals that a consumer is not impacted by the standard level. By accounting for consumers who already purchase more-efficient products, DOE avoids overstating the potential benefits from increasing product efficiency.

DOE calculated the LCC and PBP for consumers of consumer water heaters as if each were to purchase a new product in the expected first full year of required compliance with new or amended standards. Amended standards would apply to consumer water heaters manufactured 5 years after the date on which any new or amended standard is published. (42 U.S.C. 6295(g)(10)(B)) At this time, DOE estimates issuance of a final rule in 2024. Therefore, for purposes of its analysis, DOE used 2030 as the first full year of compliance with any amended standards for consumer water heaters.

NEEA, ACEEE, and NWPCC requested that DOE publish the LCC of HPWHs binned by occupancy and average daily water draw. NEEA, ACEEE, and NWPCC stated that DOE's draw profiles derived from RECS 2015 exhibit a wide variance in water consumption even among homes with the same occupancy resulting in net cost for households with very low water usage and the proposed approach will allow for a better assessment. (NEEA, ACEEE, and NWPCC, No. 47 at p. 8) DOE provides additional LCC results binned by occupancy and average daily water draw in appendix 8G.

Table IV. summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The paragraphs that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the NOPR TSD and its appendices.

TABLE IV.31—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *

Inputs	Source/method
Product Cost	Derived by multiplying MPCs by manufacturer and retailer markups and sales tax, as appropriate. Used historical data to derive a price scaling index to project product costs.
Installation Costs	Baseline installation cost determined with data from RSMeans. Assumed no change with efficiency level.
Annual Energy Use	Total annual energy use based on the average daily hot water use, derived from the building samples. Variability: Based on the RECS 2015 and CBECS 2018.
Energy Prices	Natural Gas: Based on EIA's Natural Gas Navigator data for 2022. Electricity: Based on EIA's Form 861 data for 2022. Propane and Fuel Oil: Based on EIA's State Energy Data System ("SEDS") for 2021. Variability: Regional energy prices determined for 50 states and District of Columbia for residential and commercial applications. Marginal prices used for natural gas, propane, and electricity prices.
Energy Price Trends	Based on *AEO2023* price projections.
Repair and Maintenance Costs	Based on RSMeans 2023 data and other sources. Assumed variation in cost by efficiency.
Product Lifetime	Based on shipments data, multi-year RECS, American Housing Survey, American Home Comfort Survey data.

[54] Crystal Ball™ is commercially-available software tool to facilitate the creation of these types of models by generating probability distributions and summarizing results within Excel, available at *www.oracle.com/technetwork/middleware/crystalball/overview/index.html* (last accessed May 1, 2023).

TABLE IV.31—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *—Continued

Inputs	Source/method
Discount Rates	Residential: approach involves identifying all possible debt or asset classes that might be used to purchase the considered appliances, or might be affected indirectly. Primary data source was the Federal Reserve Board's Survey of Consumer Finances. Commercial: Calculated as the weighted average cost of capital for businesses purchasing NWGFs. Primary data source was Damodaran Online.
Compliance Date	2030.

* Not used for PBP calculation. References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the NOPR TSD.

1. Product Cost

To calculate consumer product costs, DOE multiplied the MPCs developed in the engineering analysis by the markups described previously (along with sales taxes). DOE used different markups for baseline products and higher-efficiency products, because DOE applies an incremental markup to the increase in MSP associated with higher-efficiency products.

PHCC review of just one nationally noted online plumbing wholesale source found that the cost of various types of water heaters to be near or even exceed the TSD projected installed cost of water heaters. (PHCC, No. 40 at p. 1) DOE updated its MPC values from the engineering analysis and the markups to the latest available values. Overall the water heater retail prices increased. DOE compared its estimated retail prices to available current retail prices and found that the prices are comparable to DOE's estimates (see Appendix 6A of this NOPR TSD).

BWC requested DOE elaborate on how it has arrived at its installation cost estimates for EL 2, which included thermopile flue dampers as an associated design option, considering that thermopile flue dampers are not commercially available for the consumer water heater market. (BWC, No. 32 at p. 2) In response, as previously discussed in the screening analysis section, IV.B.1, of this NOPR, DOE has removed this design option from all proposed efficiency levels and updated cost estimates.

Examination of historical price data for certain appliances and equipment that have been subject to energy conservation standards indicates that the assumption of constant real prices may, in many cases, overestimate long-term trends in appliance and equipment prices. Economic literature and historical data suggest that the real costs of these products may in fact trend downward over time according to ''learning'' or ''experience'' curves.[55]

In the experience curve method, the real cost of production is related to the cumulative production or ''experience'' with a manufactured product. This experience is usually measured in terms of cumulative production. As experience (production) accumulates, the cost of producing the next unit decreases. The percentage reduction in cost that occurs with each doubling of cumulative production is known as the learning rate. In typical experience curve formulations, the learning rate parameter is derived using two historical data series: cumulative production and price (or cost). DOE obtained historical PPI data for water heating equipment from 1950–1961, 1968–1973, and 1977–2022 for electric consumer water heaters and from 1967–1973 and 1977–2022 for all other consumer water heaters from the Bureau of Labor Statistics' (BLS).[56] The PPI data reflect nominal prices, adjusted for product quality changes. An inflation-adjusted (deflated) price index for heating equipment manufacturing was calculated by dividing the PPI series by the implicit price deflator for Gross Domestic Product Chained Price Index.

From 1950 to 2006, the deflated price index for consumer water heaters was mostly decreasing, or staying flat. Since then, the index has risen, primarily due to rising prices of copper, aluminum, and steel products which are the major raw material used in water heating equipment. The rising prices for copper and steel products were attributed to a series of global events, from strong demand from China and other emerging economies to the recent severe delay in commodity shipping due to the COVID–19 pandemic. Given the slowdown in global economic activity in recent years and the lingering impact from the global pandemic, DOE believes that the extent to which the trends of the past five years will continue is very uncertain. DOE also assumes that any current supply chain constraints are short-lived and will not persist to the first year of compliance. Therefore, DOE decided to use constant prices as the default price assumption to project future consumer water heater prices. Thus, projected prices for the LCC and PBP analysis are equal to the 2022 values for each efficiency level in each product class. DOE welcomes comment on the use of a constant price trend.

CA IOUs stated that the current difference in pricing between electric resistance water heater and HPWHs reflects HPWH's current small share of the electric storage water heater market. They believe that the potential for future increases in HPWH sales volumes will lower prices. CA IOUs encouraged DOE to reflect this potential through the inclusion of price learning in its Life Cycle Cost analyses. (CA IOUs, No. 39 at p. 2) The MPCs estimated by DOE account for economies of scale for HPWHs if they are a standard and the sales volume sales is much larger.

CA IOUs stated that in comparing condensing technologies in commercial residential-duty gas and consumer storage water heaters analysis, they believe that DOE has significantly underestimated the learning price trend for consumer storage water heaters. Because the incremental MPC for condensing design options is lower in commercial residential duty water analysis compared to consumer water heaters analysis, even though they would expect the opposite to be true due to commercial residential duty larger size. (CA IOUs, No. 52 at pp. 5–6) NYSERDA commented that DOE should adopt price learning for condensing technology in its LCC analyses for consumer storage water heaters. (NYSERDA, No. 51 at p. 2) NYSERDA also recommends DOE to conduct a sensitivity analysis for different technology price scenarios. (NYSERDA, No. 35 at p. 3) Joint Advocates encouraged DOE to investigate how the analysis could reflect price learning associated with

[55] Desroches, L.-B., K. Garbesi, C. Kantner, R. Van Buskirk, and H.-C. Yang. Incorporating Experience Curves in Appliance Standards Analysis. *Energy Policy*. 2013. 52 pp. 402–416; Weiss, M., M. Junginger, M. K. Patel, and K. Blok. A Review of Experience Curve Analyses for Energy Demand Technologies. *Technological Forecasting and Social Change*. 2010. 77(3): pp. 411–428.

[56] Series ID PCU33522033522081 and PCU33522833522083; see *www.bls.gov/ppi/*.

heat pump and condensing technology. Joint Advocates expected that the price trends associated with heat pump and condensing technologies will be significantly different than the overall price trends of water heaters. In particular, components used in heat pump water heaters, such as compressors and heat exchangers, are similar to those used in other air conditioning and heat pump equipment. Joint Advocates noted that in the rulemakings for space cooling heat pumps and room air conditioners DOE applied price trends similar to central air conditioners which utilize similar components. (Joint Advocates, No. 34, p. 3)

DOE acknowledges that the prices of higher efficiency technologies (such as heat pump or condensing technology options) may not change at the same rate and using a trend for all water heaters to represent the price trend of higher efficiency water heaters may underestimate the future decline in the cost of higher efficiency water heaters. However, DOE could not find detailed data that would allow for a price trend projection for higher efficiency water heaters that may differ from baseline water heaters. Thus, for this NOPR, it used the same price trend projection for all water heaters. Although DOE was not able to find information or data regarding price trends related to different water heater technologies, DOE is aware of alternative approaches to estimating learning rates.[57] For this analysis, DOE included a scenario where HPWH and condensing technology had a separate learning curve, which is similar to HVAC equipment.

2. Installation Cost

The installation cost is the cost to the consumer of installing the consumer water heater, in addition to the cost of the water heater itself. The cost of installation covers all labor, overhead, and material costs associated with the replacement of an existing water heater or the installation of a water heater in a new home, as well as delivery of the new water heater, removal of the existing water heater, and any applicable permit fees. Higher-efficiency water heaters may require one to incur additional installation costs.

DOE's analysis of installation costs estimated specific installation costs for each sample household based on building characteristics given in RECS 2015 and CBECS 2018. For this NOPR, DOE used 2023 RSMeans data for the installation cost estimates, including labor costs.[58] [59] [60] [61] DOE's analysis of installation costs accounted for regional differences in labor costs by aggregating city-level labor rates from RSMeans into 50 U.S. States and the District of Columbia to match RECS 2015 data and CBECS 2018 data.

a. Basic Installation Costs and Inputs

First, DOE estimated basic installation costs that are applicable to all consumer water heaters, in replacement, new owner, and new home or building installations. These costs include putting in place and setting up the consumer water heater, gas piping and/or electrical hookup, permits, water piping, removal of the existing consumer water heater, and removal or disposal fees.

PHCC stated that the values for products, materials, and labor used in the preliminary analysis TSD do not seem to be aligned with the current market. PHCC's review of just one nationally noted online plumbing wholesale source found that the cost of various types of water heaters to be near or even exceed the TSD projected installed cost of water heaters. PHCC found that the cost of many of the miscellaneous products listed in the TSD analysis are understated as well (expansion tanks, water heater stands, relief valves, pipe and fittings, etc.). (PHCC, No. 40 at p. 1) DOE updated its MPC values from the engineering analysis and the markups to the latest available values. Overall the water heater retail prices increased. DOE compared its estimated retail prices to available current retail prices and found that the prices are comparable to DOE's estimates (see Appendix 6A of this NOPR TSD). DOE updated the components cost with data from RS Means 2023 and found them comparable to multiple other sources (see Appendix 7D of this NOPR TSD).

BWC states that there are a number of labor and material costs that are mischaracterized. (BWC, No. 32 at p.6) BWC did not provide any details, so DOE was unable to determine what they believe is mischaracterized. However, DOE welcomes specific suggestions as to how it might improve its maintenance and repair methodology.

PHCC observed that the TSD indicates plumbers charge approximately $64 per hour for residential work and $89 for commercial work yet the analysis uses $60 per hour. PHCC's opinion is that these values are very low. Further, PHCC noted that in several instances DOE relies on information from sources in the HVAC industry which are not plumbing professionals and that there are differences between the two industries. (PHCC, No. 40 at p. 2) PHCC also pointed out that there are errors and confusing statements in the preliminary analysis TSD appendix 8C and requested clarification of these issues. (PHCC, No. 40 at p. 3) In regard to the plumbers' hourly rates, the consultant report uses a $60 per hour average labor hour for illustration purposes based on actual rates in a few locations. DOE's analysis uses plumbing labor rates based on RS Means data that vary by state and market segment (residential or commercial). In addition, DOE assigned a higher labor rate for ''emergency'' replacements in residential applications. For mobile home installations, DOE also assigned lower labor rates based on consultant input on the labor rates that might be used in the mobile homes market. For the NOPR analysis, DOE updated labor rates using the latest RSMeans 2023 available. DOE also significantly updated its installation cost appendix (appendix 8D of the NOPR TSD) to correct inconsistencies noted by stakeholders.

PHCC stated that the materials needed for the installation that DOE included seem somewhat random. For example, 3 feet of pipe is allowed for hot and cold-water pipe drops, which is fine if the heater is located under the mains but there may be a need for branch piping to get to a location. In addition, PHCC stated that electrical requirements should be included, and there is no mention of seismic bracing as required in numerous jurisdictions. (PHCC, No. 40 at p. 4) The fixed pipe lengths and materials costs that are listed in the consultant report, are for typical installations for illustrative purposes. In DOE's analysis, the pipe lengths vary based on a distribution of pipe lengths. DOE's analysis also includes a variety of installation costs that are encountered in the field to meet different electrical

[57] Taylor, M. and K. S. Fujita, Accounting for Technological Change in Regulatory Impact Analyses: The Learning Curve Technique, Lawrence Berkeley National Laboratory, Report No. LBNL–6195E (2013) (Available at: *eta-publications.lbl.gov/sites/default/files/lbnl-6195e_.pdf*) (Last accessed May 1, 2023).

[58] RSMeans Company Inc., *RSMeans Mechanical Cost Data.* Kingston, MA (2023) (Available at: *www.rsmeans.com/products/books/2022-cost-data-books*) (Last accessed May 1, 2023).

[59] RSMeans Company Inc., *RSMeans Residential Repair & Remodeling Cost Data. Kingston,* MA (2023) (Available at: *www.rsmeans.com/products/books/2022-cost-data-books*) (Last accessed May 1, 2023).

[60] RSMeans Company Inc., *RSMeans Plumbing Cost Data.* Kingston, MA (2023) (Available at: *www.rsmeans.com/products/books/2022-cost-data-books*) (Last accessed May 1, 2023).

[61] RSMeans Company Inc., *RSMeans Electrical Cost Data.* Kingston, MA (2023) (Available at: *www.rsmeans.com/products/books/2022-cost-data-books*) (Last accessed May 1, 2023).

requirements and code requirements (for example, seismic bracing in all California installations). For the NOPR, DOE expanded the material requirements for different installation situations (see appendix 8D of the NOPR TSD for more details).

PHCC noted that the installation time of 2.08 hours is low however no breakdown for the various installation items is provided. (PHCC, No. 40 at p. 4) The 2.08 hours refers to the consultant report average typical hours to install and set into place a water heater for illustrative purposes, while in DOE's analysis this value varies based on the installation characteristics. (see appendix 8D of the NOPR TSD).

PHCC noted that the direct vent installations have lower cost than a conventional system due to the vent material, but the installation of these units is more complex. (PHCC, No. 40 at p. 4) For the NOPR, DOE expanded the distribution of values associated with setting in place a water heater in several installation situations including differences in installation costs for direct vent compared to conventional system venting (see appendix 8D of the NOPR TSD).

PHCC noted that a trip charge is included for service contractors to cover some travel and office overhead related to the job, but the water heater installations additionally require some miscellaneous materials and some special tooling as well as the costs for vehicles and fuel. These additional costs are not recognized as part of the trip charge. (PHCC, No. 40 at p. 4) Based on the consultant report, DOE's analysis included additional miscellaneous materials as a line item.

PHCC stated that not all water meters have check valves. For systems that have check valves, the water heater expansion tank is necessary. The expansion tank should also be replaced at a changeout of a water heater, which adds additional installation costs. (PHCC, No. 40 at p. 4) DOE agrees that not all water heaters have check valves. DOE's analysis accounts for replacement of the expansion tank when the water heater is replaced. For the preliminary analysis, DOE estimated that 5% of water heater installations would require an expansion tank. For the NOPR, reviewed available data and the updated consultant report, but found no source to justify a lower or higher fraction. DOE also notes that the check valve installation cost is the same for baseline and higher efficiency equipment.

b. Gas-Fired and Oil-Fired Water Heater Installation Costs

For gas-fired and oil-fired water heater installations, DOE included a number of additional costs (''adders'') for a fraction of the sample households. Most of these additional cost adders are associated with installing higher efficiency consumer water heater designs in replacement installations.

For replacement installations, DOE conducted a detailed analysis of installation costs when a baseline (or minimum efficiency) consumer water heater is replaced with higher efficiency design options, with particular attention to space constraint issues (associated with larger dimensions for certain higher efficiency consumer water heaters), venting issues, and condensate withdrawal (for power vented and condensing gas-fired water heaters). Due to the larger dimensions of higher efficiency storage water heaters, installation adders included removing and replacing door jambs (to be able to fit the larger sized water heater) or adding tempering valves for increasing set-point temperatures to install a smaller sized storage water heater that produces the same hot water output. For non-condensing gas-fired and oil-fired water heaters, additional costs included updating flue vent connectors, vent resizing, and chimney relining. For non-condensing power vented and condensing gas-fired water heaters, additional costs included adding a new flue vent, combustion air vent for direct vent installations, concealing vent pipes for indoor installations, addressing an orphaned furnace (by updating flue vent connectors, vent resizing, or chimney relining), and condensate removal. Freeze protection is accounted for in the cost of condensate removal for a fraction of condensing gas-fired water heaters installed in non-conditioned spaces.

DOE also included installation adders for new owner and new construction installations. For non-condensing gas-fired and oil-fired water heaters, a new flue vent and accounting for other commonly vented heating appliances are the only adders. For power vented and condensing gas-fired water heaters, the adders include new flue vent, combustion air vent for direct vent installations, and condensate removal.

Atmos, One Gas, and Gas Association Commenters stated that DOE should more accurately consider the variability and uncertainty around installation costs of water heaters, particularly in water heater replacement applications requiring a shift in venting systems from atmospheric venting to power venting, and the consequences of venting to other appliances. (Atmos, No. 38 at p. 3; One Gas, No. 44 at p. 6 ; Gas Association Commenters, No. 41, Attachment E at p. 8) PHCC stated that in terms of gas venting it has long maintained that the conversion to condensing products is not always an acceptable option. PHCC pointed out that there are some installations where vent lengths could exceed the manufacturer's recommendation. (PHCC, No. 40 at p. 3) CA IOUs stated that in comparing condensing technologies in Commercial residential-duty gas and consumer storage water heaters analysis, they believe that DOE has significantly overestimated the installation for consumer storage water heaters. Because the incremental installation cost for condensing design options is lower in commercial residential duty water analysis compared to consumer water heaters analysis, even though they would expect the opposite to be true due to commercial residential duty larger size. (CA IOUs, No. 52 at pp. 5–6)

In the case of replacing an atmospheric GSWH with a power vent or condensing GSWH, DOE's installation model carefully considers different vent installation configurations (or situations). This includes adding costs for varying length of new PVC piping, piping going through multiple walls, patching and concealing vent piping in living areas, and addressing the vent termination requirements. These costs could range from relatively small amount in the case of close to the wall GSWH with side wall venting to complex venting installation. DOE believes that the range of values captures the variability that is likely to occur in the field.

PHCC acknowledged that DOE suggests that alternate methods exist or are in development, but noted that it would be preferable to have fully vetted proven technology in place before hanging hopes on this. (PHCC, No. 40 at p. 3) DOE's analysis considers an alternative venting option that is currently on the market for commonly-vented non-condensing and condensing equipment, but did not include in its reference case analysis since it has limited field data associated with this technology. DOE is considering whether to include the alternative venting options in its installation model and/or conduct a sensitivity analysis with alternative venting options and invites stakeholder input on its approach.

See appendix 8D of the NOPR TSD for further details about flue venting cost model and the alternative venting option.

Atmos, One Gas, and Gas Association Commenters stated that DOE's analysis ignores consumers who do not live in single-family households who may need a water heater replacement. Atmos stated that DOE should consider the impacts on multifamily housing households whose water heaters vent atmospherically into a common vent shared with other households, because one household's water heater replacement may, due to the unavailability of models of atmospherically vented water heaters, compromise proper venting of other households' water heaters because the atmospheric venting system is likely to now be oversized. (Atmos, No. 38, p. 4; One Gas, No. 44 at p. 6; Gas Association Commenters, No. 41, Attachment 6 at pp. 8–9) DOE's preliminary analysis accounted for water heater installations (or replacements) in all residential building types including single-family (detached); single-family (attached), multi-family, and mobile homes. DOE also considers separate installation costs for commercial buildings. For the NOPR analysis DOE refined its installation model so that it could better account for impacts of installations in multi-family and mobile home installations, including common vent installations in multifamily buildings. See appendix 8D of the NOPR TSD for disaggregated installation costs by building type.

c. Condensate Withdrawal for Higher Efficiency Design Options

For the preliminary analysis, DOE assumed that 12.5 percent of condensing gas-fired water heaters and HPWHs in replacement situations required a condensate pump. For new construction, DOE assumed that a condensate pump would not be required since the building would be designed with the drains located nearby. PHCC stated that it is not a code requirement to have a drain near the water heater, and many times this drain is not there. PHCC has concerns that in the case of new construction, DOE does not contemplate condensate pumps and electric outlets for certain water heaters. In reality, these should be included, if the builder did not anticipate that these products would be at additional cost. (PHCC, No. 40 at pp. 3–4) Based on the input of an expert consultant, if a higher efficiency water heater that requires condensate withdrawal is selected for a project it is unlikely that a condensate pump with be required, since the plumbing plan will likely include a drain nearby to deal with the condensate. Similarly, the electrical plan will be adjusted so that the appropriate electrical outlet requirements are included. DOE believes these are very minor requirements to have in a construction plan, particularly with a long lead time to the first year of compliance. DOE did not change its approach for the NOPR analysis.

d. Heat Pump Water Heater Installation Costs

For heat pump water heater installations, DOE included a number of adders for a fraction of the sample households. Most of these adders are associated with installing heat pump water heater designs in replacement installations.

For replacement installations, DOE conducted a detailed analysis of installation costs when a baseline consumer water heater is replaced with higher efficiency designs, with particular attention to space constraint issues (associated with larger dimensions for heat pump water heaters compared to electric resistance water heaters), condensate withdrawal, and ductwork for heat pump water heaters installed in conditioned spaces. To address the larger dimensions of heat pump water heaters, installation adders included removing and replacing door jambs (to be able to fit the larger sized water heater), adding a tempering valve for increasing set-point temperatures to allow for a smaller-sized storage water heater that produces the same hot water output, or relocating water heater. Freeze protection is accounted for in the cost of condensate removal for a fraction of heat pump water heaters installed in non-conditioned spaces. DOE also included condensate removal installation adders for new owner and new construction HPWH installations.

PHCC stated that the preliminary TSD's assumption that changing to a heat pump would only add, on average, 1 hour of labor is too low. Additional handling, drain work, re-piping, and programming of controls will require additional time. (PHCC, No. 40 at p. 4) The average additional labor varies by installation. In the preliminary analysis, the average additional labor hours is about 2 hours, which matches available field data. For the NOPR, DOE kept the same assumptions and methodological approach.

NRECA stated that heat pump water heaters are required to maintain a specific minimum area around the heat pump water heater to function per manufacturer design specifications. They added that many homes, especially older housing stock or manufactured homes, do not allow for such a large space to house a water heater, and others would require home retrofits. NRECA concluded that heat pump water heaters are simply not practical in many of these cases. (NRECA, No. 33 at pp. 2–3) EEI stated that non-ducted HPWH require at least 700 cubic feet of space to operate properly and achieve efficiency levels presented in the technical support document. (EEI, No. 43 at p. 2) In contrast, NEEA, ACEEE, and NWPCC pointed to current research which indicates that HPWHs can be installed in much smaller spaces than manufacturer literature specifies. Specifically, under testing with a draw profile similar to the DOE-specified medium draw profile, compared to performance at OEM-specified minimums, reducing room volume to 450 ft^3 reduces COP by less than 10 percent, and reducing room volume to 200 ft^3 reduces COP by less than one-third. They noted that remedies that have been successfully applied (adding small vents to the door, using a louvered door, installing passive ventilation grilles in the wall, and simple ducting to an adjacent room) are inexpensive and require little labor. (NEEA, ACEEE, and NWPCC, No. 47 at p. 5)

To be conservative in its analysis, DOE accounted for the airflow requirements as specified in manufacturer installation manuals in its installation cost model. The additional costs of adding louvered doors, venting, or relocating a water heater are included for a fraction of installations, mainly for HPWHs installed in indoor locations. See appendix 8D of the NOPR TSD for more details.

NRECA and EEI pointed to field studies from NREL, Fortis BC, and SMUD [62] that provide a range of actual costs for installing heat pump water heaters when replacing electric resistance water heaters in space constrained areas such as closets where walls, ceilings, and doors must be removed and replaced or ductwork needs to be added. NRECA stated that DOE should update its analysis with real world information on the costs of such installations as it moves forward. (NRECA, No. 33 at pp. 3–4; EEI, No. 43 at p. 2)

NEEA, ACEEE, and NWPCC pointed to a survey of more than 100 installers in the NW and SE regions to understand issues associated with HPWH installations. Survey respondents indicated an average of less than two

[62] See *www.nrel.gov/docs/fy16osti/64904.pdf*; *energy350.com/wp-content/uploads/2018/11/CO2-Integrated-Heat-Pump-Water-Heater-Performance-Report-FINAL.pdf*; and *www.smud.org/-/media/Documents/Corporate/About-Us/Reports-and-Documents/2018/HPWH-Field-Testing-Report-1-6-2016.ashx*.

additional labor hours to install a HPWH compared with a conventional electric resistance product. Informed by this survey, NEEA believed that DOE's estimates for the likelihood of installation challenges and the associated additional labor hours are within reason. (NEEA, ACEEE, and NWPCC, No. 47, pp. 4–5) NYSERDA and Joint Advocates stated that DOE's HPWH installation cost estimates are robust and reasonable. (NYSERDA, No. 35 at p. 2; Joint Advocates, No. 34 at pp. 3–4) Joint Advocates stated that NEEA has experienced limited challenges with installation. In a survey of consumers who had received a utility rebate for a HPWH, NEEA found that 72 percent of professionally installed water heaters were installed in half a day or less, which appears to be in line with DOE's estimated installation time for HPWHs. The study found that only 15 percent of professionally installed HPWHs encountered some form of challenge (usually minor) during the installation process and only three percent of installations had to install ducting. Joint Advocates stated that the limited installation challenges are further corroborated by a recent study conducted by CLEAResult that evaluated 15 HPWHs installed in manufactured homes. (Joint Advocates, No. 47, pp. 4–5) NEEA, ACEEE, and NWPCC stated that NEEA's regional experience with more than 100,000 heat pump water heaters installed in the Northwest shows limited installation challenges and broad consumer satisfaction. (NEEA, ACEEE, and NWPCC, No. 47 at p. 3)

DOE carefully reviewed the studies provided by stakeholders. DOE found that the NREL study, Fortis BC, Canadian study, and NEEA study results were consistent with DOE's installation model. DOE conducted a literature review and found that other studies in other regions (outside of California, Canada, Northeast) have similar results to DOE's analysis. See Appendix 8D of the NOPR TSD for more details of the literature review and comparison results.

CA IOUs also stated that currently available HPWH products are unable to serve some ''space-constrained'' [63] applications currently served by electric resistance storage water heaters. They noted that while the eventual development of HPWH products that can serve many of these space-constrained applications is possible, the current HPWH market is dominated by integrated models in a standard configuration (CA IOUs, No. 52 at pp. 6–7) AHRI, Rheem, and GE Appliances stated that DOE disregarded lowboy electric storage water heaters, which are space constrained products that are the only means for some consumers to meet their hot water needs. They stated that to comply with the current standards, these products have already reached the maximum size feasible for these space constrained applications, and there is no room available for these products to incorporate heat pump technologies or physically expand to accommodate additional insulation. They requested the Department to update its analysis to include lowboy electric storage water heaters, similar to what was done for short and tall ratio water heaters. (AHRI, No. 20 at p. 5; GEA, No. 46 at p. 1; Rheem, No. 45 at p. 4) PHCC stated that taller heaters will not fit in undercounter cabinets and that rough-in piping locations or building elements may also prevent taller units. PHCC added that instead of the space constraint option solutions listed, consumers likely will settle for a smaller capacity water heater rather than make extensive modifications to their buildings. (PHCC, No. 40 at p. 3) DOE did extensive revisions to its installation cost model to include installations of low-boy water heaters, which DOE estimated to be around 11 percent of the total 20 to 55 gallon electric storage water heater market. DOE assessed that many of these installations would require significant installation costs in order to install a HPWH. DOE notes that at the proposed standard, most models currently serving the small electric water heater market will remain available.

PHCC stated that DOE's analysis suggested that door frames be removed and re-installed to allow larger storage water heater design options (such as HPWH) products to be installed. PHCC believed that this is against the plumbing code for most jurisdictions in the U.S., which prescribe that structural elements or finished surfaces are not to be removed to service water heaters. (PHCC, No. 40 at p. 3) For the NOPR, to account for locations where plumbing codes might limit or ban this practice, DOE reduced the fraction of installations removing and re-installing door jambs. In these situations, the model selects an alternative installation, such as using a tempering valve, moving the water heater to a new location, or installing a split-system heat pump water heater. All relevant costs for these installations are accounted for in the analysis.

PHCC questioned DOE's suggestion that smaller heaters can be installed with elevated storage temperatures and the use of a mixing valve can then reduce the supply water temperature, noting that this is a costly and maintenance-intensive solution and there is concern for inadvertent scalding situations with elevated temperatures. (PHCC, No. 40 at p. 3) In contrast, CA IOUs stated that Thermostatic mixing valves that allow the storage temperature to be set above 125 °F are relatively inexpensive, widely available, and required by the plumbing code in at least one state. (CA IOUs, No. 52 at pp. 8)

DOE has found that for some applications mixing valves are currently being used in order to have higher hot water temperature for dishwashers or clothes washers, to provide more hot water capacity, and to reduce bacterial growth, while making sure the delivered water is within a safe range. In other cases, this approach is starting to be used more often to increase available hot water.[64] Some water heaters have internal mixing valves that are meant to increase available hot water. In some cases, mixing valves could be used to address the increased hot water needs when the number of people in the household increases without replacing the entire water heater. DOE's updated test procedure includes a method to test water heaters in the highest storage tank temperature mode, which would be more representative for these types of installations. This is discussed more in section V.D.1. DOE's analysis in this NOPR accounts for a fraction of installations that might choose this approach.

3. Annual Energy Consumption

For each sampled household and building, DOE determined the energy consumption for consumer water heaters at different efficiency levels using the approach described previously in section IV.E of this document.

Higher-efficiency water heaters reduce the operating costs for a consumer, which can lead to greater use of the water heater. A direct rebound effect occurs when a product that is made more efficient is used more intensively, such that the expected energy savings from the efficiency improvement may not fully materialize. At the same time, consumers benefit

[63] CA IOUs define ''space-constrained'' as applications that include ''small closets, crawlspaces, and other locations where electric resistance storage water heaters function well, but HPWH either cannot physically fit, or do not have access to an adequate ambient air supply.'' (CA IOUs, No. 52 at p. 6).

[64] See *www.geappliances.com/appliance/GE-Smart-50-Gallon-Electric-Water-Heater-with-Flexible-Capacity-GE50S10BMM.*

from increased utilization of products due to rebound. Although some households may increase their water heater use in response to increased efficiency, DOE does not include the rebound effect in the LCC analysis because the increased utilization of the water heater provides value to the consumer. DOE does include rebound in the NIA for a conservative estimate of national energy savings and the corresponding impact to consumer NPV. See section IV.H of this document and chapter 10 of the NOPR TSD for more details.

4. Energy Prices

Because marginal energy prices more accurately capture 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 energy prices. Therefore, DOE applied average energy prices for the energy use of the product purchased in the no-new-standards case, and marginal energy prices for the incremental change in energy use associated with the other efficiency levels considered.

DOE derived average monthly marginal residential and commercial electricity, natural gas, and LPG prices for each state using data from EIA.[65] [66] [67] DOE calculated marginal monthly regional energy prices by: (1) first estimating an average annual price for each region; (2) multiplying by monthly energy price factors, and (3) multiplying by seasonal marginal price factors for electricity, natural gas, and LPG. The analysis used historical data up to 2022 for residential and commercial natural gas and electricity prices and historical data up to 2021 for LPG and fuel oil prices. Further details may be found in chapter 8 of the NOPR TSD.

GEAG is concerned with DOE's approach in the preliminary TSD at section 2.8.2.1 that conflates marginal energy prices with marginal energy rates. CEAG states that DOE's method of averaging inflates consumer savings estimates. GEAG recommends another method instead (called CMER) which is described in a paper from Spire to the NAS peer review committee. GEAG would like to see the CMER method used as a reality/spot check until DOE gets accustomed to it. (GEAG, No. 36 at p. 3)

DOE is currently reviewing the CMER method proposed by GEAG. In the past, stakeholders have proposed alternative methods and data to estimate marginal natural gas prices. For example, DOE compared marginal price factors developed by DOE from the EIA data to develop seasonal marginal price factors for 23 gas tariffs provided by the Gas Technology Institute for the 2016 residential boilers energy conservation standards rulemaking.[68] DOE found that the winter price factors used by DOE are generally comparable to those computed from the tariff data, indicating that DOE's marginal price estimates are reasonable at average usage levels. The summer price factors are also generally comparable. Of the 23 tariffs analyzed, eight have multiple tiers, and of these eight, six have ascending rates and two have descending rates. The tariff-based marginal factors use an average of the two tiers as the commodity price. A full tariff-based analysis would require information about the household's total baseline gas usage (to establish which tier the consumer is in), and a weight factor for each tariff that determines how many customers are served by that utility on that tariff. These data are generally not available in the public domain. DOE's use of EIA State-level data effectively averages overall consumer sales in each State, and so incorporates information from all utilities. DOE's approach is, therefore, more representative of a large group of consumers with diverse baseline gas usage levels than an approach that uses only tariffs.

DOE notes that within a State, there could be significant variation in the marginal price factors, including differences between rural and urban rates. In order to take this to account, DOE developed marginal price factors for each individual household using RECS 2015 billing data. These data are then normalized to match the average State marginal price factors, which are equivalent to a consumption-weighted average marginal price across all households in the State. DOE's methodology allows energy prices to vary by sector, region and season. For more details on the comparative analysis and updated marginal price analysis, see appendix 8E of this NOPR TSD.

To estimate energy prices in future years, DOE multiplied the 2022 energy prices by the projection of annual average price changes for each of the 50 U.S. states and District of Columbia from the Reference case in *AEO2023,* which has an end year of 2050. [69] To estimate price trends after 2050, DOE used the average annual growth rate in prices from 2046 to 2050 based on the methods used in the 2022 Life-Cycle Costing Manual for the Federal Energy Management Program (''FEMP'').[70]

Joint Advocates believe that the current DOE approach may be significantly underestimating future natural gas prices. Joint Advocates note that the national electrification trends will result in decline in gas customers and/or consumption, which will result in an increase in gas prices for the remaining customers. (Joint Advocates, No. 34 at p. 3) NRDC and RMI also stated that customer exit from the gas system associated with electrification will tend to increase rates for remaining gas customers, because the fixed costs of the gas system will be spread over a smaller number of users. NRDC and RMI urge DOE to take into account the potential for such increases in average gas rates. (NRDC and RMI, No. 37 at p. 1)

Because the effects of widespread electrification are very uncertain at this point, DOE prefers to rely on the latest AEO price forecasts in its analysis. DOE notes that if future natural gas prices end up higher than DOE estimates due to electrification, the economic justification for the standards proposed for gas-fired water heaters in this NOPR would become stronger still.

The CA IOUs proposed a methodology for developing adjustment factors for EIA natural gas price forecasts. The approach adjusts the most recent natural gas price forecast based on historical trends in forecast accuracy, thus narrowing the difference between forecasted and actual prices. CA IOUs also recommend that DOE also incorporate scenario analyses in its LCC calculations to consider the future impact of these factors on the retail

[65] U.S. Department of Energy-Energy Information Administration, Form EIA–861M (formerly EIA–826) detailed data (2022) (Available at: *www.eia.gov/electricity/data/eia861m/*) (Last accessed May 1, 2023).

[66] U.S. Department of Energy-Energy Information Administration, Natural Gas Navigator (2022) (Available at: *www.eia.gov/naturalgas/data.php*) (Last accessed May 1, 2023).

[67] U.S. Department of Energy-Energy Information Administration, State Energy Data System (''SEDS'') (2021) (Available at: *www.eia.gov/state/seds/*) (Last accessed May 1, 2023).

[68] GTI provided a reference located in the docket of DOE's 2016 rulemaking to develop energy conservation standards for residential boilers. (Docket No. EERE–2012–BT–STD–0047–0068) (Available at: *www.regulations.gov/document/EERE-2012-BT-STD-0047-0068*) (Last accessed May 1, 2023).

[69] EIA. *Annual Energy Outlook 2023 with Projections to 2050.* Washington, DC. Available at *www.eia.gov/forecasts/aeo/* (last accessed May 1, 2023).

[70] Lavappa, Priya D. and J. D. Kneifel. Energy Price Indices and Discount Factors for Life-Cycle Cost Analysis—2022 Annual Supplement to NIST Handbook 135. National Institute of Standards and Technology (NIST). NISTIR 85–3273–37, available at *www.nist.gov/publications/energy-price-indices-and-discount-factors-life-cycle-cost-analysis-2022-annual* (last accessed May 1, 2023).

price of natural gas. (CA IOU, No. 52 at pp. 2–5) NYSERDA also encouraged DOE to improve the accuracy of natural gas retail price forecasts by using the CA IOUs approach. (NYSERDA, No. 51 at p. 2)

Atmos recommends that the Department modify its current use of single forecasts of consumer energy prices with forecast adjustments of plus and minus five percent to account for forecasting errors, and then run the analysis under these three price forecast trends. One Gas suggests for parity with forecasts of electricity prices, error factors of plus or minus 6% in forecast prices appear as reasonable alternative price trends for natural gas and propane, as well as a systematic adjustment in the AEO 2021 natural gas price out to 2050 and beyond on the order of 15%. Further, Atmos and One Gas stated that the EIA data has diminishing accuracy and reliability in out years of the forecast period. (Atmos, No. 38 at p. 5; One Gas, No. 44 at pp. 9–10; Gas Association Commenters, No. 41, Attachment 6 at p. 12)

DOE's analysis uses price forecasts from the latest AEO reference case and includes sensitivity analysis using high and low economic growth scenarios. DOE is currently evaluating the use of other price forecast scenarios (such as high/low oil gas supply, high/low oil price, high/low renewables cost) as well as the approaches suggested by the stakeholders. DOE uses other inputs from the AEO analysis and DOE contends that it is important for it to maintain consistency with EIA in DOE's inputs and energy prices.

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. Typically, small incremental increases in product efficiency produce no, or only minor, changes in repair and maintenance costs compared to baseline efficiency products. DOE included additional maintenance and repair costs for higher efficiency consumer water heaters (including maintenance costs associated with condensate withdrawal, heat pump component filter cleaning, and deliming of the heat exchanger and repair costs associated with electronic ignition, controls, and blowers for fan-assisted designs, compressor, evaporator fan) based on 2023 RSMeans data.[71] DOE accounted for regional differences in labor costs by using RSMeans regional cost factors.

BWC states that there are a number of labor and material maintenance and repair costs that are mischaracterized. (BWC, No. 32 at p. 6) BWC did not provide any details, so DOE was unable to determine what they believe is mischaracterized. However, DOE welcomes specific suggestions as to how it might improve its maintenance and repair methodology, including accounting for the value of time spent by consumers performing regular maintenance (*e.g.,* cleaning heat pump air filters).

The methodology and data sources are described in detail in appendix 8F of the NOPR TSD.

6. Product Lifetime

Product lifetime is the age at which an appliance is retired from service. DOE conducted an analysis of water heater lifetimes based on the methodology described in a journal paper.[72] For this analysis, DOE relied on RECS 1990, 1993, 2001, 2005, 2009, 2015, and 2020.[73] DOE also used the U.S. Census's biennial American Housing Survey (''AHS''), from 1974–2021, which surveys all housing, noting the presence of a range of appliances.[74] DOE used the appliance age data from these surveys, as well as the historical water heater shipments, to generate an estimate of the survival function. The survival function provides a lifetime range from minimum to maximum, as well as an average lifetime. DOE estimates the average product lifetime to be around 15 years for storage water heaters and around 20 years for instantaneous water heaters. DOE is considering whether to conduct a sensitivity analysis with higher and lower lifetimes for all water heater product classes and invites stakeholder input on its approach.

7. Discount Rates

In the calculation of LCC, DOE applies discount rates appropriate to households to estimate the present value of future operating cost savings. DOE estimated a distribution of discount rates for consumer water heaters 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.[75] The LCC analysis estimates net present value over the lifetime of the product, so the appropriate discount rate will reflect the general opportunity cost of household funds, taking this time scale into account. Given the long time horizon modeled in the LCC analysis, the application of a marginal interest rate associated with an initial source of funds is inaccurate. Regardless of the method of purchase, consumers are expected to continue to rebalance their debt and asset holdings over the LCC analysis period, based on the restrictions consumers face in their debt payment requirements and the relative size of the interest rates available on debts and assets. DOE estimates the aggregate impact of this rebalancing using the historical distribution of debts and assets.

To establish residential discount rates for the LCC analysis, DOE identified all relevant household debt or asset classes in order to approximate a consumer's opportunity cost of funds related to appliance energy cost savings. It estimated the average percentage shares of the various types of debt and equity by household income group using data from the Federal Reserve Board's triennial Survey of Consumer Finances[76] (''SCF'') starting in 1995 and ending in 2019. Using the SCF and other sources, DOE developed a distribution of rates for each type of debt and asset

[71] RSMeans Company, Inc., *RS Means Facilities Repair and Maintenance* (2023), available at *www.rsmeans.com/* (last accessed May 1, 2023).

[72] Lutz, J., A. Hopkins, V. Letschert, V. Franco, and A. Sturges, Using national survey data to estimate lifetimes of residential appliances, *HVAC&R Research* (2011) 17(5): pp. 28 (Available at: *www.tandfonline.com/doi/abs/10.1080/10789669.2011.558166*) (Last accessed May 1, 2023).

[73] U.S. Department of Energy: Energy Information Administration, *Residential Energy Consumption Survey (''RECS''),* Multiple Years (1990, 1993, 1997, 2001, 2005, 2009, 2015, and 2020) (Available at: *www.eia.gov/consumption/residential/*) (Last accessed May 1, 2023).

[74] U.S. Census Bureau: Housing and Household Economic Statistics Division, *American Housing Survey,* Multiple Years (1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1983, 1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009, 2011, 2013, 2015, 2017, 2019, and 2021) (Available at: *www.census.gov/programs-surveys/ahs/*) (Last accessed April 1, 2023).

[75] 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.

[76] The Federal Reserve Board, *Survey of Consumer Finances* (1995, 1998, 2001, 2004, 2007, 2010, 2013, 2016, and 2019) (Available at: *www.federalreserve.gov/econres/scfindex.htm*) (last accessed May 1, 2023). The Federal Reserve Board is currently processing the 2022 Survey of Consumer Finances, which is expected to be fully available in late 2023.

by income group to represent the rates that may apply in the year in which amended standards would take effect. DOE assigned each sample household a specific discount rate drawn from one of the distributions. The average rate across all types of household debt and equity and income groups, weighted by market share of each product class, is 4.1 percent. See chapter 8 of the NOPR TSD for further details on the development of consumer discount rates.

To establish commercial discount rates for the small fraction of consumer water heaters installed in commercial buildings, DOE estimated the weighted-average cost of capital using data from Damodaran Online.[77] 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 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. DOE's commercial discount rate approach is based on the methodology described in a LBNL report, and the distribution varies by business activity.[78] The average rate for consumer water heaters used in commercial applications in this NOPR analysis, across all business activity and weighted by the market share of each product class, is 6.9 percent.

See chapter 8 of this NOPR TSD for further details on the development of consumer and commercial discount rates.

8. Energy Efficiency Distribution in the No-New-Standards Case

To accurately estimate the share of consumers that would be affected by a potential energy conservation standard at a particular efficiency level, DOE's LCC analysis considered the projected distribution (market shares) of product efficiencies under the no-new-standards case (*i.e.,* the case without amended or new energy conservation standards). This approach reflects the fact that some consumers may purchase products with efficiencies greater than the baseline levels.

To estimate the energy efficiency distribution of consumer water heaters for 2030, DOE used available shipments data by efficiency including in previous AHRI submitted historical shipment data,[79] ENERGY STAR unit shipments data,[80] and data from a 2022 BRG Building Solutions report. [81] To cover gaps in the available shipments data, DOE used DOE's public CCMS model database [82] and AHRI certification directory.[83]

NEEA, ACEEE, and NWPCC provided the market data regarding the market share of HPWHs in the northwest. The high percentage of installations in new homes has been driven by building codes combined with utility incentives, bulk pricing, and a workforce that has quickly become adept at installing HPWHs. (NEEA, ACEEE, and NWPCC, No. 47 at p. 3) Based on the provided data, DOE was able to refine the assignment of HPWHs in the Northwest for replacements and new construction.

The estimated market shares for the no-new-standards case for consumer water heaters are shown in Table IV.28. See chapter 8 of the NOPR TSD for further information on the derivation of the efficiency distributions.

TABLE IV.27—NO-NEW-STANDARDS CASE ENERGY EFFICIENCY DISTRIBUTIONS IN 2030 FOR CONSUMER WATER HEATERS

Efficiency level	Draw pattern					
	Low		Medium		High	
	UEF*	Market Share (%)	UEF*	Market Share (%)	UEF*	Market Share (%)
Gas-Fired Storage Water Heaters, ≥20 gal and ≤55 gal						
0	0.54	63.7	0.58	57.1	0.63	54.3
1	0.57	15.3	0.60	21.3	0.64	22.8
2	0.59	6.0	0.64	4.4	0.68	4.7
3	0.60	12.1	0.65	14.8	0.69	15.7
4	0.71	2.8	0.75	0.9	0.80	1.0
5	0.77	0.0	0.81	1.5	0.88	1.5
Oil-Fired Storage Water Heaters, ≤50 gal						
0					0.64	66.4
1					0.66	16.5
2					0.68	17.2
Small Electric Storage Water Heaters, ≥20 gal and ≤35 gal and FHR <51 gal						
0	0.91/0.92**	99.0				

[77] Damodaran Online, Data Page: Costs of Capital by Industry Sector (2021) (Available at: *pages.stern.nyu.edu/~adamodar/*) (Last accessed May 1, 2023).

[78] Fujita, S., Commercial, Industrial, and Institutional Discount Rate Estimation for Efficiency Standards Analysis: Sector-Level Data 1998–2018 (Available at: *ees.lbl.gov/publications/commercial-industrial-and*) (Last accessed May 1, 2023).

[79] AHRI. Confidential Instantaneous Gas-fired Water Heater Shipments Data from 2004–2007 to LBNL. March 3, 2008; AHRI. Gas-fired and Electric Storage Water Heater Shipments Data to DOE. March 11, 2008; AHRI. Gas-fired Storage Heater Shipments Data to DOE. March 18, 2009.

[80] ENERGY STAR. Unit Shipments data 2010–2021. multiple reports. (Available at: *www.energystar.gov/partner_resources/products_partner_resources/brand_owner_resources/unit_shipment_data*) (Last accessed May 1, 2023).

[81] BRG Building Solutions. The North American Heating & Cooling Product Markets (2022 Edition). 2022.

[82] U.S. Department of Energy-Appliance & Equipment Standards Program. Compliance Certification Management System (CCMS) for Consumer Water Heaters (Downloaded June 1, 2022). (Available at *www.regulations.doe.gov/certification-data/CCMS–4-Water_Heaters.html#q=Product_Group_s%3A%22Water%20Heaters%22*) (Last accessed May 1, 2023).

[83] Air Conditioning Heating and Refrigeration Institute. Consumer's Directory of Certified Efficiency Ratings for Heating and Water Heating Equipment. June 1, 2022. (Available at *www.ahridirectory.org*) (Last accessed May 1, 2023).

TABLE IV.27—NO-NEW-STANDARDS CASE ENERGY EFFICIENCY DISTRIBUTIONS IN 2030 FOR CONSUMER WATER HEATERS—Continued

Efficiency level	Draw pattern					
	Low		Medium		High	
	UEF*	Market Share (%)	UEF*	Market Share (%)	UEF*	Market Share (%)
1	2.00	1.0				
Electric Storage Water Heaters, ≥20 gal and ≤55 gal, excluding Small ESWHs						
0	0.91	87.8	0.92	86.9	0.93	84.2
1	2.30	0.9	2.30	0.6	2.30	0.7
2	3.29	7.3	3.35	8.2	3.47	11.0
3	3.69	4.0	3.75	4.3	3.87	4.1
Electric Storage Water Heaters, >55 gal and ≤120 gal						
0			2.05	2.6	2.15	3.0
1			2.50	11.2	2.50	11.4
2			3.35	74.6	3.45	73.8
3			3.90	11.7	4.00	11.8
Gas-Fired Instantaneous Water Heaters, <2 gal and >50,000 Btu/h						
0			0.81	30.7	0.81	29.7
1			0.87	8.1	0.89	7.6
2			0.91	47.3	0.93	46.6
3			0.92	5.6	0.95	7.2
4			0.93	8.3	0.97	9.0

* UEF at the representative rated capacity.
** 0.91 UEF at 30 gallon effective volume and 0.92 UEF at 35 gallon effective volume.

The LCC Monte Carlo simulations draw from the efficiency distributions and randomly assign an efficiency to the water heater purchased by each sample household in the no-new-standards case according to these distributions.

Finally, DOE considered the 2019 AHCS survey,[84] which includes questions to recent purchasers of HVAC equipment regarding the perceived efficiency of their equipment (Standard, High, and Super High Efficiency), as well as questions related to various household and demographic characteristics. DOE did not find similar data for consumer water heaters, but believes that the HVAC data could be applicable to other larger appliances such as consumer water heaters. From these data, DOE found that households with larger square footage exhibited a higher fraction of High- or Super-High efficiency equipment installed. DOE used the AHCS data to adjust its water heater efficiency distributions as follows: (1) the market share of higher efficiency equipment for households under 1,500 sq. ft. was decreased by 5 percentage points; and (2) the market share of condensing equipment for households above 2,500 sq. ft. was increased by 5 percentage points.

ONE Gas and Gas Association Commenters stated that no attempts appear to have been made to address consumer choice and trade-offs (NAS Report RECOMMENDATION 4–3), and instead assignment of consumer purchase decisions again appears to be continuing to use a random assignment of consumers across the design options. One Gas further stated that the consumer choice and decision making is not accounted for in rational economic terms among the options of: (1) savings that could be demonstrated among the choices of a baseline water heater against the proposed efficiency levels (EL) or (2) savings that could accrue from continuing to own a baseline product versus purchasing an EL-rated product (NAS Report RECOMMENDATION 4–5). (ONE Gas, No. 44 at p. 6; Gas Association Commenters, No. 41, attachment 6, p. 8) Atmos also stated that consistent with NAS Recommendation 4–5, DOE should account for consumer choice in rational economic terms, including the: (1) savings that could be demonstrated among the choices of a baseline water heater against the proposed TSLs or (2) savings that could accrue from continuing to own a baseline product versus purchasing TSL efficiency products. These savings are crucial for estimating the benefits of appliance replacement programs that governments and utilities may consider, and such savings analyses will better illuminate potential consumer impacts. Atmos also stated that consistent with NAS Recommendation 4–13, DOE should assume that consumers will behave rationally and purchase the model that produces the most life-cycle cost savings. Atmos pointed out that DOE selected the minimum efficiency water heater as the baseline model, but this model will not produce the most life-cycle cost savings in all cases. Atmos stated that DOE should not rely on a one-size-fits-all assumption, as doing so underestimates costs to consumers and overestimates purported benefits of energy efficiency standards. (Atmos, No. 38 at p. 3)

Atmos stated that DOE's use of a random assignment of consumers across design options instead of assigning base-case efficiencies with discretion, results in an inaccurate overstatement of energy efficiency standards' potential to produce economic benefits for consumers and is contrary to NAS Recommendation 4–3, which states that the agency ''should collect data on consumer choices in appliance markets and estimate a discrete choice model of consumer behavior to quantify the

[84] Decision Analysts, 2019 American Home Comfort Studies (Available at: *www.decisionanalyst.com/Syndicated/HomeComfort/*) (Last accessed May 1, 2023).

trade-offs that consumers face from changes in appliance performance.'' Atmos stated that, at a minimum, DOE should provide further explanation of its efforts to account for correlated variables in the life-cycle cost analysis. (Atmos, No. 38 at p. 2) Further, Atmos urged DOE to assign base-case efficiencies with discretion, rather than random assignment. Atmos disagrees with DOE that the current method of efficiency assignment, which is in part random, ''is a better representation of actual behavior in the field compared to assigning water heater efficiency based solely on imputed cost-effectiveness.'' Atmos stated that, at minimum, as recommended in the NAS report ''DOE should place greater emphasis on providing an argument for the plausibility and magnitude of any market failure related to the energy efficiency gap in their analyses.'' (Atmos, No. 38 at p. 4) Atmos urged DOE to consider assigning base-case efficiencies with discretion, rather than randomly, and suggested DOE place greater emphasis on explaining the plausibility and magnitude of any market failure related to the energy efficiency gap in its analyses. (Atmos, No. 19 at pp. 4–5)

ONE Gas and Gas Association Commenters also stated that the Department appears to have not undertaken measures to address stakeholder concerns related to past issues of random assignment of consumers to appliance purchase decisions in the base case life cycle cost analysis. Further, ONE Gas stated that DOE has never presented analysis that justifies linkages between market failure and random purchase behavior and pointed out that there is no evidence that the recommendations of the National Academies of Sciences (NAS) report to improve its coverage of market failure in relation to the setting of appliance minimum efficiency standards is implemented in DOE's analysis. (ONE Gas, No. 44 at pp.4–5; Gas Association Commenters, #41, attachment 6 at p. 6) ONE Gas and Gas Association Commenters recommended that to address the issues in consumer base case definition, the Department should modify the LCC spreadsheet by using either of the two methods suggested by the gas industry—Correlated Consumer Attributes Approach or Rational Consumer Economic Choice Approach. Under a Correlated Consumer Attribute Approach, the Department would use the functionality of the Monte Carlo software to avoid presumed non-rational economic decision making by implementing simulation correlations of these variables and develop base case conditions that better approximate consumer decision making. Under the Rational Consumer Economic Choice Approach would calculate for each simulated consumer the most life cycle cost efficient alternative among available water heating products and assign that as the base case over which improvements provided by higher efficiency options would be evaluated. (ONE Gas, No. 44 at p. 5; Gas Association Commenters, No. 41, attachment 6 at p. 7)

Gas Association Commenters stated that DOE must consider whether and to what extent there are market failures that significantly impede economically beneficial investments in higher-efficiency products, citing to *Am. Pub. Gas Ass'n* v. *United States Dep't of Energy,* 22 F4th 1018 (D.C. Cir. 2022) and a Consensus Study Report by the National Academies of Sciences. The Gas Association Commenters also stated that DOE's attempts to dismiss prior comment on this issue (see TSD at 2–58—2–59) are non-responsive. Gas Association Commenters also stated that DOE's LCC analysis completely ignores the fact that—in the absence of new standards—purchasers tend to make the most economically attractive efficiency investments and decline those with the most substantial net costs. Gas Association Commenters stated that DOE's analysis ''assigns'' even the most economically attractive and highest net-cost efficiency investment outcomes to the base case for analysis randomly, as though purchasers never consider the economics of potential efficiency investments regardless of the economic stakes involved. Further, Gas Association Commenters stated that because there is no basis to suggest that standards are needed to ensure that consumers will choose more efficient products when those products have lower initial costs, DOE should assign such cases to the base case for analysis rather than assigning them to the base or standard cases randomly. (Gas Association Commenters, No. 41, attachment 1 at p. 5)

Gas Association Commenters requested that DOE should assign all cases in which a purchaser would fail to invest in a more efficient product that would pay for itself within a year, to the base case for analysis rather than assigning them randomly. They stated that this would provide a useful screening test to determine whether there is any reasonable possibility that new standards could produce net LCC benefits for consumers. Gas Association Commenters further requested that DOE report the resulting change in the average LCC outcome before it proceeds with further standards development activity. Gas Association Commenters also stated that if there are market failures that could cause purchasers facing higher initial costs to forego economically beneficial efficiency investments, DOE should: (1) identify the specific nature and impact of any market failures allegedly interfering with sound economic decision-making on the part of purchasers of consumer water heaters; and (2) disclose the evidence DOE relied upon to support its assessment of such market failures. Additionally, to enable interested parties to understand and review DOE's analysis of any market failure impacts, Gas Association Commenters requested DOE (3) disclose the range and distribution of the most economically beneficial individual LCC outcomes in both its base case and rule outcome case; (4) explain its justification for the distribution of those outcomes; (5) disclose the range and distribution of the highest net cost individual LCC outcomes in both its base case and rule outcome case; and (6) explain its justification for the distribution of those outcomes. (Gas Association Commenters, No. 41, attachment 1 at pp. 6–7)

While DOE acknowledges that economic factors may play a role when consumers, commercial building owners, or builders decide on what type of water heater to install, assignment of water heater efficiency for a given installation, based solely on economic measures such as life-cycle cost or simple payback period most likely would not fully and accurately reflect actual real-world installations. There are a number of market failures discussed in the economics literature that illustrate how purchasing decisions with respect to energy efficiency are unlikely to be perfectly correlated with energy use, as described below. While this literature is not specific to water heaters, DOE maintains that the method of assignment, which is in part random, is a reasonable approach, one that simulates behavior in the water heater market, where market failures and other consumer preferences result in purchasing decisions not being perfectly aligned with economic interests, more realistically than relying only on apparent cost-effectiveness criteria derived from the limited information in CBECS or RECS. DOE further emphasizes that its approach does not assume that all purchasers of water heater make economically irrational decisions (*i.e.,* the lack of a correlation

is not the same as a negative correlation). As part of the random assignment, some homes or buildings with large hot water use will be assigned higher efficiency water heaters, and some homes or buildings with particularly low hot water use will be assigned baseline water heaters, which aligns with the available data. By using this approach, DOE acknowledges the variety of market failures and other consumer behaviors present in the water heater market. This approach minimizes any bias in the analysis by using random assignment, as opposed to assuming certain market conditions that are unsupported given the available evidence.

First, consumers are motivated by more than simple financial trade-offs. There are consumers who are willing to pay a premium for more energy-efficient products because they are environmentally conscious.[85] There are also several behavioral factors that can influence the purchasing decisions of complicated multi-attribute products, such as water heaters. For example, consumers (or decision makers in an organization) are highly influenced by choice architecture, defined as the framing of the decision, the surrounding circumstances of the purchase, the alternatives available, and how they're presented for any given choice scenario.[86] The same consumer or decision maker may make different choices depending on the characteristics of the decision context (*e.g.,* the timing of the purchase, competing demands for funds), which have nothing to do with the characteristics of the alternatives themselves or their prices. Consumers or decision makers also face a variety of other behavioral phenomena including loss aversion, sensitivity to information salience, and other forms of bounded rationality.[87] Thaler, who won the Nobel Prize in Economics in 2017 for his contributions to behavioral economics, and Sunstein point out that these behavioral factors are strongest when the decisions are complex and infrequent, when feedback on the decision is muted and slow, and when there is a high degree of information asymmetry.[88] These characteristics describe almost all purchasing situations of appliances and equipment, including water heaters. The installation of a new or replacement water heater is done infrequently, as evidenced by the mean lifetime for water heaters. Additionally, it would take at least one full water heating season for any impacts on operating costs to be fully apparent. Further, if the purchaser of the water heater is not the entity paying the energy costs (*e.g.,* a building owner and tenant), there may be little to no feedback on the purchase. Additionally, there are systematic market failures that are likely to contribute further complexity to how products are chosen by consumers, as explained in the following paragraphs.

The first of these market failures—the split-incentive or principal-agent problem—is likely to affect water heaters more than many other types of appliances. The principal-agent problem is a market failure that results when the consumer that purchases the equipment does not internalize all of the costs associated with operating the equipment. Instead, the user of the product, who has no control over the purchase decision, pays the operating costs. There is a high likelihood of split incentive problems in the case of rental properties where the landlord makes the choice of what water heater to install, whereas the renter is responsible for paying energy bills. In the LCC sample, a significant fraction of households with a water heater are renters. These fractions are significantly higher for low-income households (see section IV.I of this document). In new construction, builders influence the type of water heater used in many homes but do not pay operating costs. Finally, contractors install a large share of water heaters in replacement situations, and they can exert a high degree of influence over the type of water heater purchased.

In addition to the split-incentive problem, there are other market failures that are likely to affect the choice of water heater efficiency made by consumers. For example, emergency replacements of essential equipment such as water heaters are strongly biased toward like-for-like replacement (*i.e.,* replacing the non-functioning equipment with a similar or identical product). Time is a constraining factor during emergency replacements and it may not be possible to consider the full range of available options on the market, as a new product choice may take more time to install than is practical. The consideration of alternative product options is far more likely for planned replacements and installations in new construction.

Additionally, Davis and Metcalf[89] conducted an experiment demonstrating that the nature of the information available to consumers from EnergyGuide labels posted on air conditioning equipment results in an inefficient allocation of energy efficiency across households with different usage levels. Their findings indicate that households are likely to make decisions regarding the efficiency of the climate control equipment of their homes that do not result in the highest net present value for their specific usage pattern (*i.e.,* their decision is based on imperfect information and, therefore, is not necessarily optimal).

In part because of the way information is presented, and in part because of the way consumers process information, there is also a market failure consisting of a systematic bias in the perception of equipment energy usage, which can affect consumer choices. Attari, Krantz, and Weber[90] show that consumers tend to underestimate the energy use of large energy-intensive appliances, but overestimate the energy use of small appliances. Therefore, it is likely that consumers systematically underestimate the energy use associated with water heater, resulting in less cost-effective water heater purchases.

These market failures affect a sizeable share of the consumer population. A study by Houde[91] indicates that there is a significant subset of consumers that appear to purchase appliances without taking into account their energy efficiency and operating costs at all.

Although consumer water heaters are predominantly installed in the

[85] Ward, D.O., Clark, C.D., Jensen, K.L., Yen, S.T., & Russell, C.S. (2011): ''Factors influencing willingness-to pay for the ENERGY STAR® label,'' *Energy Policy, 39*(3), 1450–1458. (Available at: *www.sciencedirect.com/science/article/abs/pii/S0301421510009171*) (Last accessed May 1, 2023).

[86] Thaler, R.H., Sunstein, C.R., and Balz, J.P. (2014). ''Choice Architecture'' in *The Behavioral Foundations of Public Policy,* Eldar Shafir (ed).

[87] Thaler, R.H., and Bernartzi, S. (2004). ''Save More Tomorrow: Using Behavioral Economics in Increase Employee Savings,'' *Journal of Political Economy* 112(1), S164–S187. *See also* Klemick, H., et al. (2015) ''Heavy-Duty Trucking and the Energy Efficiency Paradox: Evidence from Focus Groups and Interviews,'' *Transportation Research Part A: Policy & Practice, 77*, 154–166. (providing evidence that loss aversion and other market failures can affect otherwise profit-maximizing firms).

[88] Thaler, R.H., and Sunstein, C.R. (2008). Nudge: Improving Decisions on Health, Wealth, and Happiness. New Haven, CT: Yale University Press.

[89] Davis, L.W., and G.E. Metcalf (2016): ''Does better information lead to better choices? Evidence from energy-efficiency labels,'' *Journal of the Association of Environmental and Resource Economists,* 3(3), 589–625. (Available at: *www.journals.uchicago.edu/doi/full/10.1086/686252*) (Last accessed May 1, 2023).

[90] Attari, S.Z., M.L. DeKay, C.I. Davidson, and W. Bruine de Bruin (2010): ''Public perceptions of energy consumption and savings.'' *Proceedings of the National Academy of Sciences* 107(37), 16054–16059 (Available at: *www.pnas.org/content/107/37/16054*) (Last accessed May 1, 2023).

[91] Houde, S. (2018): ''How Consumers Respond to Environmental Certification and the Value of Energy Information,'' *The RAND Journal of Economics,* 49 (2), 453–477 (Available at: *onlinelibrary.wiley.com/doi/full/10.1111/1756-2171.12231*) (Last accessed May 1, 2023).

residential sector, some are also installed in commercial buildings (slightly less than 10 percent of projected shipments; see chapter 9 of the NOPR TSD). There are market failures relevant to consumer water heaters installed in commercial applications as well. It is often assumed that because commercial and industrial customers are businesses that have trained or experienced individuals making decisions regarding investments in cost-saving measures, some of the commonly observed market failures present in the general population of residential customers should not be as prevalent in a commercial setting. However, there are many characteristics of organizational structure and historic circumstance in commercial settings that can lead to underinvestment in energy efficiency.

First, a recognized problem in commercial settings is the principal-agent problem, where the building owner (or building developer) selects the equipment and the tenant (or subsequent building owner) pays for energy costs.[92] [93] Indeed, more than a quarter of commercial buildings in the CBECS 2018 sample are occupied at least in part by a tenant, not the building owner (indicating that, in DOE's experience, the building owner likely is not responsible for paying energy costs). Additionally, some commercial buildings have multiple tenants. There are other similar misaligned incentives embedded in the organizational structure within a given firm or business that can impact the choice of a water heater. For example, if one department or individual within an organization is responsible for capital expenditures (and therefore equipment selection) while a separate department or individual is responsible for paying the energy bills, a market failure similar to the principal-agent problem can result.[94] Additionally, managers may have other responsibilities and often have other incentives besides operating cost minimization, such as satisfying shareholder expectations, which can sometimes be focused on short-term returns.[95] Decision-making related to commercial buildings is highly complex and involves gathering information from and for a variety of different market actors. It is common to see conflicting goals across various actors within the same organization as well as information asymmetries between market actors in the energy efficiency context in commercial building construction.[96]

Second, the nature of the organizational structure and design can influence priorities for capital budgeting, resulting in choices that do not necessarily maximize profitability.[97] Even factors as simple as unmotivated staff or lack of priority-setting and/or a lack of a long-term energy strategy can have a sizable effect on the likelihood that an energy efficient investment will be undertaken.[98] U.S. tax rules for commercial buildings may incentivize lower capital expenditures, since capital costs must be depreciated over many years, whereas operating costs can be fully deducted from taxable income or passed through directly to building tenants.[99]

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.[100] Asymmetric information in financial markets is particularly pronounced with regard to energy efficiency investments.[101] There is a dearth of information about risk and volatility related to energy efficiency investments, and energy efficiency investment metrics may not be as visible to investment managers,[102] which can bias firms towards more certain or familiar options. This market failure results not because the returns from energy efficiency as an investment are inherently riskier, but because information about the risk itself tends

[92] 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.

[93] 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 May 1, 2023).

[94] Prindle, B., Sathaye, J., Murtishaw, S., Crossley, D., Watt, G., Hughes, J., and de Visser, E. (2007). ''Quantifying the effects of market failures in the end-use of energy,'' Final Draft Report Prepared for International Energy Agency. (Available from International Energy Agency, Head of Publications Service, 9 rue de la Federation, 75739 Paris, Cedex 15 France).

[95] Bushee, B.J. (1998). ''The influence of institutional investors on myopic R&D investment behavior,'' *Accounting Review,* 305–333. DeCanio, S.J. (1993). ''Barriers Within Firms to Energy Efficient Investments,'' *Energy Policy,* 21(9), 906–914. (explaining the connection between short-termism and underinvestment in energy efficiency).

[96] International Energy Agency (IEA). (2007). Mind the Gap: Quantifying Principal-Agent Problems in Energy Efficiency. OECD Pub. (Available at: *www.iea.org/reports/mind-the-gap*) (Last accessed May 1, 2023).

[97] 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.

[98] Rohdin, P., and Thollander, P. (2006). ''Barriers to and driving forces for energy efficiency in the non-energy intensive manufacturing industry in Sweden,'' *Energy,* 31(12), 1836–1844.

Takahashi, M and Asano, H (2007). ''Energy Use Affected by Principal-Agent Problem in Japanese Commercial Office Space Leasing,'' In *Quantifying the Effects of Market Failures in the End-Use of Energy.* American Council for an Energy-Efficient Economy. February 2007.

Visser, E and Harmelink, M (2007). ''The Case of Energy Use in Commercial Offices in the Netherlands,'' In *Quantifying the Effects of Market Failures in the End-Use of Energy.* American Council for an Energy-Efficient Economy. February 2007.

Bjorndalen, J. and Bugge, J. (2007). ''Market Barriers Related to Commercial Office Space Leasing in Norway,'' In *Quantifying the Effects of Market Failures in the End-Use of Energy.* American Council for an Energy-Efficient Economy. February 2007.

Schleich, J. (2009). ''Barriers to energy efficiency: A comparison across the German commercial and services sector,'' *Ecological Economics,* 68(7), 2150–2159.

Muthulingam, S., et al. (2013). ''Energy Efficiency in Small and Medium-Sized Manufacturing Firms,'' *Manufacturing & Service Operations Management,* 15(4), 596–612. (Finding that manager inattention contributed to the non-adoption of energy efficiency initiatives).

Boyd, G.A., Curtis, E.M. (2014). ''Evidence of an 'energy management gap' in US manufacturing: Spillovers from firm management practices to energy efficiency,'' *Journal of Environmental Economics and Management,* 68(3), 463–479.

[99] Lovins, A. (1992). Energy-Efficient Buildings: Institutional Barriers and Opportunities. (Available at: *rmi.org/insight/energy-efficient-buildings-institutional-barriers-and-opportunities/*) (Last accessed May 1, 2023).

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.

[101] Mills, E., Kromer, S., Weiss, G., and Mathew, P.A. (2006). ''From volatility to value: analysing and managing financial and performance risk in energy savings projects,'' *Energy Policy,* 34(2), 188–199.

Jollands, N., Waide, P., Ellis, M., Onoda, T., Laustsen, J., Tanaka, K., and Meier, A. (2010). ''The 25 IEA energy efficiency policy recommendations to the G8 Gleneagles Plan of Action,'' *Energy Policy,* 38(11), 6409–6418.

[102] Reed, J.H., Johnson, K., Riggert, J., and Oh, A. D. (2004). ''Who plays and who decides: The structure and operation of the commercial building market,'' U.S. Department of Energy Office of Building Technology, State and Community Programs. (Available at: *www1.eere.energy.gov/buildings/publications/pdfs/commercial_initiative/who_plays_who_decides.pdf*) (Last accessed May 1, 2023).

not to be available in the same way it is for other types of investment, like stocks or bonds. In some cases energy efficiency is not a formal investment category used by financial managers, and if there is a formal category for energy efficiency within the investment portfolio options assessed by financial managers, they are seen as weakly strategic and not seen as likely to increase competitive advantage.[103] This information asymmetry extends to commercial investors, lenders, and real-estate financing, which is biased against new and perhaps unfamiliar technology (even though it may be economically beneficial).[104] Another market failure known as the first-mover disadvantage can exacerbate this bias against adopting new technologies, as the successful integration of new technology in a particular context by one actor generates information about cost-savings, and other actors in the market can then benefit from that information by following suit; yet because the first to adopt a new technology bears the risk but cannot keep to themselves all the informational benefits, firms may inefficiently underinvest in new technologies.[105]

In sum, the commercial and industrial sectors face many market failures that can result in an under-investment in energy efficiency. This means that discount rates implied by hurdle rates [106] and required payback periods of many firms are higher than the appropriate cost of capital for the investment.[107] The preceding arguments for the existence of market failures in the commercial and industrial sectors are corroborated by empirical evidence. One study in particular showed evidence of substantial gains in energy efficiency that could have been achieved without negative repercussions on profitability, but the investments had not been undertaken by firms.[108] The study found that multiple organizational and institutional factors caused firms to require shorter payback periods and higher returns than the cost of capital for alternative investments of similar risk. Another study demonstrated similar results with firms requiring very short payback periods of 1–2 years in order to adopt energy-saving projects, implying hurdle rates of 50 to 100 percent, despite the potential economic benefits.[109] A number of other case studies similarly demonstrate the existence of market failures preventing the adoption of energy-efficient technologies in a variety of commercial sectors around the world, including office buildings,[110] supermarkets,[111] and the electric motor market.[112]

The existence of market failures in the residential and commercial sectors is well supported by the economics literature and by a number of case studies. If DOE developed an efficiency distribution that assigned water heater efficiency in the no-new-standards case solely according to energy use or economic considerations such as life-cycle cost or payback period, the resulting distribution of efficiencies within the building sample would not reflect any of the market failures or behavioral factors above. DOE thus concludes such a distribution would not be representative of the water heater market. Further, even if a specific household/building/organization is not subject to the market failures above, the purchasing decision of water heater efficiency can be highly complex and influenced by a number of factors not captured by the building characteristics available in the RECS or CBECS samples. These factors can lead to households or building owners choosing a water heater efficiency that deviates from the efficiency predicted using only energy use or economic considerations such as life-cycle cost or payback period (as calculated using the information from RECS 2015 or CBECS 2018). However, DOE intends to investigate this issue further, and it welcomes suggestions as to how it might improve its assignment of water heater efficiency in its analyses.

DOE further notes that, in the case of gas-fired storage and electric storage water heaters (≤55 gal), the distribution of efficiency in the current market is heavily weighted toward baseline efficiency or efficiency at EL 1. Most consumers are assigned EL 0 or EL 1 in accordance with the market data. As a result, any variation to DOE's efficiency assignment methodology will not produce substantially differing results than presented in this NOPR, as most consumers will continue to be assigned the same efficiency regardless of the details of the methodology.

In response to the Gas Association Commenters regarding the disclosure of results, DOE reiterates that the full results of all trials in the LCC are made available to all interested parties. These results include the most economically beneficial individual LCC outcomes and highest net cost individual LCC outcomes.

9. Accounting for Product Switching Under Potential Standards

For the preliminary analysis, DOE did not account for the product switching under potential standards. For this NOPR, DOE maintained the same approach and did not include any product switching in its analysis. DOE assumes that any product switching as a result of the proposed standards is likely to be minimal.

In the hypothetical case of a consumer switching from a gas-fired water heater to an electric storage water heater, there are likely additional installation costs necessary to add an electrical connection. In some cases, it may be possible to install a 120 V heat pump storage water heater with minimal additional installation costs, particularly if there is a standard electrical outlet nearby already. In most cases, however, a standard 240 V electrical storage water heater would be installed. To do so, the consumer would need to add a 240 V circuit to either an existing electrical panel or upgrade the entire panel. Panel upgrade costs are significant and can be approximately $1,000–$2,000 for 100 to 200 amp

[103] Cooremans, C. (2012). ''Investment in energy efficiency: do the characteristics of investments matter?'' *Energy Efficiency,* 5(4), 497–518.

[104] Lovins 1992, op. cit.

The Atmospheric Fund. (2017). Money on the table: Why investors miss out on the energy efficiency market. (Available at: *taf.ca/publications/money-table-investors-energy-efficiency-market/*) (Last accessed May 1, 2023).

[105] Blumstein, C. and Taylor, M. (2013). Rethinking the Energy-Efficiency Gap: Producers, Intermediaries, and Innovation. Energy Institute at Haas Working Paper 243. (Available at: *haas.berkeley.edu/wp-content/uploads/WP243.pdf*) (Last accessed May 1, 2023).

[106] A hurdle rate is the minimum rate of return on a project or investment required by an organization or investor. It is determined by assessing capital costs, operating costs, and an estimate of risks and opportunities.

[107] DeCanio 1994, op. cit.

[108] DeCanio, S.J. (1998). ''The Efficiency Paradox: Bureaucratic and Organizational Barriers to Profitable Energy-Saving Investments,'' *Energy Policy,* 26(5), 441–454.

[109] Andersen, S.T., and Newell, R.G. (2004). ''Information programs for technology adoption: the case of energy-efficiency audits,'' *Resource and Energy Economics,* 26, 27–50.

[110] Prindle 2007, op. cit.

Howarth, R.B., Haddad, B.M., and Paton, B. (2000). ''The economics of energy efficiency: insights from voluntary participation programs,'' *Energy Policy,* 28, 477–486.

[111] Klemick, H., Kopits, E., Wolverton, A. (2017). ''Potential Barriers to Improving Energy Efficiency in Commercial Buildings: The Case of Supermarket Refrigeration,'' *Journal of Benefit-Cost Analysis,* 8(1), 115–145.

[112] 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.

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 April 1, 2023).

electrical panels.[113] Older homes and homes with gas-fired space heating (*e.g.,* homes with gas furnaces) are more likely to need an electrical panel upgrade in order to install an electric storage water heater, given the relatively modest electrical needs of the home at the time of construction. Given the significant additional installation costs, DOE estimates that very few consumers would switch from gas-fired water heaters to electric storage water heaters as a result of an energy conservation standard, especially at the proposed standard at TSL 2. This is especially true in the case of an emergency replacement where time is a critical factor. When a water heater fails, consumers typically have limited time to make a decision on which new water heater the consumer is going to choose to purchase and rely upon replacing the water heater with one that is similar to the one that failed. Consumers are unlikely to invest in switching fuels to water heater that utilizes a different fuel source in the emergency replacement scenario.

In the hypothetical case of a consumer switching from an electric storage water heater to a gas-fired water heater, there are, similarly, additional installation costs necessary to add a gas connection. Based on RECS 2020, DOE estimates that only 25 percent of homes with an electric storage water heater currently use natural gas and an additional 25 percent reported that natural gas is available in the neighborhood. Therefore, the option to switch to a gas-fired water heater is not available to half of consumers and for another 25 percent, it would be very expensive to bring in a natural gas connection from the street level to the home. An additional 10 percent of homes use LPG, but the fuel costs are much more expensive than natural gas and requires significant gas line connection upgrades to connect the LPG tank to the water heater. Even in homes with an existing gas connection, new venting would need to be installed for either gas-fired storage water heaters or gas-fired instantaneous water heaters. The average total installed costs for either gas-fired option, including all the necessary venting and additional gas lines in the home, are larger than replacing the electrical storage water heater with a standards-compliant model (at the proposed level). As a result, DOE estimates that very few consumers would switch from electric storage water heaters to gas-fired water heaters as a result of an energy conservation standard, particularly in the case of an emergency replacement.

Lastly, in the hypothetical case of a consumer switching from a gas-fired storage water heater to a gas-fired instantaneous water heater or vice-versa, there are additional installation costs necessary as well. The vast majority of gas-fired storage water heaters utilize non-condensing technology that utilizes Category I type B metal vent material, whereas switching to gas-fired instantaneous water heaters would require condensing technology that utilizes Category IV venting material at the efficiency levels proposed in this rule. Replacing the venting system would result in significant installation costs. Furthermore, given the significantly higher Btu/h input required for instantaneous water heaters, it may be necessary to upgrade the gas line feeding the water heater to a larger diameter. This is especially true if the line also services a gas furnace. Upgrading a gas line could add approximately $1,000 in extra costs or more. For the proposed standards for gas-fired storage water heaters and gas-fired instantaneous water heaters, the difference in installation costs between the baseline equipment and higher efficiency option is typically much less than the potential switching costs. As a result, DOE estimates that very few consumers would switch from gas-fired storage water heaters to gas-fired instantaneous water heaters or vice versa as a result of an energy conservation standard, particularly in the case of an emergency replacement.

NYSERDA recommends DOE include a Discrete Choice Model (DCM) to understand technology switching in the LCC. DCMs would help predict the likelihood of a customer choosing one product over another, based on their preferences (such as price, first cost, or life cycle cost). (NYSERDA, No.35 at p. 5) As noted previously, DOE did not include product switching in its analysis as this is likely to be a minimal effect. As a result, DOE did not require a DCM to model this switching for the LCC analysis. As described in the shipments analysis (IV.G.1.a), DOE used the LCC spreadsheet to estimate potential shipments impacts due to downsizing of electric storage water heaters in the various proposed TSLs based on a consumer choice model.

PHHC stated that in the case of switching from gas to electric resistance, the additional electrical costs would add significantly to the installation cost. (PHCC, No.40 at p. 3) DOE agrees that when switching from gas to electric storage water heaters, the additional electrical costs could be significant and include replacement of the entire electrical panel. As a result, and as noted previously, DOE did not include product switching in its analysis as this is likely to be a minimal effect.

Rheem stated that if DOE were to amend the electric storage water heater standards to a level that would require heat pump technology for lowboy water heaters, replacements would likely be electric instantaneous water heaters, as gas-fired is not an option due to venting and heat pump technology cannot fit in the confined space. Rheem stated that electric instantaneous water heaters use electric resistance technology and have comparable UEF values to lowboy water heaters, so DOE won't realize actual efficiency gains for these types of water heaters. Further, Rheem stated that replacing a lowboy water heater with an electric instantaneous water heater would likely require a costly electrical panel upgrade and significantly increase energy use during peak grid energy use times, and both issues will significantly increase the cost of water heating for the low-income households that typically rely on lowboy water heaters. (Rheem, No. 45 at p. 7)

DOE agrees that replacing small electric resistance water heaters (including lowboy water heaters) can be challenging for standards cases that would require a heat pump water heater standard. DOE notes that the proposed standard does not require an efficiency equivalent to a heat pump water heater for very small and low draw pattern electric storage water heaters below 35 gallons, which is the majority of the lowboy market. As described in the shipments analysis (IV.G.1.a), DOE used took into account various consumer choice options for lowboy water heaters and other challenging installation situations, including using a smaller electric storage water heater and a ''booster'' instantaneous water heater.[114]

DOE welcomes comment on the likelihood of consumers switching products in response to amended standards.

10. Payback Period Analysis

The payback period is the amount of time (expressed in years) it takes the consumer to recover the additional installed cost of more-efficient products, compared to baseline products, through energy cost savings. Payback periods that exceed the life of the product mean

[113] For example, see: *www.homeadvisor.com/cost/electrical/upgrade-an-electrical-panel/#upgrade* (last accessed May 1, 2023).

[114] See Rheem's booster instantaneous water heater, which can increase the availability of hot water for storage tank water heaters: *https://www.rheem.com/innovations/innovation_residential/water-heater-booster/*.

that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation for each efficiency level are the change in total installed cost of the product and the change in the first-year annual operating expenditures relative to the baseline. DOE refers to this as a ''simple PBP'' because it does not consider changes over time in operating cost savings. The PBP calculation uses the same inputs as the LCC analysis when deriving first-year operating costs.

As noted previously, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered efficiency level, DOE determined the value of the first year's energy savings by calculating the energy savings in accordance with the applicable DOE test procedure, and multiplying those savings by the average energy price projection for the year in which compliance with the amended standards would be required.

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.[115] 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.

DOE developed shipment projections based on historical data and an analysis of key market drivers for each product. DOE estimated consumer water heater shipments by projecting shipments in three market segments: (1) replacement of existing consumer water heaters; (2) new housing; and (3) new owners in buildings that did not previously have a consumer water heater or existing water heater owners that are adding an additional consumer water heater.[116]

To project water heater replacement shipments, DOE developed retirement functions from water heater lifetime estimates and applied them to the existing products in the housing stock, which are tracked by vintage. DOE calculated replacement shipments using historical shipments and the lifetime estimates. Annual historical shipments sources are: (1) Appliance Magazine; [117] (2) Air-Conditioning, Heating, and Refrigeration Institute (AHRI) website; [118] (3) multiple AHRI data submittals; [119] (4) BRG Building Solutions 2022 report; (5) ENERGY STAR unit shipments data; [120] (6) Oil Heating Magazine; [121] and 2010 Heating Products Final Rule. In addition, DOE adjusted replacement shipments by taking into account demolitions, using the estimated changes to the housing stock from *AEO2023.*

To project shipments to the new housing market, DOE used the AEO2023 housing starts and commercial building floor space projections to estimate future numbers of new homes and commercial building floor space. DOE then used data from U.S. Census Characteristics of New Housing, [122] [123] Home Innovation Research Labs Annual Builder Practices Survey,[124] RECS 2020, AHS 2021, and CBECS 2018 to estimate new construction water heater saturations by consumer water heater product class.

DOE estimated shipments to the new owners market based on the residual shipments from the calculated replacement and new construction shipments compared to historical shipments in the last 5 years (2018–2022 for this NOPR). DOE compared this with data from Decision Analysts' 2002 to 2022 American Home Comfort Study [125] and 2022 BRG data, which showed similar historical fractions of new owners. DOE assumed that the new owner fraction in 2030 would be equal to the 10-year average of the historical data (2013–2022) and then decrease to zero by the end of the analysis period (2059). If the resulting fraction of new owners is negative, DOE assumed that it was primarily due to equipment switching or non-replacement and added this number to replacements (thus reducing the replacements value).

BWC stated that there are several elements from the 2010 Final Rule that never materialized as DOE expected following its effective date in 2015. Given this, BWC recommend DOE perform a lookback analysis to better understand why things didn't materialize as expected based on the 2010 Final Rule. BWC stated that this will allow the current rulemakings process and analysis to be better informed, adjusted appropriately, and ideally be more representative of the anticipated outcome. (BWC, No.32 at p. 6) BWC did not clarify which elements of the 2010 final rule did not materialize, but DOE believes this comment mainly relates to the lower fraction of shipments of gas-fired and electric storage water heaters above 55 gallons after the 2015 standards, relative to DOE's projection. For this analysis, DOE examined why the shipments did not materialize as expected in the 2010 Final Rule analysis, which is included as part of appendix 9A of the NOPR TSD. This lookback analysis was then used to better estimate projected shipments by water heater size for the present analysis. Based on this analysis, which showed a significant number of consumers opted to install one or more smaller water heaters, DOE developed the consumer choice model for estimating the impacts of proposed

[115] 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.

[116] The new owners primarily consist of households that add or switch to a different water heater option during a major remodel. Because DOE calculates new owners as the residual between its shipments model compared to historical shipments, new owners also include shipments that switch away from water heater product class to another.

[117] Appliance Magazine. *Appliance Historical Statistical Review: 1954–2012.* 2014. UBM Canon.

[118] Air-Conditioning, Heating, and Refrigeration Institute. Water Heaters Historical Data. (Available at: *www.ahrinet.org/resources/statistics/historical-data/residential-storage-water-heaters-historical-data*) (Last accessed May 1, 2023).

[119] AHRI. Confidential Instantaneous Gas-fired Water Heater Shipments Data from 2004–2007 to LBNL. March 3, 2008; AHRI. Oil-fired Storage Water Heater (30/32 gallons) Shipments Data provided to DOE. 2008.

[120] ENERGY STAR. Unit Shipments data 2010–2021. multiple reports. (Available at: *www.energystar.gov/partner_resources/products_partner_resources/brand_owner_resources/unit_shipment_data*) (Last accessed May 1, 2023).

[121] Oil Heating Magazine. Merchandising News: Monthly Data on Water Heaters Installed by Dealers 1997–2007. 2007.

[122] U.S. Census. Characteristics of New Housing from 1999–2022 (Available at: *www.census.gov/construction/chars/*) (Last accessed May 1, 2023).

[123] U.S. Census. Characteristics of New Housing (Multi-Family Units) from 1973–2022 (Available at: *www.census.gov/construction/chars/mfu.html*) (Last accessed May 1, 2023).

[124] Home Innovation Research Labs (independent subsidiary of the National Association of Home Builders (''NAHB''). Annual Builder Practices Survey (2015–2019) (Available at: *www.homeinnovation.com/trends_and_reports/data/new_construction*) (Last accessed May 1, 2023).

[125] Decision Analysts, 2002, 2004, 2006, 2008, 2010, 2013, 2016, 2019, and 2022 American Home Comfort Study (Available at: *www.decisionanalyst.com/Syndicated/HomeComfort/*) (Last accessed May 1, 2023).

standards on shipments as shown in IV.G.1.a.

BWC is concerned with the projected water heater shipments by product category in the preliminary analysis, as it shows a significant increase in gas-fired instantaneous water heaters shipments. They stated that these projections do not appear to account for how state and local policies will impact the shipments of different water heater types; *i.e.,* California, one of the largest markets for gas-fired instantaneous water heaters, has modified Title 24, its building code, to disincentivize their use. They stated that this is also true of various pieces of state legislation and proposed actions by the California Air Resources Board, as well as several Air Districts (*e.g.,* South Coast Air Quality Management District; Bay Area Air Quality Management District). (BWC, No. 32 at p.5) AHRI requested that DOE evaluate the impact of regional efforts to bring gas water heater emissions below ultra-low NO_X levels. (AHRI, No. 31 at pp. 20–21)

For the NOPR, DOE accounted for the 2022 update to Title 24 in California [126] and also the decision of the California Public Utilities Commission to entirely eliminate ratepayer subsidies for the extension of new gas lines beginning in July 2023. Together, these policies are expected to lead to the phase-out of gas-fired water heaters in new single-family homes. The California Air Resources Board has adopted a 2022 State Strategy for the State Implementation Plan that would effectively ban sales of new gas-fired space heaters and water heaters beginning in 2030.[127] However, because a final decision on a rule would not happen until 2025, DOE did not include this policy in its analysis for the NOPR.

AHRI, Rheem and GEA are concerned with the shipment projections that DOE has outlined in the preliminary TSD because of the lack of consideration related to the ongoing decarbonization and electrification efforts. They stated that many states and cities are moving towards a ''ban'' on gas products altogether (*e.g.,* California Title 24, CARB, SCAQMD, BAAQMD, and New York City) that is likely to impact water heater shipments by product class, efficiency, and especially fuel type, and yet DOE's analysis shows a steady increase in gas appliance sales. AHRI stated that it does not appear that the Department took these policies into account when performing their analysis. (AHRI, No. 42 at p. 3; GEA, No. 46 at p. 1; Rheem, No. 45 at p. 3) NYSERDA also stated that DOE's shipment analysis is not predicting an appropriate future increase in electric water heater sales and disagrees with DOE's analysis showing the number of electric water heaters, including HPWHs, remaining steady in DOE's predictions. NYSERDA stated that New York is among many jurisdictions with deep decarbonization or carbon neutral buildings goals, with timelines ranging from 2032 to 2050 and it expects that these goals will dramatically increase the market for electric water heaters while decreasing overall demand for fossil fuel water heaters. NYSERDA recommends that DOE reflect existing policies that are heavily pushing electrification of space and water heating and increase the number of electric WHs projected to be shipped between approximately 2030 and 2050. (NYSERDA, No. 35 at pp.2–3) EEI suggested that DOE complete a sensitivity analysis based on successfully establishing a zero-carbon energy grid by 2035. (EEI, No. 31 at pp. 48–49)

For the preliminary analysis, assumptions regarding future policies encouraging electrification of households and electric water heating were speculative at that time, so such policies were not incorporated into the shipments projection.

DOE agrees that ongoing electrification policies at the Federal, State, and local levels are likely to encourage installation of electric water heaters in new homes and adoption of electric water heaters in homes that currently use gas-fired water heaters. For example, the Inflation Reduction Act includes incentives for heat pump water heaters and electrical panel upgrades. However, there are many uncertainties about the timing and impact of these policies that make it difficult to fully account for their likely impact on gas and electric water heater market shares in the time frame for this analysis (*i.e.,* 2030 through 2059). Nonetheless, DOE has modified some of its projections to attempt to account for impacts that seem most likely in the relevant time frame. The assumptions are described in chapter 9 and appendix 9A of the NOPR TSD. The changes result in a decrease in gas-fired storage and instantaneous water heater shipments in the no-new-standards case in 2030 compared to the preliminary analysis. DOE acknowledges that electrification policies may result in a larger decrease in shipments of gas-fired water heaters than projected in this NOPR, especially if stronger policies are adopted in coming years. However, this would occur in the no-new amended standards case and thus would only reduce the energy savings estimated in this proposed rule. For example, if incentives and rebates shifted 5 percent of shipments in the no-new amended standards case from gas-fired storage water heaters to heat pump electric storage water heaters, then the energy savings estimated for gas-fired storage water heaters in this proposed rule would decline by approximately 5 percent. The estimated consumer impacts are likely to be similar, however, except that the percentage of consumers with no impact at a given efficiency level would increase. DOE notes that the economic justification for the proposed rule would not change if DOE included the impact of incentives and rebates in the no-new-standards case, even if the absolute magnitude of the savings were to decline.

DOE requests comments on its approach for taking into account electrification efforts in its shipments analysis.

1. Impact of Potential Standards on Shipments

a. Impact of Consumer Choice for Electric Storage Water Heaters

DOE applied a consumer choice model to estimate the impact on electric storage water heaters shipments in the case of a heat pump water heater standard. As noted previously (IV.F.9), DOE did not include other product switching (*e.g.,* using different fuels) in its analysis as this is likely to be a minimal effect. This is especially true in the case of an emergency replacement.

DOE accounted for the potential of consumers selecting one or more smaller electric storage water heaters with or without a ''booster'' instantaneous water heater instead of replacing a larger electric storage water heater with a heat pump water heater.[128] DOE analyzed two main scenarios for a heat pump standard: (1) When electric storage water heaters, ≥20 gal and ≤55 gal, excluding small ESWHs could potentially downsize to the small electric storage water heater product class, due to a heat pump standard to electric storage water heaters, ≥20 gal

[126] The 2022 update includes heat pumps as a performance standard baseline for water or space heating in single-family homes, and space heating in multi-family homes. Builders will need to either include one high-efficiency heat pump in new constructions or subject those buildings to more stringent energy efficiency standards.

[127] *https://ww2.arb.ca.gov/resources/documents/2022-state-strategy-state-implementation-plan-2022-state-sip-strategy#:~:text=The%202022%20State%20SIP%20Strategy,all%20nonattainment%20areas%20across%20California.*

[128] See Rheem's booster instantaneous water heater, which can increase the availability of hot water for storage tank water heaters: *https://www.rheem.com/innovations/innovation_residential/water-heater-booster/.*

and ≤55 gal, excluding small ESWHs only; (2) Heat pump water heater standard for all ESWH product classes, where ESWHs could potentially downsize to very small water heaters. DOE identified households from the electric consumer water heater sample that might downsize at each of the considered standard levels based on water heater sizing criteria and matching to the different consumer choice options that would result in no loss of utility. DOE assigned an effective volume and draw pattern to sampled consumer water heaters based on data from RECS 2015 and CBECS 2018. DOE selected the households or buildings that would downsize based on the fact that the consumer would have a financial incentive to downsize in the short term (*e.g.,* lower first cost), even though in some cases downsizing might not be advantageous in the long run compared to installing a heat pump water heater. Table IV.28 and Table IV.29 show the resulting estimated shipment market share impacted for each scenario.

TABLE IV.28—CONSUMER CHOICE RESULTS FOR ELECTRIC STORAGE WATER HEATERS

[Assuming heat pump standard for electric storage water heaters, ≥20 gal and ≤55 gal, excluding small ESWHs only]

Consumer choice options	Efficiency level, market share impacted (%)			
	0	1	2	3
Not Switching	100.0	78.2	78.5	75.3
Small ESWH	0.0	11.4	11.4	13.3
Small ESWH + Booster	0.0	7.7	7.5	8.2
Two Small ESWH	0.0	2.8	2.6	3.2

TABLE IV.29—CONSUMER CHOICE RESULTS FOR ELECTRIC STORAGE WATER HEATERS

[Assuming heat pump standard for all electric storage water heater product classes]

Consumer choice options	Efficiency level, market share impacted (%)			
	0	1	2	3
Small Electric Storage Water Heaters, ≥20 gal and ≤35 gal and FHR <51 gal				
Not Switching	100.0	23.0	.....	.....
Very Small ESWH + One Booster	0.0	74.1	.....	.....
Two Very Small ESWH	0.0	2.8	.....	.....
Two Very Small ESWH + One Booster	0.0	0.1	.....	.....
Electric Storage Water Heaters, ≥20 gal and ≤55 gal, excluding Small ESWHs				
Not Switching	100.0	90.4	90.6	89.4
Very Small ESWH + One Booster	0.0	4.7	4.7	5.5
Two Very Small ESWH	0.0	3.2	3.1	3.4
Two Very Small ESWH + One Booster	0.0	1.6	1.5	1.8

The shipments model considers the switching that might occur in each year of the analysis period (2030–2059). To do so, DOE estimated the switching in the first year of the analysis period (2030), using data on willingness to pay, in the LCC analysis and derived trends from 2030 to 2059. The shipments model also tracks the number of additional consumer water heaters shipped in each year. See appendix 9A of this NOPR TSD for further details regarding how DOE estimated switching between various electric water heater options.

b. Impact of Repair vs. Replace

For this NOPR, DOE estimated a fraction of consumer water heater replacement installations that choose to repair their equipment, rather than replace their equipment in the new standards case. The approach captures not only a decrease in consumer water heater replacement shipments, but also the energy use from continuing to use the existing consumer water heater and the cost of the repair. DOE assumes that the demand for water heating is inelastic and, therefore, that no household or commercial building will forgo either repairing or replacing their equipment (either with a new consumer water heater or a suitable water heating alternative).

For details on DOE's shipments analysis, consumer choice and the repair option, see chapter 9 of the final rule TSD.

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.[129] (''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 consumer water heaters sold from 2030 through 2059.

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

[129] The NIA accounts for impacts in the 50 states and U.S. territories.

the no-new-standards case with projections characterizing the market for each product class if DOE adopted new or amended standards at specific energy efficiency levels (*i.e.,* the TSLs or standards cases) for that class. For the standards cases, DOE considers how a given standard would likely affect the market shares of products with efficiencies greater than the standard.

DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each TSL. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values (as opposed to probability distributions) as inputs.

Table IV.29 summarizes the inputs and methods DOE used for the NIA analysis for the NOPR. Discussion of these inputs and methods follows the table. See chapter 10 of the NOPR TSD for further details.

TABLE IV—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model.
Compliance Date of Standard	2030.
Efficiency Trends	No-new-standards case: Based on historical data.
	Standards cases: Roll-up in the compliance year and then DOE estimated growth in shipment-weighted efficiency in all the standards cases.
Annual Energy Consumption per Unit	Annual weighted-average values are a function of energy use at each TSL.
Total Installed Cost per Unit	Annual weighted-average values are a function of cost at each TSL.
	Incorporates projection of future product prices based on historical data.
Annual Energy Cost per Unit	Annual weighted-average values as a function of the annual energy consumption per unit and energy prices.
Repair and Maintenance Cost per Unit	Annual values do not change with efficiency level.
Energy Price Trends	*AEO2023* projections (to 2050) and extrapolation thereafter.
Energy Site-to-Primary and FFC Conversion	A time-series conversion factor based on *AEO2023.*
Discount Rate	3 percent and 7 percent.
Present Year	2023.

NEEA, ACEEE, and NWPCC stated that DOE's NIA and NPV results align with NEEA's research and experience that HPWHs and improved gas water heaters are cost-effective and deliver significant benefits to consumers. (NEEA, ACEEE, and NWPCC, No. 47 at p. 3)

1. Product Efficiency Trends

A key component of the NIA is the trend in energy efficiency projected for the no-new-standards case and each of the standards cases. Section IV.F.8 of this document describes how DOE developed an energy efficiency distribution for the no-new-standards case (which yields a shipment-weighted average efficiency) for each of the considered product classes for the year of anticipated compliance with an amended or new standard. To project the trend in efficiency absent amended standards for consumer water heaters over the entire shipments projection period, DOE used available historical shipments data and manufacturer input. The approach is further described in chapter 10 of the NOPR TSD.

For the standards cases, DOE used a ''roll-up'' scenario to establish the shipment-weighted efficiency for the year that standards are assumed to become effective (2030). 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 2030, DOE used historical shipment data and on current consumer water heater model availability by efficiency level (see chapter 8). DOE estimated growth in shipment-weighted efficiency by assuming that the implementation of ENERGY STAR's performance criteria and other incentives would gradually increase the market shares of higher efficiency water heaters meeting ENERGY STAR® requirements such as EL 3 and above for gas-fired storage water heaters, EL 2 and above for electric storage water heaters (≥20 gal V_{eff} ≤55 gal), and EL 1 and above for gas-fired instantaneous water heaters. DOE also took into account increased incentives for higher efficiency equipment and electrification efforts. For oil-fired storage water heaters and electric storage water heaters (>55 gal V_{eff} ≤120 gal), DOE assumed a constant market share throughout the analysis period (2030–2059).

DOE requests comments on its approach for developing efficiency trends after 2030, and solicits input on how of the Inflation Reduction Act could affect future uptake of higher efficiency water heaters.

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 *AEO2023.* 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. DOE examined a 2009 review of empirical estimates of the rebound effect for various energy-using products.[130] This review concluded that the econometric and quasi-experimental studies suggest a mean value for the direct rebound

[130] Steven Sorrell, *et al.,* Empirical Estimates of the Direct Rebound Effect: A Review, 37 *Energy Policy* 1356–71 (2009) (Available at *www.sciencedirect.com/science/article/pii/S0301421508007131*) (Last accessed May 1, 2023).

effect for household water heating of around 10 percent. DOE also examined a 2012 ACEEE paper [131] and a 2013 paper by Thomas and Azevedo.[132] Both of these publications examined the same studies that were reviewed by Sorrell, as well as Greening *et al.,*[133] and identified methodological problems with some of the studies. The studies believed to be most reliable by Thomas and Azevedo show a direct rebound effect for water heating products in the 1-percent to 15-percent range, while Nadel concludes that a more likely range is 1 to 12 percent, with rebound effects sometimes higher for low-income households who could not afford to adequately heat their homes prior to weatherization. DOE applied a rebound effect of 10 percent for consumer water heaters used in residential applications based on studies of other residential products and the value used for consumer water heaters in the 2010 Final Rule for Heating Products, and 0 percent for consumer water heaters in commercial applications, which also matches EIA's National Energy Modeling System (''NEMS'') for residential and commercial water heating and is consistent with other recent energy conservation standards rulemakings.[134] [135] [136] [137] The calculated NES at each efficiency level is therefore reduced by 10 percent in residential applications. DOE also included the rebound effect in the NPV analysis by accounting for the additional net benefit from increased consumer water heaters usage, as described in section IV.H.3 of this document.

DOE requests comments on its approach and value of the rebound effect for consumer water heaters.

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 [138] that EIA uses to prepare its *Annual Energy Outlook.* The FFC factors incorporate losses in production and delivery in the case of natural gas (including fugitive emissions) and additional energy used to produce and deliver the various fuels used by power plants. The approach used for deriving FFC measures of energy use and emissions is described in appendix 10B of the NOPR TSD.

EEI stated that DOE continues to utilize a ''fossil fuel equivalent'' marginal heat rate for electricity, which likely leads to overestimation of pollution reduction in its analysis. EEI stated that DOE should utilize the ''captured energy'' approach as outlined in an October 2016 report, ''Accounting Methodology for Source Energy of Non-Combustible Renewable Electricity Generation'' (3412 Btu/kWh for non-combustible renewable electricity generation). EEI stated that DOE could also consider the approach used in certain ASHRAE standards, such as Standard 189.1 for Green Commercial Buildings. EEI stated that either of these methodologies more accurately capture the ongoing transition in the electric sector, and DOE should utilize these more accurate metrics in its rulemaking. (EEI, No. 43 at p. 3)

DOE converts electricity consumption and savings to primary energy using annual conversion factors derived from the AEO. Traditionally, EIA has used the fossil fuel equivalency approach to report noncombustible renewables' contribution to total primary energy, in part because the resulting shares of primary energy are closer to the shares of generated electricity.[139] The fossil fuel equivalency approach applies an annualized weighted-average heat rate for fossil fuel power plants to the electricity generated (in kWh) from noncombustible renewables. EIA recognizes that using captured energy (the net energy available for direct consumption after transformation of a noncombustible renewable energy into electricity) or incident energy (the mechanical, radiation, or thermal energy that is measurable as the ''input'' to the device) are possible alternative approaches for converting renewable electricity to a common measure of primary energy,[140] but it continues to use the fossil fuel equivalency approach in the AEO and other reporting of energy statistics. DOE contends that it is important for it to maintain consistency with EIA in DOE's accounting of primary energy savings from energy efficiency standards.

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 consumer water heaters price trends based on historical PPI data. DOE applied the same trends to project prices for each

[131] Steven Nadel, ''The Rebound Effect: Large or Small?'' ACEEE White Paper (August 2012) (Available at *www.aceee.org/files/pdf/white-paper/rebound-large-and-small.pdf*) (Last accessed May 1, 2023).

[132] Brinda Thomas and Ines Azevedo, Estimating Direct and Indirect Rebound Effects for U.S. Households with Input–Output Analysis, Part 1: Theoretical Framework, 86 *Ecological Econ.* 199–201 (2013) (Available at *www.sciencedirect.com/science/article/pii/S0921800912004764*) (Last accessed May 1, 2023).

[133] Lorna A. Greening, *et al.,* Energy Efficiency and Consumption—The Rebound Effect—A Survey, 28 *Energy Policy* 389–401 (2002) (Available at *www.sciencedirect.com/science/article/pii/S0301421500000215*) (Last accessed May 1, 2023).

[134] See: *www.eia.gov/outlooks/aeo/nems/documentation/residential/pdf/m067(2020).pdf* (Last accessed May 1, 2023).

[135] DOE. Energy Conservation Program for Certain Industrial Equipment: Energy Conservation Standards for Small, Large, and Very Large Air-Cooled Commercial Package Air Conditioning and Heating Equipment and Commercial Warm Air Furnaces; Direct final rule. 81 FR 2419 (Jan. 15, 2016) (Available at *www.regulations.gov/document/EERE-2013-BT-STD-0021-0055*) (Last accessed May 1, 2023).

[136] DOE. Energy Conservation Program: Energy Conservation Standards for Residential Boilers; Final rule. 81 FR 2319 (Jan. 15, 2016) (Available at *www.regulations.gov/document/EERE-2012-BT-STD-0047-0078*) (Last accessed May 1, 2023).

[137] DOE. Energy Conservation Program: Energy Conservation Standards for Commercial Packaged Boilers; Final Rule. 85 FR 1592 (Jan. 10, 2020) (Available at *www.regulations.gov/document/EERE-2013-BT-STD-0030-0099*) (Last accessed May 1, 2023).

[138] 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/overview/pdf/0581(2018).pdf* (last accessed May 1, 2023).

[139] Without adjusting primary energy for fossil fuel equivalence, the non-combustible renewable share of total energy consumption for utility-scale electricity generation in 2018 would have been 6% instead of the 15% share under the fossil fuel equivalency approach. On a physical units basis, net generation from noncombustible renewable energy sources was 16% of total utility-scale net generation in the same year. (see *www.eia.gov/todayinenergy/detail.php?id=41013*).

[140] See: *www.eia.gov/totalenergy/data/monthly/pdf/sec12_28.pdf.*

product class at each considered efficiency level. By 2059, which is the end date of the projection period, the average consumer water heaters price doesn't change relative to 2022. DOE's projection of product prices is described in appendix 10C of the NOPR TSD.

To evaluate the effect of uncertainty regarding the price trend estimates, DOE investigated the impact of different product price projections on the consumer NPV for the considered TSLs for consumer water heaters. In addition to the default price trend, DOE considered two product price sensitivity cases: (1) a price decline case and (2) a price increase case based on PPI data. The derivation of these price trends and the results of these sensitivity cases are described in appendix 10C of the NOPR TSD.

DOE requests comments on its approach for product price projections.

The operating cost savings are the sum of the differences in energy cost savings, maintenance, and repair costs. The maintenance and repair costs derivation is described in section IV.F.5. The energy cost savings are calculated using the estimated energy savings in each year and the projected price of the appropriate form of energy. To estimate energy prices in future years, DOE multiplied the average regional energy prices by the projection of annual national-average residential and commercial energy price changes in the Reference case from *AEO2023,* which has an end year of 2050. To estimate price trends after 2050, DOE used the average annual rate of change in prices from 2046 through 2050. As part of the NIA, DOE also analyzed scenarios that used inputs from variants of the *AEO2023* Reference case that have lower and higher economic growth. Those cases have lower and higher energy price trends compared to the Reference case. NIA results based on these cases are presented in appendix 10D of the NOPR TSD.

In considering the consumer welfare gained due to the direct rebound effect, DOE accounted for change in consumer surplus attributed to additional water heating from the purchase of a more efficient unit. Overall consumer welfare is generally understood to be enhanced from rebound. The net consumer impact of the rebound effect is included in the calculation of operating cost savings in the consumer NPV results. See appendix 10E of the NOPR TSD for details on DOE's treatment of the monetary valuation of the rebound effect.

DOE requests comments on its approach to monetizing the impact of the rebound effect.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For this NOPR, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (''OMB'') to Federal agencies on the development of regulatory analysis.[141] The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the ''social rate of time preference,'' which is the rate at which society discounts future consumption flows to their present value.

I. Consumer Subgroup Analysis

In analyzing the potential impact of new or amended energy conservation standards on consumers, DOE evaluates the impact on identifiable subgroups of consumers that may be disproportionately affected by a new or amended national standard. The purpose of a subgroup analysis is to determine the extent of any such disproportional impacts. DOE evaluates impacts on particular subgroups of consumers by analyzing the LCC impacts and PBP for those particular consumers from alternative standard levels. For this NOPR, DOE analyzed the impacts of the considered standard levels on three subgroups: (1) low-income households, (2) senior-only households, and (3) small businesses. The analysis used subsets of the RECS 2015 sample composed of households and CBECS 2018 sample composed of commercial buildings that meet the criteria for the three subgroups. DOE used the LCC and PBP spreadsheet model to estimate the impacts of the considered efficiency levels on these subgroups. Chapter 11 in the NOPR TSD describes the consumer subgroup analysis.

1. Low-Income Households

Low-income households are significantly more likely to be renters or live in subsidized housing units, compared to homeowners. DOE notes that in these cases the landlord purchases the equipment and may pay the gas bill as well. RECS 2015 includes data on whether a household pays for the gas bill, allowing DOE to categorize households appropriately in the analysis.[142] For this consumer subgroup analysis, DOE considers the impact on the low-income household narrowly, excluding any costs or benefits that are accrued by either a landlord or subsidized housing agency. This allows DOE to determine whether low-income households are disproportionately affected by an amended energy conservation standard in a more representative manner. DOE takes into account a fraction of renters that face product switching (when landlords switch to products that have lower upfront costs but higher operating costs, which will be incurred by tenants).

The majority of low-income households that experience a net cost at higher efficiency levels are homeowner households, as opposed to renters. These households either have a smaller capacity water heater or lower hot water use. Unlike renters, homeowners would bear the full cost of installing a new water heater. For these households, a potential rebate program to reduce the total installed costs would be effective in lowering the percentage of low-income consumers with a net cost. DOE understands that the landscape of low-income consumers with a water heater may change before the compliance date of amended energy conservation standards, if finalized. For example, point-of-sale rebate programs are being considered that may moderate the impact on low-income consumers to help offset the total installed cost of a higher efficiency water heater, particularly given the lower total installed cost of smaller capacity water heater. Currently, DOE is aware that the Inflation Reduction Act will likely include incentives for certain water heaters, although the specific implementation details have yet to be finalized. DOE is also aware of State or utility program rebates in the Northeast or California, for example, that support additional heat pump deployment as a result of decarbonization policy goals. Point-of-sale rebates or weatherization programs could also reduce the total number of low-income consumers that would be impacted because the household no longer has a water heater to upgrade. DOE is particularly interested in seeking comment around

[141] United States Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. Section E. Available at *www.whitehouse.gov/omb/memoranda/m03-21.html* (last accessed May 1, 2023).

[142] RECS 2015 includes a category for households that pay only some of the gas bill. For the low-income consumer subgroup analysis, DOE assumes that these households pay 50 percent of the gas bill, and, therefore, would receive 50 percent of operating cost benefits of an amended energy conservation standard.

the landscape of heating replacements leading up to 2030, which may impact the low-income consumer economics being presented and considered in this proposed rulemaking.

Measures of energy insecurity provide another accounting of the number of households that are affected by cost changes due to rules for water heating equipment energy efficiency in addition to the senior-only and low-income categories used by DOE in this analysis. Energy insecurity in the 2020 RECS quantifies the households reporting one or more of the metrics for energy insecurity, including that they that are forgoing basic necessities to pay for energy, and that they leave their home at an unhealthy temperature due to energy cost. The energy insecurity data are disaggregated by water heating equipment type, income category, race, ethnicity, presence of children, presence of seniors, regional distribution, and ownership/rental status. DOE has determined that the energy insecure designation captures more households than the low-income and seniors-only categories used for distributional analysis. Similar PBP and net savings/net cost analysis applied to energy insecure households could result in larger impacts than for the categories DOE chose to analyze and may be more directly interpreted in terms of welfare changes that can be disaggregated by the factors already listed. DOE seeks comment on conducting distributional analysis for energy insecure households in addition to, or instead of, the low-income and seniors-only categories currently analyzed and described in the NOPR.

BWC noted their concern regarding the implications of DOE's analysis for smaller storage volume products, especially how it may impact installations in low to median income households. (BWC, No. 32 at p. 2) As discussed in section IV.F.2, installation cost analysis accounts for significant installation costs for smaller tank volumes in particular installed in space constrained installations in mobile homes, multi-family buildings, or closet installations in single-family homes, which impacts a significant fraction of low-income households. DOE has explicitly considered small electric storage water heaters as part of this NOPR analysis. See section V.B.1.b for the low-income household results, which show that at the considered efficiency levels the average LCC savings and PBP are not substantially different from the average for all households.

DOE requests comments on its approach to estimate low-income consumer impacts for higher efficiency standards.

J. Manufacturer Impact Analysis

1. Overview

DOE performed an MIA to estimate the financial impacts of amended energy conservation standards on manufacturers of consumer water heaters and to estimate the potential impacts of such standards on employment and manufacturing capacity. The MIA has both quantitative and qualitative aspects and includes analyses of projected industry cash flows, the INPV, investments in research and development (''R&D'') and manufacturing capital, and domestic manufacturing employment. Additionally, the MIA seeks to determine how amended energy conservation standards might affect manufacturing employment, capacity, and competition, as well as how standards contribute to overall regulatory burden. Finally, the MIA serves to identify any disproportionate impacts on manufacturer subgroups, including small business manufacturers.

The quantitative part of the MIA primarily relies on the Government Regulatory Impact Model (''GRIM''), an industry cash flow model with inputs specific to this rulemaking. The key GRIM inputs include data on the industry cost structure, unit production costs, product shipments, manufacturer markups, and investments in R&D and manufacturing capital required to produce compliant products. The key GRIM outputs are the INPV, which is the sum of industry annual cash flows over the analysis period, discounted using the industry-weighted average cost of capital, and the impact to domestic manufacturing employment. The model uses standard accounting principles to estimate the impacts of more-stringent energy conservation standards on a given industry by comparing changes in INPV and domestic manufacturing employment between a no-new-standards case and the various standards cases (''TSLs''). To capture the uncertainty relating to manufacturer pricing strategies following amended standards, the GRIM estimates a range of possible impacts under different markup scenarios.

The qualitative part of the MIA addresses manufacturer characteristics and market trends. Specifically, the MIA considers such factors as a potential standard's impact on manufacturing capacity, competition within the industry, the cumulative impact of other DOE and non-DOE regulations, and impacts on manufacturer subgroups. The complete MIA is outlined in chapter 12 of the NOPR TSD.

DOE conducted the MIA for this rulemaking in three phases. In Phase 1 of the MIA, DOE prepared a profile of the consumer water heaters manufacturing industry based on the market and technology assessment, preliminary manufacturer interviews, and publicly-available information. This included a top-down analysis of consumer water heaters 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 consumer water heaters manufacturing industry, including company filings of form 10–K from the SEC,[143] corporate annual reports, the U.S. Census Bureau's *Economic Census*,[144] and reports from Dunn & Bradstreet.[145]

In Phase 2 of the MIA, DOE prepared a framework industry cash-flow analysis to quantify the potential impacts of amended energy conservation standards. The GRIM uses several factors to determine a series of annual cash flows starting with the announcement of the standard and extending over a 30-year period following the compliance date of the standard. These factors include annual expected revenues, costs of sales, SG&A and R&D expenses, taxes, and capital expenditures. In general, energy conservation standards can affect manufacturer cash flow in three distinct ways: (1) creating a need for increased investment, (2) raising production costs per unit, and (3) altering revenue due to higher per-unit prices and changes in sales volumes.

In addition, during Phase 2, DOE developed interview guides to distribute to manufacturers of consumer water heaters 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.

[143] U.S. Securities and Exchange Commission. Company Filings. Available at *https://www.sec.gov/edgar/searchedgar/companysearch.html.*

[144] The U.S. Census Bureau. Quarterly Survey of Plant Capacity Utilization. Available at *www.census.gov/programs-surveys/qpc/data/tables.html.*

[145] The Dun & Bradstreet Hoovers login is available at *app.dnbhoovers.com.*

In Phase 3 of the MIA, DOE conducted structured, detailed interviews with representative manufacturers. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics to validate assumptions used in the GRIM and to identify key issues or concerns. See section IV.J.3 of this document for a description of the key issues raised by manufacturers during the interviews. As part of Phase 3, DOE also evaluated subgroups of manufacturers that may be disproportionately impacted by amended standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash flow analysis. Such manufacturer subgroups may include small business manufacturers, low-volume manufacturers (''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 NOPR TSD.

2. Government Regulatory Impact Model and Key Inputs

DOE uses the GRIM to quantify the changes in cash flow due to amended standards that result in a higher or lower industry value. The GRIM uses a standard, annual discounted cash-flow analysis that incorporates manufacturer costs, markups, shipments, and industry financial information as inputs. The GRIM models changes in costs, distribution of shipments, investments, and manufacturer margins that could result from an amended energy conservation standard. The GRIM 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 2059. DOE calculated INPVs by summing the stream of annual discounted cash flows during this period. For manufacturers of consumer water heaters, DOE used a real discount rate of 9.3 percent, which was derived from industry financials and then modified according to feedback received during manufacturer interviews.

The GRIM calculates cash flows using standard accounting principles and compares changes in INPV between the no-new-standards case and each standards case. The difference in INPV between the no-new-standards case and a standards case represents the financial impact of the amended energy conservation standard on manufacturers. As discussed previously, DOE developed critical GRIM inputs using a number of sources, including publicly available data, results of the engineering analysis, and 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 NOPR TSD.

a. Manufacturer Production Costs

Manufacturing more efficient equipment is typically more expensive than manufacturing baseline equipment due to the use of more complex components, which are typically more costly than baseline components. The changes in the MPCs of covered products can affect the revenues, gross margins, and cash flow of the industry.

As discussed in section IV.C.1 of this document, DOE conducted a market analysis of currently available models listed in DOE's CCD to determine which efficiency levels were most representative of the current distribution of consumer water heaters available on the market. DOE also completed physical teardowns of commercially available units to determine which design options manufacturers may use to achieve certain efficiency levels for each water heater category analyzed. DOE requested comments from stakeholders and conducted interviews with manufacturers concerning these initial efficiency levels, which have been updated in this NOPR based on the feedback DOE received. For a complete description of the MPCs, see chapter 5 of the NOPR TSD.

b. Shipments Projections

The GRIM estimates manufacturer revenues based on total unit shipment projections and the distribution of those shipments by efficiency level. Changes in sales volumes and efficiency mix over time can significantly affect manufacturer finances. For this analysis, the GRIM uses the NIA's annual shipment projections derived from the shipments analysis from 2023 (the base year) to 2059 (the end year of the analysis period). See chapter 9 of the NOPR TSD for additional details.

c. Product and Capital Conversion Costs

Amended energy conservation standards could cause manufacturers to incur conversion costs to bring their production facilities and 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 product class. For the MIA, DOE classified these conversion costs into two major groups: (1) product conversion costs; and (2) capital conversion costs. Product conversion costs are investments in research, development, testing, marketing, and other non-capitalized costs necessary to make product designs comply with amended energy conservation standards. Capital conversion costs are investments in property, plant, and equipment necessary to adapt or change existing production facilities such that new compliant product designs can be fabricated and assembled.

To evaluate the level of product conversion costs manufacturers would likely incur to comply with amended energy conservation standards, DOE relied on feedback from manufacturer interviews. DOE contractors conducted interviews with manufacturer of gas-fired storage, gas-fired instantaneous, oil-fired storage, electric storage, electric instantaneous, tabletop, and grid-enabled water heaters. The interviewed manufacturers account for approximately 80 percent of unit sales in the industry. DOE used market share weighted feedback from interviews to extrapolate industry-level product conversion costs from the manufacturer feedback.

To evaluate the level of capital conversion costs manufacturers would likely incur to comply with amended energy conservation standards, DOE relied on estimate of equipment and tooling from its engineering analysis and on feedback from manufacturer interviews. DOE modeled the green field investments required for a major manufacturer to setup a production facility. The investment figures included capital required for manufacturing equipment, tooling, conveyor, facility. DOE then modeled the incremental investment required by increases in standards. DOE multiplied the incremental investment by number of major manufacturers. These investment levels aligned well with feedback from interviews. Additionally, DOE determined that smaller manufacturers would have lower investment levels given their lower production volumes and accounted for those lower investments for manufacturer with lower market share.

In general, DOE assumes all conversion-related investments occur between the year of publication of the final rule and the year by which manufacturers must comply with the new standard. The conversion cost

figures used in the GRIM can be found in section V.B.2 of this document. For additional information on the estimated capital and product conversion costs, see chapter 12 of the NOPR TSD.

d. Manufacturer Markup Scenarios

MSPs include direct manufacturing production costs (*i.e.,* labor, materials, and overhead estimated in DOE's MPCs) and all non-production costs (*i.e.,* SG&A, R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied manufacturer markups to the MPCs estimated in the engineering analysis for each product class and efficiency level. Modifying these markups in the standards case yields different sets of impacts on manufacturers. For the MIA, DOE modeled two standards-case markup scenarios to represent uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of amended energy conservation standards: (1) a preservation of gross margin percentage scenario; and (2) a preservation of operating profit scenario. These scenarios lead to different markup values that, when applied to the MPCs, result in varying revenue and cash flow impacts.

Under the preservation of gross margin percentage scenario, DOE applied a single uniform ''gross margin percentage'' markup across all efficiency levels, which assumes that manufacturers would be able to maintain the same amount of profit as a percentage of revenues at all efficiency levels within a product class. As manufacturer production costs increase with efficiency, this scenario implies that the per-unit dollar profit will increase. DOE estimated gross margin percentages of 24% for the gas-fired storage product class, 22% for electric storage, 23% for oil-fired storage, and 31% for gas-fired instantaneous.[146] Manufacturers tend to believe it is optimistic to assume that they would be able to maintain the same gross margin percentage as their production costs increase, particularly for minimally efficient products. Therefore, this scenario represents a high bound to industry profitability under an amended energy conservation standard.

Under the preservation of operating profit markup scenario, DOE modeled a situation in which manufacturers are not able to increase per-unit operating profit in proportion to increases in manufacturer production costs. In the preservation of operating profit scenario, as the cost of production goes up under a standards case, manufacturers are generally required to reduce their manufacturer markups to a level that maintains base-case operating profit. DOE implemented this scenario in the GRIM by lowering the manufacturer markups at each TSL to yield approximately the same earnings before interest and taxes in the standards case as in the no-new-standards case in the year after the compliance date of the amended standards. The implicit assumption behind this scenario is that the industry can only maintain its operating profit in absolute dollars after the standard. A comparison of industry financial impacts under the two manufacturer markup scenarios is presented in section V.B.2.a of this document.

A comparison of industry financial impacts under the two markup scenarios is presented in section V.B.2.a of this document.

3. Manufacturer Interviews

DOE interviewed manufacturers representing approximately 80 percent of the consumer water heaters industry by shipment volume. Participants included manufacturers of gas-fired storage, gas-fired instantaneous, oil-fired storage, electric storage, electric instantaneous, tabletop, and grid enabled water heaters.

In interviews, DOE asked manufacturers to describe their major concerns regarding potential amended standards for consumer water heaters. The following section highlights manufacturer concerns in an aggregated fashion that helped inform the projected potential impacts of an amended standard on the industry. Manufacturer interviews are conducted under non-disclosure agreements (''NDAs''), so DOE does not document these discussions in the same way that it does public comments in the comment summaries and DOE's responses throughout the rest of this document.

a. Level of Investment Associated With Concurrent Technology Shifts

Manufacturers raised concerns about the potential for multiple significant technology shifts associated with this rulemaking. They noted that the adoption of a standard level requiring condensing technology for gas-fired storage water heaters would potentially require large investments to expand production capacity. At higher condensing efficiencies, manufacturers anticipated a range of manufacturing bottlenecks associated with more complex assembly, heavier products, and longer production times. To resolve these bottlenecks, manufacturers expected investments in additional production equipment and tooling. Manufacturers further noted that, in some cases, new additional production lines would have to be added.

Manufacturers also raised concern that the adoption of a standard level requiring heat pump technology for electric storage water heaters would require substantial investment in expanding and retooling production facilities. Manufacturers noted that only a small percentage of the electric storage water heaters market uses heat pumps today. Manufacturers would need to update a broad range of designs to meet market needs. Additionally, industry would need to substantially expand heat pump water heater production. Manufacturers noted they would need to significantly change their electric water heater manufacturing layout. Some manufacturers anticipated the need to develop multiple new production lines to service the market.

Manufactures noted that concurrent shifts in technology would lead to very high investment levels in a short period of time. Additional manufacturers were concerned about having the technical resources to manage the technology changes within the conversion period. Finally, manufacturers noted that the shift to heat pump water heaters is further complicated by regulatory and market uncertainty related to refrigerants due to the American Innovation and Manufacturing (AIM) Act, which directs EPA to phase down hydrofluorocarbons (HFCs) production and consumption and includes sector-based restrictions. Additionally, manufacturers noted that several states have introduced their own HFC phase-down regulations. Manufacturers raised concerns that state actions could further complicate refrigerant restrictions.

b. Lowboy Electric Storage Water Heaters

In interviews, manufacturers raised concerns about the effect higher standards would have on specific designs, known as ''lowboys,'' which are used in height-restricted installations. In particular, manufacturers asserted that the adoption of integrated heat pump technology, which would add significant height to water heaters, would present challenges for some

[146] The gross margin percentage of 24 percent for gas-fired storage is based on a manufacturer markup of 1.31. The gross margin percentage of 22 percent for electric storage is based on a manufacturer markup of 1.28.The gross margin percentage of 23 percent for oil-fired storage is based on a manufacturer markup of 1.30. The gross margin percentage of 31 percent for gas-fired instantaneous is based on a manufacturer markup of 1.45.

installations. For this reason, manufacturers stated that lowboy electric storage water heaters could not be easily replaced with heat pump water heaters that are currently available on the market. However, as discussed in the engineering analysis, DOE has tentatively determined that split-system heat pump designs would still be feasible for lowboy installations without increasing the height of the product. See section IV.C.1 for details.

4. Discussion of MIA Comments

BWC urged DOE to consider the cumulative burden placed on manufacturers by the simultaneous occurrence of multiple rulemakings. Additionally, BWC requested DOE consider the impact of regulations outside the seven-year period around when this rulemaking would come into effect. (BWC, No. 32 at pp. 4)

DOE analyzes cumulative regulatory burden pursuant to appendix A. Pursuant to appendix A, the Department will recognize and consider the overlapping effects on manufacturers of new or revised DOE standards and other Federal regulatory actions affecting the same products or equipment. The results of this analysis can be found in section V.B.2.e of this document.

BWC stated that Steffes Corporation and Hubbell were not included in DOE's list of small business manufacturers of consumer water heaters and suggested they be added. (BWC, No. 32 at p. 5). DOE notes that Hubbell Corporation was included in DOE's list of manufacturers under the name of its parent company at the time, HEH Holdings. Hubbell's parent company has since changed to the Nudyne Group LLC. DOE continues to consider the company and its products in its analyses. Based on BWC's written comment, DOE reviewed the products from Steffes Corporation. Based on publicly available product information, Steffes Corporation's products appear to be for multi-family homes and the products' rated input would exceed the thresholds for consumer water heaters. DOE has not included Steffes Corporation in its list of small business consumer water heater manufacturers.

K. Emissions Analysis

The emissions analysis consists of two components. The first component estimates the effect of potential energy conservation standards on power sector and site (where applicable) combustion emissions of CO_2, NO_X, SO_2, and Hg. The second component estimates the impacts of potential standards on emissions of two additional greenhouse gases, CH_4 and N_2O, as well as the reductions to emissions of other gases due to ''upstream'' activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion.

The analysis of electric power sector emissions of CO_2, NO_X, SO_2, and Hg uses emissions factors intended to represent the marginal impacts of the change in electricity consumption associated with amended or new standards. The methodology is based on results published for the *AEO,* including a set of side cases that implement a variety of efficiency-related policies. The methodology is described in appendix 13A in the NOPR TSD. The analysis presented in this notice uses projections from *AEO2023.* Power sector emissions of CH_4 and N_2O from fuel combustion are estimated using Emission Factors for Greenhouse Gas Inventories published by the EPA.[147]

The on-site operation of consumer water heaters requires combustion of fossil fuels and results in emissions of CO_2, NO_X, SO_2 CH_4 and N_2O where these products are used. Site emissions of these gases were estimated using Emission Factors for Greenhouse Gas Inventories and, for NO_X and SO_2 emissions intensity factors from an EPA publication.[148]

FFC upstream emissions, which include emissions from fuel combustion during extraction, processing, and transportation of fuels, and ''fugitive'' emissions (direct leakage to the atmosphere) of CH_4 and CO_2, are estimated based on the methodology described in chapter 15 of the NOPR TSD.

BWC stated that in regard to the NOPR Emissions Impact Analysis, in addition to DOE's consideration of the upstream emissions as it relates to the power sector, they recommend DOE also analyze additional emissions generated to comply with an amended standard. With an amended standard more complex components and more of certain existing components will be required to comply. BWC believes that more emissions will be generated to produce these components to comply with an amended standard versus what will be saved by requiring higher efficiency equipment. (BWC, No. 32 at p. 6)

In determining the economic justification of a standard, EPCA requires DOE to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) DOE considers full-fuel cycle energy savings, including the energy consumed in electricity production, in distribution and transmission, and in extracting, processing, and transporting primary fuels. DOE further analyzes the emissions savings associated with those projected energy savings. DOE does not analyze energy or emissions savings related to manufacturing, recycling, or disposing of products, as such impacts would not be considered a direct result of the standard on the energy use of the covered product. DOE did take into account the increased electricity consumption due to increased electricity use in higher efficiency design options. See chapter 7 for more details.

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. *AEO2023* generally represents current legislation and environmental regulations, including recent government actions, that were in place at the time of preparation of *AEO2023,* including the emissions control programs discussed in the following paragraphs.[149]

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

[147] U.S. Environmental Protection Agency. Emission Factors for Greenhouse Gas Inventories. Available at *www.epa.gov/sites/production/files/2021-04/documents/emission-factors_apr2021.pdf* (last accessed May 1, 2023).

[148] U.S. Environmental Protection Agency. External Combustion Sources. In *Compilation of Air Pollutant Emission Factors.* AP–42. Fifth Edition. Volume I: Stationary Point and Area Sources. Chapter 1. Available at *www.epa.gov/ttn/chief/ap42/index.html* (last accessed May 1, 2023).

[149] For further information, see the Assumptions to *AEO2023* 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 May 1, 2023).

(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.[150] *AEO2023* incorporates implementation of CSAPR, including the update to the CSAPR ozone season program emission budgets and target dates issued in 2016. 81 FR 74504 (Oct. 26, 2016). Compliance with CSAPR is flexible among EGUs and is enforced through the use of tradable emissions allowances. Under existing EPA regulations, any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by another regulated EGU.

However, beginning in 2016, SO_2 emissions began to fall as a result of the Mercury and Air Toxics Standards (''MATS'') for power plants. 77 FR 9304 (Feb. 16, 2012). The final rule establishes power plant emission standards for mercury, acid gases, and non-mercury metallic toxic pollutants. *I*n order to continue operating, coal power plants must have either flue gas desulfurization or dry sorbent injection systems installed. Both technologies, which are used to reduce acid gas emissions, also reduce SO_2 emissions. Because of the emissions reductions under the MATS, it is unlikely that excess SO_2 emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO_2 emissions by another regulated EGU. Therefore, energy conservation standards that decrease electricity generation would generally reduce SO_2 emissions. DOE estimated SO_2 emissions reduction using emissions factors based on *AEO2023.*

CSAPR also established limits on NO_X emissions for numerous States in the eastern half of the United States. Energy conservation standards would have little effect on NO_X emissions in those States covered by CSAPR emissions limits if excess NO_X emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO_X emissions from other EGUs. In such case, NO_X emissions would remain near the limit even if electricity generation goes down. A different case could possibly result, depending on the configuration of the power sector in the different regions and the need for allowances, such that NO_X emissions might not remain at the limit in the case of lower electricity demand. In this case, energy conservation standards might reduce NO_X emissions in covered States. Despite this possibility, DOE has chosen to be conservative in its analysis and has maintained the assumption that standards will not reduce NO_X emissions in States covered by CSAPR. Energy conservation standards would be expected to reduce NO_X emissions in the States not covered by CSAPR. DOE used *AEO2023* 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 *AEO2023,* which incorporates the MATS.

L. Monetizing Emissions Impacts

As part of the development of this proposed rule, for the purpose of complying with the requirements of Executive Order 12866, DOE considered the estimated monetary benefits from the reduced emissions of CO_2, CH_4, N_2O, NO_X, and SO_2 that are expected to result from each of the TSLs considered. In order to make this calculation analogous to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped in the projection period for each TSL. This section summarizes the basis for the values used for monetizing the emissions benefits and presents the values considered in this NOPR.

To monetize the benefits of reducing GHG emissions, this analysis uses the interim estimates presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990* published in February 2021 by the IWG.

1. Monetization of Greenhouse Gas Emissions

DOE estimates the monetized benefits of the reductions in emissions of CO_2, CH_4, and N_2O by using a measure of the SC of each pollutant (*e.g.,* SC–CO_2). These estimates represent the monetary value of the net harm to society associated with a marginal increase in emissions of these pollutants in a given year, or the benefit of avoiding that increase. These estimates are intended to include (but are not limited to) climate-change-related changes in net agricultural productivity, human health, property damages from increased flood risk, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services.

DOE exercises its own judgment in presenting monetized climate benefits as recommended by applicable Executive orders, and DOE would reach the same conclusion presented in this proposed rulemaking in the absence of the social cost of greenhouse gases. That is, the social costs of greenhouse gases, whether measured using the February 2021 interim estimates presented by the Interagency Working Group on the Social Cost of Greenhouse Gases or by another means, did not affect the rule ultimately proposed by DOE.

DOE estimated the global social benefits of CO_2, CH_4, and N_2O reductions using SC–GHG values that were based on the interim values presented in the Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990, published in February 2021 by the IWG. The SC–GHGs is the monetary value of the net harm to society associated with a marginal increase in emissions in a given year, or the benefit of avoiding that increase. In principle, SC–GHGs includes the value of all climate change impacts, including (but not limited to) changes in net agricultural productivity, human health effects, property damage from increased flood risk and natural disasters, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services. The SC–GHGs therefore, reflects the societal value of reducing emissions of the gas in question by one metric ton. The SC–GHGs is the theoretically appropriate value to use in conducting benefit-cost analyses of policies that affect CO_2, N_2O and CH4 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

[150] 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).

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.*[151] 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).[152] Shortly thereafter, in March 2017, President Trump issued Executive Order 13783, which disbanded the IWG, withdrew the previous TSDs, and directed agencies to ensure SC–CO_2 estimates used in regulatory analyses are consistent with the guidance contained in OMB's Circular A–4, ''including with respect to the consideration of domestic versus international impacts and the consideration of appropriate discount rates'' (E.O. 13783, Section 5(c)). Benefit-cost analyses following E.O. 13783 used SC–GHG estimates that attempted to focus on the U.S.-specific share of climate change damages as estimated by the models and were calculated using two discount rates recommended by Circular A–4, 3 percent and 7 percent. All other methodological decisions and model versions used in SC–GHG calculations remained the same as those used by the IWG in 2010 and 2013, respectively.

On January 20, 2021, President Biden issued Executive Order 13990, which re-established the IWG and directed it to ensure that the U.S. Government's estimates of the social cost of carbon and other greenhouse gases reflect the best available science and the recommendations of the National Academies (2017). The IWG was tasked with first reviewing the SC–GHG estimates currently used in Federal analyses and publishing interim estimates within 30 days of the E.O. that reflect the full impact of GHG emissions, including by taking global damages into account. The interim SC–GHG estimates published in February 2021 are used here to estimate the climate benefits for this proposed rulemaking. The E.O. instructs the IWG to update the interim SC–GHG estimates by January 2022, taking into consideration the advice of the National Academies of Science, Engineering, and Medicine as reported in Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide (2017) and other recent scientific literature. The February 2021 SC–GHG TSD provides a complete discussion of the IWG's initial review conducted under E.O.13990. In particular, the IWG found that the SC–GHG estimates used under E.O. 13783 fail to reflect the full impact of GHG emissions in multiple ways.

First, the IWG found that the SC–GHG estimates used under E.O. 13783 fail to fully capture many climate impacts that affect the welfare of U.S. citizens and residents, and those impacts are better reflected by global measures of the SC–GHG. Examples of omitted effects from the E.O. 13783 estimates include direct effects on U.S. citizens, assets, and investments located abroad, supply chains, U.S. military assets and interests abroad, and tourism, and spillover pathways such as economic and political destabilization and global migration that can lead to adverse impacts on U.S. national security, public health, and humanitarian concerns. In addition, assessing the benefits of U.S. GHG mitigation activities requires consideration of how those actions may affect mitigation activities by other countries, as those international mitigation actions will provide a benefit to U.S. citizens and residents by mitigating climate impacts that affect U.S. citizens and residents. A wide range of scientific and economic experts have emphasized the issue of reciprocity as support for considering global damages of GHG emissions. If the United States does not consider impacts on other countries, it is difficult to convince other countries to consider the impacts of their emissions on the United States. The only way to achieve an efficient allocation of resources for emissions reduction on a global basis—and so benefit the U.S. and its citizens—is for all countries to base their policies on global estimates of damages. As a member of the IWG involved in the development of the February 2021 SC–GHG TSD, DOE agrees with this assessment and, therefore, in this proposed rule DOE centers attention on a global measure of SC–GHG. This approach is the same as that taken in DOE regulatory analyses from 2012 through 2016. A robust estimate of climate damages that accrue only to U.S. citizens and residents does not currently exist in the literature. As explained in the February 2021 TSD, existing estimates are both incomplete and an underestimate of total damages that accrue to the citizens and residents of the U.S. because they do not fully capture the regional interactions and spillovers discussed above, nor do they include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature. As noted in the February 2021 SC–GHG TSD, the IWG will continue to review developments in the literature, including more robust methodologies for estimating a U.S.-specific SC–GHG value, and explore ways to better inform the public of the full range of carbon impacts. As a member of the IWG, DOE

[151] Marten, A.L., E.A. Kopits, C.W. Griffiths, S.C. Newbold, and A. Wolverton. Incremental CH_4 and N_2O mitigation benefits consistent with the US Government's SC–CO_2 estimates. *Climate Policy.* 2015. 15(2): pp. 272–298.

[152] 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.

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,[153] 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 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.[154] 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,

[153] Interagency Working Group on Social Cost of Carbon. *Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866.* 2010. United States Government. Available at *www.epa.gov/sites/default/files/2016-12/documents/scc_tsd_2010.pdf* (last accessed May 1, 2023); 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. Available at *www.federalregister.gov/documents/2013/11/26/2013-28242/technical-support-document-technical-update-of-the-social-cost-of-carbon-for-regulatory-impact* (last accessed May 1, 2023); Interagency Working Group on Social Cost of Greenhouse Gases, United States Government. Technical Support Document: Technical Update on the Social Cost of Carbon for Regulatory Impact Analysis—Under Executive Order 12866. August 2016. Available at *www.epa.gov/sites/default/files/2016-12/documents/sc_co2_tsd_august_2016.pdf* (last accessed May 1, 2023); Interagency Working Group on Social Cost of Greenhouse Gases, United States Government. Addendum to Technical Support Document on Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866: Application of the Methodology to Estimate the Social Cost of Methane and the Social Cost of Nitrous Oxide. August 2016. Available at *www.epa.gov/sites/default/files/2016-12/documents/addendum_to_sc-ghg_tsd_august_2016.pdf* (last accessed May 1, 2023).

[154] Interagency Working Group on Social Cost of Greenhouse Gases (IWG). 2021. Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990. February. United States Government. Available at *www.whitehouse.gov/briefing-room/blog/2021/02/26/a-return-to-science-evidence-based-estimates-of-the-benefits-of-reducing-climate-pollution/* (last accessed May 1, 2023).

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–CO_2, SC–N_2O, and SC–CH_4 values used for this NOPR are discussed in the following sections, and the results of DOE's analyses estimating the benefits of the reductions in emissions of these GHGs are presented in section V.A.6 of this document.

a. Social Cost of Carbon

The SC–CO_2 values used for this NOPR were based on the values presented for the IWG's February 2021 TSD. Table IV.30 shows the updated sets of SC–CO_2 estimates from the IWG's TSD in 5-year increments from 2020 to 2050. The full set of annual values that DOE used is presented in appendix 14A of the NOPR TSD. For purposes of capturing the uncertainties involved in regulatory impact analysis, DOE has determined it is appropriate include all four sets of SC–CO_2 values, as recommended by the IWG.[155]

TABLE IV—ANNUAL SC–CO_2 VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050

[2020$ per Metric Ton CO_2]

Year	Discount rate and statistic			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2020	14	51	76	152
2025	17	56	83	169
2030	19	62	89	187
2035	22	67	96	206
2040	25	73	103	225
2045	28	79	110	242
2050	32	85	116	260

For 2051 to 2070, DOE used SC–CO_2 estimates published by EPA, adjusted to 2020$.[156] 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 consumer water heaters 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.

DOE multiplied the CO_2 emissions reduction estimated for each year by the SC–CO_2 value for that year in each of the four cases. DOE adjusted the values to 2022$ using the implicit price deflator for gross domestic product (''GDP'') from the Bureau of Economic Analysis. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SC–CO_2 values in each case.

b. Social Cost of Methane and Nitrous Oxide

The SC–CH_4 and SC–N_2O values used for this NOPR were based on the values developed for the February 2021 TSD. Table IV.31 shows the updated sets of SC–CH_4 and SC–N_2O estimates from the latest interagency update in 5-year increments from 2020 to 2050. The full set of annual values used is presented in appendix 14A of the NOPR TSD. To capture the uncertainties involved in regulatory impact analysis, DOE has determined it is appropriate to include all four sets of SC–CH_4 and SC–N_2O values, as recommended by the IWG. DOE derived values after 2050 using the approach described above for the SC–CO_2.

TABLE IV—ANNUAL SC–CH_4 AND SC–N_2O VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050

[2020$ per Metric Ton]

Year	SC–CH_4				SC–N_2O			
	Discount rate and statistic				Discount rate and statistic			
	5%	3%	2.5%	3%	5%	3	2.5%	3%
	Average	Average	Average	95th percentile	Average	Average	Average	95th percentile
2020	670	1500	2000	3900	5800	18000	27000	48000
2025	800	1700	2200	4500	6800	21000	30000	54000
2030	940	2000	2500	5200	7800	23000	33000	60000
2035	1100	2200	2800	6000	9000	25000	36000	67000
2040	1300	2500	3100	6700	10000	28000	39000	74000
2045	1500	2800	3500	7500	12000	30000	42000	81000

[155] 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.

[156] See EPA, *Revised 2023 and Later Model Year Light-Duty Vehicle GHG Emissions Standards: Regulatory Impact Analysis,* Washington, DC, December 2021. Available at: *nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1013ORN.pdf* (last accessed May 1, 2023).

TABLE IV—ANNUAL SC–CH_4 AND SC–N_2O VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050—Continued
[2020$ per Metric Ton]

Year	SC–CH_4				SC–N_2O			
	Discount rate and statistic				Discount rate and statistic			
	5%	3%	2.5%	3%	5%	3	2.5%	3%
	Average	Average	Average	95th percentile	Average	Average	Average	95th percentile
2050	1700	3100	3800	8200	13000	33000	45000	88000

DOE multiplied the CH_4 and N_2O emissions reduction estimated for each year by the SC–CH_4 and SC–N_2O estimates for that year in each of the cases. DOE adjusted the values to 2021$ using the implicit price deflator for gross domestic product (''GDP'') from the Bureau of Economic Analysis. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the cases using the specific discount rate that had been used to obtain the SC–CH_4 and SC–N_2O estimates in each case.

2. Monetization of Other Emissions Impacts

For the NOPR, DOE estimated the monetized value of NO_X and SO_2 emissions reductions from electricity generation using the latest benefit per ton estimates for that sector from the EPA's Benefits Mapping and Analysis Program.[157] DOE used EPA's values for $PM_{2.5}$-related benefits associated with NO_X and SO_2 and for ozone-related benefits associated with NO_X for 2025, 2030, and 2040, calculated with discount rates of 3 percent and 7 percent. DOE used linear interpolation to define values for the years not given in the 2025 to 2040 period; for years beyond 2040 the values are held constant. DOE combined the EPA benefit per ton estimates with regional information on electricity consumption and emissions to define weighted-average national values for NO_X and SO_2 as a function of sector (see appendix 14B of the NOPR TSD).

DOE also estimated the monetized value of NO_X and SO_2 emissions reductions from site use of natural gas, LPG and fuel oil in consumer water heaters using benefit-per-ton estimates from the EPA's Benefits Mapping and Analysis Program. Although none of the sectors covered by EPA refers specifically to residential and commercial buildings, the sector called ''area sources'' would be a reasonable proxy for residential and commercial buildings.[158] The EPA document provides high and low estimates for 2025 and 2030 at 3- and 7-percent discount rates.[159] DOE used the same linear interpolation and extrapolation as it did with the values for electricity generation.

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. Trial Standard Levels

In general, DOE typically evaluates potential amended standards for products and equipment by grouping individual efficiency levels for each class into TSLs. Use of TSLs allows DOE to identify and consider manufacturer cost interactions between the product classes, to the extent that there are such interactions, and market cross elasticity from consumer purchasing decisions that may change when different standard levels are set. For consumer water heaters, it is particularly important to look at the aggregated impacts as characterized by TSLs due to the changes in consumer purchasing decisions as a result of the increased product and installation costs that impact the shipments model. The changes to the shipments model will drive differential national impacts both on the consumer and manufacturer side that are more realistic of how the market may change in response to amended DOE standards.

In the analysis conducted for this NOPR, DOE analyzed the benefits and burdens of six TSLs for consumer water heaters. DOE developed TSLs that combine efficiency levels for each analyzed product class. DOE presents the results for the TSLs in this document, while the results for all efficiency levels that DOE analyzed are in the NOPR TSD.

Table IV.32 presents the TSLs and the corresponding efficiency levels that DOE has identified for potential amended energy conservation standards for consumer water heaters. TSL 6 represents the maximum technologically feasible (''max-tech'') energy efficiency for all product classes. TSL 5 represents the highest efficiency level for each product class with a positive NPV at 7 percent discount rate for all product classes. For gas-fired gas storage water heater, the NPV at 7 percent discount rate is negative from EL 3 to EL 5. Therefore, TSL 5 is constructed by reducing the efficiency level for gas-fired storage water heaters (*i.e.,* EL 2) and with the same efficiency level for all other product class compared to the max-tech. TSL 4 represents the highest efficiency level for each product class with the maximum NPV at 7 percent discount rate for all product classes. Therefore, TSL 4 is constructed by reducing the efficiency level for electric storage water heaters (*i.e.,* EL 2) and gas-fired instantaneous water heaters (*i.e.,* EL 3). TSL 3 represents an interim energy efficiency level between the joint stakeholder recommendation (*i.e.,* TSL 2) and TSL 4. TSL 2 represents the joint stakeholder recommendation. Finally, because EL 1 is the lowest analyzed efficiency level above baseline, TSL 1 is constructed with EL 1 for all product classes, except for electric storage water heaters (20 gal $\leq V_{eff} \leq$55 gal) which is set equal to the current standard level.

[157] *Estimating the Benefit per Ton of Reducing $PM_{2.5}$ Precursors from 21 Sectors.* Available at: *www.epa.gov/benmap/estimating-benefit-ton-reducing-pm25-precursors-21-sectors* (last accessed May 1, 2023).

[158] ''Area sources'' represents all emission sources for which states do not have exact (point) locations in their emissions inventories. Because exact locations would tend to be associated with larger sources, ''area sources'' would be fairly representative of small, dispersed sources like homes and businesses.

[159] ''Area sources'' are a category in the 2018 document from EPA, but are not used in the 2021 document cited above. See: *www.epa.gov/sites/default/files/2018-02/documents/sourceapportionmentbpttsd_2018.pdf.*

TABLE IV—TRIAL STANDARD LEVELS FOR CONSUMER WATER HEATERS

Product class	Trial standard level					
	1	2	3	4	5	6
	Efficiency level					
Gas-fired Storage Water Heaters (20 gal ≤ V_{eff} ≤55 gal)	1	2	2	2	2	5
Oil-fired Storage Water Heaters (V_{eff} ≤50 gal)	1	2	2	2	2	2
Small electric storage water heaters (20 gal ≤ V_{eff} ≤35 gal and FHR <51 gal)	0	0	1	1	1	1
Electric Storage Water Heaters (20 gal ≤ V_{eff} ≤55 gal, excluding small electric storage water heaters)	0	1	1	2	3	3
Electric Storage Water Heaters (55 gal < V_{eff} ≤120 gal)	1	1	1	2	3	3
Gas-fired Instantaneous Water Heaters (V_{eff} <2 gal, Rated Input >50,000 Btu/h)	1	2	2	3	4	4

DOE constructed the TSLs for this NOPR to include ELs representative of ELs with similar characteristics (*i.e.,* using similar technologies and/or efficiencies, and having roughly comparable equipment availability). The use of representative ELs provided for greater distinction between the TSLs. While representative ELs were included in the TSLs, DOE considered all efficiency levels as part of its analysis.[160]

Rheem recommended that DOE separately analyze the ELs by draw pattern and refrain from proposing a single EL across all draw patterns unless that EL is economically justified for each draw pattern individually. (Rheem, No. 45 at p. 4) Atmos also recommended that the DOE consider EL life-cycle cost evaluations independently as TSLs for competing consumer water heating options, rather than grouping ELs and, thus, combining costs and benefits. Atmos stated that the current approach of grouping ELs appears to average away the distinctions in EL life-cycle cost performance and that the grouping of diversely performing ELs is likely to result in distortions in the representation of TSLs. (Atmos, No. 38 at p. 5)

DOE typically evaluates potential amended standards for products and equipment at the product class level and by grouping select individual efficiency levels for each class into TSLs. Use of TSLs allows DOE to identify and consider industry-level manufacturer cost interactions between the product classes, to the extent that there are such interactions, and national-level market cross-elasticity from consumer purchasing decisions that may change when different standard levels are set. For consumer water heaters, it is particularly important to look at the aggregated impacts as characterized by TSLs due to the changes in consumer purchasing decisions as a result of the increased product and installation costs that impact the shipments model. The changes to the shipments model will drive differential national impacts both on the consumer and manufacturer side that are more realistic of how the market may change in response to amended DOE standards. DOE notes that its engineering analysis results in TSLs that are prescribed across multiple efficiency levels and draw patterns; proposing a separate efficiency level for each draw pattern would not significantly influence the resulting TSL. DOE proposes efficiency levels across draw patterns to ensure calculated energy savings for consumers if manufacturers change the draw patterns of their products, which was previously observed as a result of standards prescribed for gas-fired and electric storage water heaters larger than 55 gallons. In other words, although each draw pattern constitutes a separate product class in the regulations, in this analysis DOE did not make that distinction (for example, gas-fired storage water heaters 20–55 gallons is treated as a single group rather than four product classes for the four draw patterns). Although DOE presents the results in terms of TSLs, DOE analyzes and evaluates all possible ELs for each product class in its analysis. Additionally, DOE notes that although a single EL may be proposed for multiple draw patterns, the resultant energy conservation standards equations are different for each draw pattern.

N. 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 *AEO2023.* 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 *AEO2023* Reference case and various side cases. Details of the methodology are provided in the appendices to chapters 13 and 15 of the NOPR TSD.

The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of electricity savings calculated in the NIA to provide estimates of selected utility impacts of potential new or amended energy conservation standards.

NEEA, ACEEE, and NWPCC stated that the connectivity components of the electric water heaters including HPWHs, may have less impact on site electricity use but are critical to the ability to compare products for their grid value, including primary and full fuel cycle energy use. NEEA, ACEEE, and NWPCC encourage DOE to add a definition of connectivity to the performance standard and calculate the value that a

[160] Efficiency levels that were analyzed for this NOPR are discussed in section IV.C.4 of this document. Results by efficiency level are presented in TSD chapters 8, 10, and 12.

connected water heater offers to the electric grid. (NEEA, ACEEE, and NWPCC, No. 47 at p. 10) DOE agrees that connectivity features on electric water heaters can have an impact on the electric grid. The current efficiency levels DOE is proposing do not include any design requirement for electric water heaters to have connectivity features. DOE therefore did not calculate the value that a connected water heater offers to the electric grid for this rulemaking.

O. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a proposed standard. Employment impacts from new or amended energy conservation standards include both direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the products subject to standards, their suppliers, and related service firms. The MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more-efficient appliances. Indirect employment impacts from standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, caused by (1) reduced spending by consumers on energy, (2) reduced spending on new energy supply by the utility industry, (3) increased consumer spending on the products to which the new standards apply and other goods and services, and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's Bureau of Labor Statistics (''BLS''). BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.[161] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.,* the utility sector) to more labor-intensive sectors (*e.g.,* the retail and service sectors). Thus, the BLS data suggest that net national employment may increase due to shifts in economic activity resulting from energy conservation standards.

DOE estimated indirect national employment impacts for the standard levels considered in this NOPR using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 4 (''ImSET'').[162] ImSET is a special-purpose version of the ''U.S. Benchmark National Input-Output'' (''I–O'') model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model having structural coefficients that characterize economic flows among 187 sectors most relevant to industrial, commercial, and residential building energy use.

DOE notes that ImSET is not a general equilibrium forecasting model, and that the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may over-estimate actual job impacts over the long run for this rule. Therefore, DOE used ImSET only to generate results for near-term timeframes (2030–2035), where these uncertainties are reduced. For more details on the employment impact analysis, see chapter 16 of the NOPR TSD.

V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for consumer water heaters. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for consumer water heaters, and the standards levels that DOE is proposing to adopt in this NOPR. Additional details regarding DOE's analyses are contained in the NOPR TSD supporting this document.

A. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts of consumer water heaters on consumers by looking at the effects that potential amended standards at each TSL would have on the LCC and PBP. DOE also examined the impacts of potential standards on selected consumer subgroups. These analyses are discussed in the following sections.

a. Life-Cycle Cost and Payback Period

In general, higher-efficiency products affect consumers in two ways: (1) purchase price increases and (2) annual operating costs decrease. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.,* product price plus installation costs), and operating costs (*i.e.,* annual energy use, energy prices, energy price trends, repair costs, and maintenance costs). The LCC calculation also uses product lifetime and a discount rate. Chapter 8 of the NOPR TSD provides detailed information on the LCC and PBP analyses.

Table V.1 through Table V.12 show the LCC and PBP results for the TSLs considered for each product class. In the first of each pair of tables, the simple payback is measured relative to the baseline product. In the second table, impacts are measured relative to the efficiency distribution in the no-new-standards case in the compliance year (see section IV.F.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.

[161] 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/resources/methodologies/RIMSII-user-guide* (last accessed April 1, 2023).

[162] 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. Available at *www.pnnl.gov/main/publications/external/technical_reports/PNNL-24563.pdf* (last accessed May 1, 2023).

TABLE V.1—AVERAGE LCC AND PBP RESULTS FOR GAS-FIRED STORAGE WATER HEATERS

[20 gal ≤ V_{eff} ≤55 gal]

TSL	Efficiency level	Average costs (2022$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
0	0	1,524	265	3.090	4,614	NA	14.5
1	1	1,566	259	3,030	4,596	8.1	14.5
2,3,4,5	2	1,668	246	2,888	4,556	7.9	14.5
6	5	2,325	216	2,583	4,908	16.4	14.5

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.2—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR GAS-FIRED STORAGE WATER HEATERS

[20 gal ≤ V_{eff} ≤55 gal]

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings * (2022$)	Percent of consumers that experience net cost
1	1	17	22
2,3,4,5	2	52	36
6	5	(247)	70

* The savings represent the average LCC for affected consumers.

TABLE V.3—AVERAGE LCC AND PBP RESULTS FOR OIL-FIRED STORAGE WATER HEATERS

[V_{eff} ≤50 gal]

TSL	Efficiency level	Average costs (2022$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
0	0	4,120	844	9,069	13,189	NA	15.5
1	1	4,216	822	8,828	13,044	4.4	15.5
2,3,4,5,6	2	4,394	801	8,600	12,994	6.4	15.5

Note: The results for each TSL are calculated assuming that all consumers use products 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 OIL-FIRED STORAGE WATER HEATERS

[V_{eff} ≤50 gal]

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings * (2022$)	Percent of consumers that experience net cost
1	1	145	9
2,3,4,5,6	2	165	25

* The savings represent the average LCC for affected consumers.

TABLE V.5—AVERAGE LCC AND PBP RESULTS FOR SMALL ELECTRIC STORAGE WATER HEATERS

[20 gal ≤ V_{eff} ≤35 gal and FHR <51 gal]

TSL	Efficiency level	Average costs (2022$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1,2	0	841	386	4,481	5,322	NA	15.1

TABLE V.5—AVERAGE LCC AND PBP RESULTS FOR SMALL ELECTRIC STORAGE WATER HEATERS—Continued

[20 gal ≤ V_{eff} ≤35 gal and FHR <51 gal]

TSL	Efficiency level	Average costs (2022$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
3,4,5,6	1	2,385	210	2,520	4,905	8.8	15.1

Note: The results for each TSL are calculated assuming that all consumers use products 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 SMALL ELECTRIC STORAGE WATER HEATERS

[20 gal ≤ V_{eff} ≤35 gal and FHR <51 gal]

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings * (2022$)	Percent of consumers that experience net cost
1,2	0	NA	0
3,4,5,6	1	418	56

* The savings represent the average LCC for affected consumers.

TABLE V.7—AVERAGE LCC AND PBP RESULTS FOR ELECTRIC STORAGE WATER HEATERS

[20 gal ≤ V_{eff} ≤55 gal, excluding small electric storage water heaters]

TSL	Efficiency level	Average costs (2022$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1	0	947	463	5,301	6,248	NA	15.1
2,3	1	1,670	225	2,669	4,339	3.0	15.1
4	2	1,713	182	2,195	3,908	2.7	15.1
5,6	3	1,831	170	2,060	3,892	3.0	15.1

Note: The results for each TSL are calculated assuming that all consumers use products 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 ELECTRIC STORAGE WATER HEATERS

[20 gal ≤ V_{eff} ≤55 gal, excluding small electric storage water heaters]

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings * (2022$)	Percent of consumers that experience net cost
1,2	0	NA	0
2,3	1	1,868	25
4	2	2,283	23
5,6	3	2,101	30

* The savings represent the average LCC for affected consumers.

TABLE V.9—AVERAGE LCC AND PBP RESULTS FOR ELECTRIC STORAGE WATER HEATERS

[55 gal < V_{eff} ≤120 gal]

TSL	Efficiency level	Average costs (2022$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
0	0	2,013	285	3,347	5,361	NA	15.1
1,2,3	1	2,024	239	2,835	4,858	0.2	15.1
4	2	2,052	190	2,283	4,335	0.4	15.1

TABLE V.9—AVERAGE LCC AND PBP RESULTS FOR ELECTRIC STORAGE WATER HEATERS—Continued

[55 gal < V_{eff} ≤120 gal]

TSL	Efficiency level	Average costs (2022$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
5,6	3	2,178	172	2,082	4,260	1.5	15.1

Note: The results for each TSL are calculated assuming that all consumers use products 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 ELECTRIC STORAGE WATER HEATERS

[55 gal < V_{eff} ≤120 gal]

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings * (2022$)	Percent of consumers that experience net cost
1,2,3	1	501	0.2
4	2	599	1
5,6	3	170	42

* The savings represent the average LCC for affected consumers.

TABLE V.11—AVERAGE LCC AND PBP RESULTS FOR GAS-FIRED INSTANTANEOUS WATER HEATERS

[V_{eff} <2 gal, rated input >50,000 Btu/h]

TSL	Efficiency level	Average costs (2022$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
0	0	2,320	262	3,846	6,166	NA	20.0
1	1	2,424	248	3,665	6,089	7.3	20.0
2,3	2	2,447	240	3,556	6,004	5.9	20.0
4	3	2,465	237	3,509	5,975	5.9	20.0
5,6	4	2,493	234	3,468	5,962	6.3	20.0

Note: The results for each TSL are calculated assuming that all consumers use products 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 GAS-FIRED INSTANTANEOUS WATER HEATERS

[V_{eff} <2 gal, rated input >50,000 Btu/h]

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings * (2022$)	Percent of consumers that experience net cost
1	1	66	13
2,3	2	135	13
4	3	89	29
5,6	4	95	36

* The savings represent the average LCC for affected consumers.

b. Consumer Subgroup Analysis

In the consumer subgroup analysis, DOE estimated the impact of the considered TSLs on low-income households, senior-only households, and small businesses. Table V.13 through Table V.18 compare the average LCC savings and PBP at each efficiency level for the consumer subgroups with similar metrics for the entire consumer sample for each consumer water heater product class analyzed. In most cases, the average LCC savings and PBP for low-income households and senior-only households at the considered efficiency levels are not substantially different from the average for all households. Chapter 11 of the NOPR TSD presents the complete LCC and PBP results for the subgroups.

TABLE V.13—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; GAS-FIRED STORAGE WATER HEATERS

[20 gal ≤ V_{eff} ≤55 gal]

	Low-income households	Senior-only households	Small businesses	All households
Average LCC savings (2022$)				
TSL 1	44	28	(18)	17
2,3,4,5	137	89	(49)	52
6	192	(257)	(527)	(247)
Simple Payback Period (years)				
TSL 1	3.2	6.9	11	8.1
2,3,4,5	3.1	6.6	9.7	7.9
6	6.9	19	17	16
Consumers with Net Cost (%)				
TSL 1	8	19	44	22
2,3,4,5	13	29	66	36
6	31	64	82	70
Consumers with Net Benefit (%)				
TSL 1	40	33	11	34
2,3,4,5	56	42	12	42
6	58	30	18	29

TABLE V.14—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; OIL-FIRED STORAGE WATER HEATERS

[V_{eff} ≤50 gal]

	Low-income households	Senior-only households	Small businesses	All households
Average LCC Savings (2022$)				
TSL 1	186	158	21	145
2,3,4,5,6	307	205	(46)	165
Simple Payback Period (years)				
TSL 1	1.2	3.9	5.4	4.4
2,3,4,5,6	1.9	5.6	7.8	6.4
Consumers with Net Cost (%)				
TSL 1	2	5	22	9
2,3,4,5,6	5	16	61	25
Consumers with Net Benefit (%)				
TSL 1	60	60	45	58
2,3,4,5,6	71	66	23	58

TABLE V.15—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; SMALL ELECTRIC STORAGE WATER HEATERS

[20 gal ≤ V_{eff} ≤35 gal and FHR <51 gal]

	Low-income households	Senior-only households	Small businesses	All households
Average LCC Savings (2022$)				
TSL 1,2*	NA	NA	NA	NA
2,3,4,5,6	1,481	69	(1,196)	418
Simple Payback Period (years)				
TSL 1,2*	NA	NA	NA	NA
2,3,4,5,6	3.5	10	23	8.8
Consumers with Net Cost (%)				
TSL 1,2*	NA	NA	NA	NA
2,3,4,5,6	20	47	89	56
Consumers with Net Benefit (%)				
TSL 1,2*	NA	NA	NA	NA
2,3,4,5,6	71	47	10	43

*TSLs 1 and 2 represent no new amended standards for small electric storage water heaters.

TABLE V.16—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; ELECTRIC STORAGE WATER HEATERS

[20 gal ≤ V_{eff} ≤55 gal, except small electric storage water heaters]

	Low-income households	Senior-only households	Small businesses	All households
Average LCC Savings (2022$)				
TSL 1	NA	NA	NA	NA
2,3	2,475	1,018	556	1,868
4	2,943	1,270	707	2,283
5,6	2,773	1,149	566	2,101
Simple Payback Period (years)				
TSL 1	NA	NA	NA	NA
2,3	1.3	3.9	3.4	3.0
4	1.2	3.5	3.2	2.7
5,6	1.3	3.9	3.6	3.0
Consumers with Net Cost (%)				
TSL 1	0.0	0.0	0.0	0.0
2,3	9.9	24	62	25
4	9.0	23	61	23
5,6	12	29	70	30
Consumers with Net Benefit (%)				
TSL 1	0	0	0	0
2,3	69	54	25	62
4	71	56	26	64
5,6	76	57	26	65

TABLE V.17—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; ELECTRIC STORAGE WATER HEATERS

[55 gal < V_{eff} ≤120 gal]

	Low-income households	Senior-only households	Small businesses	All households
Average LCC Savings (2022$)				
TSL 1,2,3	474	479	336	501
4	674	488	291	599
5,6	270	89	25	170
Simple Payback Period (years)				
TSL 1,2,3	0.1	0.3	0.3	0.2
4	0.2	0.6	0.5	0.4
5,6	0.7	2.2	1.6	1.5
Consumers with Net Cost (%)				
TSL 1,2,3	0.0	0.1	1.6	0.2
4	0.1	1.1	7.7	1.2
5,6	19	47	70	42
Consumers with Net Benefit (%)				
TSL 1,2,3	4.3	2.4	1.7	2.8
4	15	12	7.0	13
5,6	65	36	20	46

TABLE V.18—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; GAS-FIRED INSTANTANEOUS WATER HEATERS

[V_{eff} <2 gal, rated input >50,000 Btu/h]

	Low-income households	Senior-only households	Small businesses	All households
Average LCC Savings (2022$)				
TSL 1	109	4	41	66
2,3	158	58	95	135
4	108	41	68	89
5,6	125	37	65	95
Simple Payback Period (years)				
TSL 1	4.9	10.9	5.0	7.3
2,3	4.1	8.7	4.0	5.9
4	4.1	8.6	3.8	5.9
5,6	4.3	9.2	4.1	6.3
Consumers with Net Cost (%)				
TSL 1	7.7	13	18	13
2,3	7.2	14	22	13
4	17	32	45	29

TABLE V.18—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; GAS-FIRED INSTANTANEOUS WATER HEATERS—Continued

[V_{eff} <2 gal, rated input >50,000 Btu/h]

	Low-income households	Senior-only households	Small businesses	All households
5,6	19	42	53	36
Consumers with Net Benefit (%)				
TSL 1	22	15	13	17
2,3	32	22	18	24
4	62	49	39	55
5,6	67	46	39	55

c. Rebuttable Presumption Payback

As discussed in section III.E.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 consumer water heaters. 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.19 presents the rebuttable-presumption payback periods for the considered TSLs for consumer water heaters. While DOE examined the rebuttable-presumption criterion, it considered whether the standard levels considered for the NOPR are economically justified through a more detailed analysis of the economic impacts of those levels, pursuant to 42 U.S.C. 6295(o)(2)(B)(i), that considers the full range of impacts to the consumer, manufacturer, Nation, and environment. The results of that analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level, thereby supporting or rebutting the results of any preliminary determination of economic justification.

TABLE V.19—REBUTTABLE-PRESUMPTION PAYBACK PERIODS

TSL	1	2	3	4	5	6
GSWH	6.6	6.4	6.4	6.4	6.4	10.8
OSWH	4.2	6.1	6.1	6.1	6.1	6.1
ESWH (20 gal ≤ V_{eff} ≤35 gal, FHR < 51 gal)	NA	NA	8.4	8.4	8.4	8.4
ESWH (20 gal ≤ V_{eff} ≤55 gal, excluding small ESWH)	NA	2.3	3.3	2.9	2.9	3.2
ESWH (55 gal < V_{eff} ≤120 gal)	0.3	0.3	0.3	0.5	1.5	1.5
GIWH	11.7	8.5	8.5	8.5	8.3	8.3

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of amended energy conservation standards on manufacturers of consumer water heaters. The following section describes the expected impacts on manufacturers at each considered TSL. Chapter 12 of the NOPR TSD explains the analysis in further detail.

a. Industry Cash Flow Analysis Results

In this section, DOE provides GRIM results from the analysis, which examines changes in the industry that would result from a standard. The following tables summarize the estimated financial impacts (represented by changes in INPV) of potential amended energy conservation standards on manufacturers of consumer water heaters, as well as the conversion costs that DOE estimates manufacturers of consumer water heaters would incur at each TSL.

As discussed in section IV.J.2.d of this document, DOE modeled two scenarios to evaluate a range of cash flow impacts on the consumer water heater industry: (1) the preservation of gross margin percentage scenario and (2) the preservation of operating profit. Under the preservation of gross margin percentage scenario, DOE applied a single uniform ''gross margin percentage'' across all efficiency levels. As MPCs increase with efficiency, this scenario implies that the absolute dollar markup will increase. DOE assumed a manufacturer ''gross margin percentage'' of 31% for gas-fired storage water heaters, 30% for oil-fired storage water heaters, 28% for all electric storage water heaters, and 45% for gas-fired instantaneous water heaters. This manufacturer markup is the same as the one DOE assumed in the engineering analysis and the no-new-standards case of the GRIM. Because this scenario assumes that a manufacturer's absolute dollar markup would increase as MPCs increase in the standards cases, it represents the upper-bound to industry profitability under potential new energy conservation standards.

The preservation of operating profit scenario reflects manufacturers' concerns about their inability to maintain margins as MPCs increase to reach more-stringent efficiency levels. In this scenario, while manufacturers make the necessary investments required to convert their facilities to produce compliant products, operating profit does not change in absolute dollars and decreases as a percentage of revenue.

Each of the modeled manufacturer markup scenarios results in a unique set of cash-flows and corresponding industry values at each TSL. In the following discussion, the INPV results refer to the difference in industry value between the no-new-standards case and each standards case resulting from the sum of discounted cash-flows from 2023 through 2059. To provide perspective

on the short-run cash-flow impact, DOE includes in the discussion of results a comparison of free cash flow between the no-new-standards case and the standards case at each TSL in the year before new standards are required.

TABLE V.20—MANUFACTURER IMPACT ANALYSIS FOR CONSUMER WATER HEATERS UNDER THE PRESERVATION OF GROSS MARGIN SCENARIO

	Units	No-new-standards case	Trial standard level *					
			1	2	3	4	5	6
INPV	*2022$ millions*	2,554.7	2,602.7	2,720.2	2,596.0	2,590.1	2,619.4	2,706.9
Change in INPV	*2022$ millions*	.....	47.9	165.5	41.2	35.3	64.7	152.2
	%	.....	1.9	6.5	1.6	1.4	2.5	6.0
Product Conversion Costs.	*2022$ millions*	.....	4.2	13.4	15.4	16.9	17.9	28.4
Capital Conversion Costs.	*2022$ millions*	.....	4.0	214.7	307.9	359.8	406.2	623.1
Total Investment Required **.	*2022$ millions*	.....	8.2	228.1	323.3	376.7	424.1	651.5

* Numbers in parentheses indicate a negative number.
** Numbers may not sum exactly due to rounding.

TABLE V.21—MANUFACTURER IMPACT ANALYSIS FOR CONSUMER WATER HEATERS UNDER THE PRESERVATION OF OPERATING PROFIT SCENARIO

	Units	No-new-standards case	Trial standard level *					
			1	2	3	4	5	6
INPV	*2022$ millions*	2,554.7	2,532.9	2,347.4	2,168.6	2,115.9	2,044.0	1,804.2
Change in INPV	*2022$ millions*	.....	(21.8)	(207.3)	(386.1)	(438.8)	(510.7)	(750.5)
	%	.....	(0.9)	(8.1)	(15.1)	(17.2)	(20.0)	(29.4)
Product Conversion Costs.	*2022$ millions*	.....	4.2	13.4	15.4	16.9	17.9	28.4
Capital Conversion Costs.	*2022$ millions*	.....	4.0	214.7	307.9	359.8	406.2	623.1
Total Investment Required**.	*2022$ millions*	.....	8.2	228.1	323.3	376.7	424.1	651.5

* Numbers in parentheses indicate a negative number.
** Numbers may not sum exactly due to rounding.

At TSL 1, DOE estimates that impacts on INPV will range from −$21.8 million to $47.9 million, or a change in INPV of −0.9 to 1.9 percent. At TSL 1, industry free cash-flow is $210.1 million, which is a decrease of $3.2 million compared to the no-new-standards case value of $213.3 million in 2029, the year leading up to the proposed standards. Industry conversion costs total $8.2 million.

TSL 1 would set the energy conservation standard for gas-fired storage water heaters at EL 1, oil-fired storage water heaters at EL 1, small electric storage water heaters at baseline, electric storage water heaters with an effective storage volume at least 20 gallons and less or equal to 55 gallons (excluding small electric storage water heaters) at baseline, electric storage water heaters with effective volumes above 55 gallons at EL 1, and gas-fired instantaneous water heaters at EL 1. At TSL 1, DOE estimates that manufacturers will incur approximately $4.2 million in product conversion costs, as some gas-fired storage water heaters, electric storage water heaters, and gas-fired instantaneous water heaters will need to be redesigned to comply with the standard. DOE also estimates that manufacturers will incur approximately $4.0 million in capital conversion costs at TSL 1 to accommodate the need for increased capacity for gas-fired & electric storage water heaters.

At TSL 1, the shipment-weighted average MPC for all consumer water heaters increases by 3.3 percent relative to the no-new-standards case shipment-weighted average MPC for all water heaters in 2030. In the preservation of gross margin markup scenario, manufacturers are able to fully pass on this slight cost increase to consumers. The slight increase in shipment-weighted average MPC for consumer water heaters outweighs the $8.2 million in conversion costs, causing a slightly positive change in INPV at TSL 2 under the preservation of gross margin markup scenario.

Under the preservation of operating profit markup scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the 3.3 percent shipment-weighted average MPC increase results in a reduction in the manufacturer markup after the analyzed compliance year. This reduction in the manufacturer markup and the $8.2 million in conversion costs incurred by manufacturers cause a slightly negative change in INPV at TSL 1 under the preservation of operating profit markup scenario.

At TSL 2, DOE estimates that impacts on INPV will range from −$207.3 million to $165.5 million, or a change in INPV of −8.1 to 6.5 percent. At TSL 2, industry free cash-flow is $112.2 million, which is a decrease of $101.1 million compared to the no-new-standards case value of $213.3 million in 2029, the year leading up to the

proposed standards. Industry conversion costs total $228.1 million.

TSL 2 would set the energy conservation standard for gas-fired storage water heaters at EL 2, oil-fired storage water heaters at EL 2, small electric storage water heaters at baseline, electric storage water heaters with an effective storage volume at least 20 gallons and less than 55 gallons (excluding small electric storage water heaters) at EL 1, electric storage water heaters with effective volume above 55 gallons at EL 1, and gas-fired instantaneous water heaters at EL 2. At TSL 2, DOE estimates that manufacturers will incur approximately $13.4 million in product conversion costs, as some gas-fired storage water heaters, electric storage water heaters, and gas-fired instantaneous water heaters will need to be redesigned to comply with the standard. While small electric storage water heaters could remain reliant on electric resistance technology, most electric storage water heaters would need to transition to heat pump technology. Heat pump ESWHs currently comprises approximately 5% of the electric storage water heater market. TSL 2 would shift an estimated 63% of electric storage water heaters to heat pumps by 2030, driving large investments to expand production capacity of heat exchangers and to optimize production costs. As a result, DOE estimates that manufacturers will incur approximately $191.9 million in capital conversion costs for ESWHs (and $214.7 million in capital conversion costs for all product classes) at TSL 2 to accommodate the need for increased capacity.

At TSL 2, the shipment-weighted average MPC for all consumer water heaters increases by 27.7 percent relative to the no-new-standards case shipment-weighted average MPC for all water heaters in 2030. In the preservation of gross margin markup scenario, manufacturers are able to fully pass on this slight cost increase to consumers. The increase in shipment-weighted average MPC for consumer water heaters outweighs the $228.1 million in conversion costs, causing a slightly positive change in INPV at TSL 2 under the preservation of gross margin markup scenario.

Under the preservation of operating profit markup scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the 27.7 percent shipment-weighted average MPC increase results in a reduction in the manufacturer markup after the analyzed compliance year. This reduction in the manufacturer markup and the $228.1 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 2 under the preservation of operating profit markup scenario.

At TSL 3, DOE estimates that impacts on INPV will range from −$386.1 million to $41.2 million, or a change in INPV of −15.1 to 1.6 percent. At TSL 3, industry free cash-flow is $69.5 million, which is a decrease of $143.8 million compared to the no-new-standards case value of $192.8 million in 2029, the year leading up to the proposed standards. Industry conversion costs total $323.3 million.

TSL 3 would set the energy conservation standard for gas-fired storage water heaters at EL 2, oil-fired storage water heaters at EL 2, small electric storage water heaters at EL 1, electric storage water heaters with an effective storage volume at least 20 gallons and less than 55 gallons (excluding small electric storage water heaters) at EL 1, electric storage water heaters with effective volume above 55 gallons at EL 1, and gas-fired instantaneous water heaters at EL 2. At TSL 3, DOE estimates that manufacturers will incur approximately $15.4 million in product conversion costs, as some gas-fired storage water heaters, electric storage water heaters with effective volume between 20 and 55 gallons, and gas-fired instantaneous water heaters will need to be redesigned to comply with the standard. At TSL 3, 100% of electric storage water heaters would need to shift to heat pump technology by 2030, driving large investments in product redesign and expanding manufacturing capacity. This will necessitate small electric storage water heater manufacturers developing split-system heat pump designs. To reach this level, DOE estimates that industry will incur approximately $307.9 million in capital conversion costs at TSL 3 to accommodate the need for increased capacity.

At TSL 3, the shipment-weighted average MPC for all consumer water heaters increases by 40.5 percent relative to the no-new-standards case shipment-weighted average MPC for all water heaters in 2030. In the preservation of gross margin markup scenario, manufacturers are able to fully pass on this slight cost increase to consumers. The increase in shipment-weighted average MPC for consumer water heaters outweighs the $323.3 million in conversion costs, causing a slightly positive change in INPV at TSL 3 under the preservation of gross margin markup scenario.

Under the preservation of operating profit markup scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the 40.5 percent shipment-weighted average MPC increase results in a reduction in the manufacturer markup after the analyzed compliance year. This reduction in the manufacturer markup and the $323.3 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 3 under the preservation of operating profit markup scenario.

At TSL 4, DOE estimates that impacts on INPV will range from −$438.8 million to $35.3 million, or a change in INPV of −17.2 to 1.4 percent. At TSL 4, industry free cash-flow is $45.7 million, which is a decrease of $167.6 million compared to the no-new-standards case value of $213.3 million in 2029, the year leading up to the proposed standards. Industry conversion costs total $376.7 million.

TSL 4 would set the energy conservation standard for gas-fired storage water heaters at EL 2, oil-fired storage water heaters at EL 2, small electric storage water heaters at EL 1, electric storage water heaters with an effective storage volume at least 20 gallons and less than 55 gallons (excluding small electric storage water heaters) at EL 2, electric storage water heaters with effective volume above 55 gallons at EL 2, and gas-fired instantaneous water heaters at EL 3. At TSL 4, DOE estimates that manufacturers will incur approximately $16.9 million in product conversion costs, as some gas-fired storage water heaters, electric storage water heaters with effective volume between 20 and 55 gallons, electric storage water heaters with effective volume above 55 gallons, and gas-fired instantaneous water heaters will need to be redesigned to comply with the standard. TSL 4 would shift 100% of electric storage water heaters to heat pumps, driving large investments in product capacity of heat exchangers and to optimize production costs. This will necessitate small electric storage water heater manufacturers developing split system heat pump designs. DOE estimates that manufacturers could incur approximately $359.8 million in capital conversion costs at TSL 4 to accommodate the need for increased capacity.

At TSL 4, the shipment-weighted average MPC for all consumer water heaters increases by 43.5 percent relative to the no-new-standards case

shipment-weighted average MPC for all water heaters in 2030. In the preservation of gross margin markup scenario, manufacturers are able to fully pass on this slight cost increase to consumers. The increase in shipment-weighted average MPC for consumer water heaters outweighs the $376.7 million in conversion costs, causing a slightly positive change in INPV at TSL 4 under the preservation of gross margin markup scenario.

Under the preservation of operating profit markup scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the 43.5 percent shipment-weighted average MPC increase results in a reduction in the manufacturer markup after the analyzed compliance year. This reduction in the manufacturer markup and the $376.7 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 4 under the preservation of operating profit markup scenario.

At TSL 5, DOE estimates that impacts on INPV will range from −$510.7 million to $64.7 million, or a change in INPV of −20.0 to 2.5 percent. At TSL 5, industry free cash-flow is $24.5 million, which is a decrease of $188.8 million compared to the no-new-standards case value of $213.3 million in 2029, the year leading up to the proposed standards. Industry conversion costs total $424.1 million.

TSL 5 would set the energy conservation standard for gas-fired storage water heaters at EL 2, oil-fired storage water heaters at EL 2, small electric storage water heaters at EL 1, electric storage water heaters with an effective storage volume less than 55 gallons (excluding small electric storage water heaters) at EL 3, electric storage water heaters with effective volume above 55 gallons at EL 3, and gas-fired instantaneous water heaters at EL 4. At TSL 5, DOE estimates that manufacturers will incur approximately $17.9 million in product conversion costs, as some gas-fired storage water heaters, electric storage water heaters with effective volume of between 20 and 55 gallons, electric storage water heaters with effective volume above 55 gallons, and gas-fired instantaneous water heaters will need to be redesigned to comply with the standard. Heat pump technology currently comprises approximately 5% of the electric storage water heater market. TSL 5 would shift 100% of electric storage water heaters to heat pumps, driving large investments in product capacity of heat exchangers and to optimize production costs. This will necessitate small electric storage water heater manufacturers developing split system heat pumps. Additionally, requiring fully modulating burners for gas instantaneous water heaters and larger condensers for gas storage water heaters would require significant investments in capacity. As a result, DOE also estimates that manufacturers will incur approximately $406.2 million in capital conversion costs at TSL 5 to accommodate the need for increased capacity.

At TSL 5, the shipment-weighted average MPC for all consumer water heaters increases by 51.7 percent relative to the no-new-standards case shipment-weighted average MPC for all water heaters in 2030. In the preservation of gross margin markup scenario, manufacturers are able to fully pass on this cost increase to consumers. The increase in shipment-weighted average MPC for consumer water heaters outweighs the $424.1 million in conversion costs, causing a slightly positive change in INPV at TSL 5 under the preservation of gross margin markup scenario.

Under the preservation of operating profit markup scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the 51.7 percent shipment-weighted average MPC increase results in a reduction in the manufacturer markup after the analyzed compliance year. This reduction in the manufacturer markup and the $424.1 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 5 under the preservation of operating profit markup scenario.

At TSL 6, DOE estimates that impacts on INPV will range from −$750.5 million to $152.2 million, or a change in INPV of −29.4 to 6.0 percent. At TSL 6, industry free cash-flow is negative $76.7 million, which is a decrease of $290.0 million compared to the no-new-standards case value of $213.3 million in 2029, the year leading up to the proposed standards. Industry conversion costs total $651.5 million. TSL 6 would set the energy conservation standard for gas-fired storage water heaters at EL 5, oil-fired storage water heaters at EL 2, small electric storage water heaters at EL 1, electric storage water heaters with an effective storage volume less than 55 gallons (excluding small electric storage water heaters) at EL 3, electric storage water heaters with effective volume above 55 gallons at EL 3, and gas-fired instantaneous water heaters at EL 4. At TSL 6, DOE estimates that manufacturers will incur approximately $28.4 million in product conversion costs, as some gas-fired storage water heaters, electric storage water heaters with effective volume between 20 and 55 gallons, and gas-fired instantaneous water heaters will need to be redesigned to comply with the standard. Heat pump technology currently comprises approximately 5% of the electric storage water heater market. TSL 6 would shift 100% of electric storage water heaters to heat pumps, driving large investments in product capacity of heat exchangers and to optimize production costs. This will necessitate small electric storage water heater manufacturers developing split system heat pump designs. Additionally, requiring fully modulating burners for gas instantaneous water heaters and larger condensers, electronic ignition, power venting, and larger heat exchangers for gas storage water heaters would require significant investments in capacity. As a result, DOE also estimates that manufacturers will incur approximately $623.1 million in capital conversion costs at TSL 5 to accommodate the need for increased capacity.

At TSL 6, the shipment-weighted average MPC for all consumer water heaters increases by 84.3 percent relative to the no-new-standards case shipment-weighted average MPC for all water heaters in 2030. In the preservation of gross margin markup scenario, manufacturers are able to fully pass on this cost increase to consumers. The increase in shipment-weighted average MPC for consumer water heaters outweighs the $651.5 million in conversion costs, causing a slightly positive change in INPV at TSL 6 under the preservation of gross margin markup scenario.

Under the preservation of operating profit markup scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the 84.3 percent shipment-weighted average MPC increase results in a reduction in the manufacturer markup after the analyzed compliance year. This reduction in the manufacturer markup and the $651.5 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 6 under the preservation of operating profit markup scenario.

b. Direct Impacts on Employment

To quantitatively assess the potential impacts of amended energy

conservation standards on direct employment in the consumer water heaters 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. Labor expenditures related to product manufacturing depend on the labor intensity of the product, the sales volume, and an assumption that wages remain fixed in real terms over time. The total labor expenditures in each year are calculated by multiplying the total MPCs by the labor percentage of MPCs. The total labor expenditures in the GRIM were then converted to total production employment levels by dividing production labor expenditures by the average fully burdened wage multiplied by the average number of hours worked per year per production worker. To do this, DOE relied on the *ASM* inputs; [163] Production Workers Annual Wages, Production Workers Annual Hours, Production Workers for Pay Period, and Number of Employees. DOE also relied on the BLS employee compensation data [164] to determine the fully burdened wage ratio. The fully burdened wage ratio factors in paid leave, supplemental pay, insurance, retirement and savings, and legally required benefits.

The number of production employees is then multiplied by the U.S. labor percentage to convert total production employment to total domestic production employment. The U.S. labor percentage represents the industry fraction of domestic manufacturing production capacity for the covered product. This value is derived from manufacturer interviews, product database analysis, and publicly available information. DOE estimates that 70 percent of consumer water heaters are produced domestically.

The domestic production employees estimate covers production line workers, including line supervisors, who are directly involved in fabricating and assembling products within the OEM facility. Workers performing services that are closely associated with production operations, such as materials handling tasks using forklifts, are also included as production labor. DOE's estimates only account for production workers who manufacture the specific products covered by this proposed rulemaking.

Non-production employees account for the remainder of the direct employment figure. The non-production employees estimate covers domestic workers who are not directly involved in the production process, such as sales, engineering, human resources, and management. Using the amount of domestic production workers calculated above, non-production domestic employees are extrapolated by multiplying the ratio of non-production workers in the industry compared to production employees. DOE assumes that this employee distribution ratio remains constant between the no-new-standards case and standards cases.

Direct employment is the sum of domestic production employees and non-production employees. Using the GRIM, DOE estimates in the absence of new energy conservation standards there would be 6,589 domestic employees for consumer water heaters in 2030. Table V.22 shows the range of the impacts of energy conservation standards on U.S. manufacturing employment in the consumer water heaters industry. The following discussion provides a qualitative evaluation of the range of potential impacts presented in Table V.22.

TABLE V.22—DOMESTIC DIRECT EMPLOYMENT IMPACTS FOR CONSUMER WATER HEATER MANUFACTURERS IN 2030

	No-new-standards case	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Direct Employment in 2030	6,589	6,847	7,450	7,342	7,255	7,578	8,978
Potential Changes in Direct Employment Workers in 2030 *		0 to 258	(1,719) to 861	(2,236) to 753	(2,236) to 666	(2,236) to 989	(2,236) to 2,389

* DOE presents a range of potential employment impacts. Numbers in parentheses denote negative values.

The direct employment impacts shown in Table V.22 represent the potential domestic employment changes that could result following the compliance date for the consumer water heater product classes in this proposal. Employment could increase or decrease due to the labor content of the various products being manufactured domestically or if manufacturers decided to move production facilities abroad because of the amended standards. The upper bound estimate corresponds to an increase in the number of domestic workers that would result from amended energy conservation standards if manufacturers continue to produce the same scope of covered products within the United States after compliance takes effect. The lower bound estimate represents the maximum decrease in production workers if manufacturing of heat pump electric storage water heaters moved to lower labor-cost countries. Many manufacturers currently produce at least a portion of their electric storage consumer water heaters in countries with lower labor costs. DOE anticipates that adopting an amended standard will necessitate large investments in production capability and capacity for the industry to transition to heat pump technology for electric storage water heaters. This large investment could increase the risk that manufacturers reevaluate domestic production siting options. Siting decisions depend on a wide range of factors beyond the standard. Additionally, many OEMs have traditionally kept the most advanced manufacturing and more efficient technologies at domestic production facilities. However, to establish a lower bound, the direct employment analysis assumed a reduction in domestic employment commensurate with the percentage of electric storage water heaters shipments that transition to heat pump designs.

Additional detail on the analysis of direct employment can be found in chapter 12 of the NOPR TSD. Additionally, the employment impacts

[163] U.S. Census Bureau, *Annual Survey of Manufactures.* ''Summary Statistics for Industry Groups and Industries in the U.S. (2020).'' Available at: *www.census.gov/data/tables/time-series/econ/asm/2018-2020-asm.html* (Last accessed April 1, 2023).

[164] U.S. Bureau of Labor Statistics. *Employer Costs for Employee Compensation.* June 16, 2022. Available at: *www.bls.gov/news.release/pdf/ecec.pdf* (Last accessed April 1, 2023).

discussed in this section are independent of the employment impacts from the broader U.S. economy, which are documented in chapter 16 of the NOPR TSD.

c. Impacts on Manufacturing Capacity

Industry concerns around manufacturing capacity were driven by potential technology transitions. In particular, manufacturers focused on the transition to heat pump technology for electric storage water heaters with rated storage volumes between 20 and 55 gallons. The vast majority of sales today in this product class are electric resistance water heaters. DOE estimates less than 8 percent of current sales are heat pump units. At the proposed level, all electric storage water heaters with rated storage volumes above 35 gallons, and all ESWHs with medium or high draw patterns, would incorporate heat pump technology. Industry would need to add capacity to produce an additional three to four million heat pump electric storage water heater units per year. In interviews, manufacturers noted that heat pump electric storage water heaters are more complex to manufacture than electric resistance water heaters. In written comments, Rheem noted the need for significant capital investments for new and upgraded manufacturing facilities (Rheem, No. 45 at p. 5). DOE estimated conversion costs based on both industry feedback and estimates of capital investment from the engineering analysis. DOE's analysis indicated significant investment in additional production floor space and in production capacity for heat exchangers. At the proposed level, conversion costs total $230 million, presuming all OEMs of electric storage water heaters invest in the transition to heat pump models.

d. Impacts on Subgroups of Manufacturers

As discussed in section IV.J.1 of this document, 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 manufacturers, and manufacturers exhibiting a cost structure substantially different from the industry average could be affected disproportionately. DOE used the results of the industry characterization to group manufacturers exhibiting similar characteristics. Consequently, DOE identified small business manufacturers as a subgroup for a separate impact analysis.

For the small business subgroup analysis, DOE applied the small business size standards published by the Small Business Administration (''SBA'') to determine whether a company is considered a small business. The size standards are codified at 13 CFR part 121. To be categorized as a small business under NAICS code 335220, ''major household appliance manufacturing,'' a consumer water heater manufacturer and its affiliates may employ a maximum of 1,500 employees. The 1,500-employee threshold includes all employees in a business's parent company and any other subsidiaries. Based on this classification, DOE identified two potential manufacturers that could qualify as domestic small businesses.

The small business subgroup analysis is discussed in more detail in chapter 12 of the NOPR TSD. DOE examines the potential impacts on small business manufacturers in section VI.B of this NOPR.

e. Cumulative Regulatory Burden

One aspect of assessing manufacturer burden involves looking at the cumulative impact of multiple DOE standards and the product-specific regulatory actions of other Federal agencies that affect the manufacturers of a covered product or equipment. While any one regulation may not impose a significant burden on manufacturers, the combined effects of several existing or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

Some consumer water heater manufacturers also make other products or equipment that could be subject to energy conservation standards set by DOE. DOE looks at other regulations that affects manufacturer of consumer water heater manufacturers that are Federal, are product-specific, and that will take effect three years before or after the estimated 2029 compliance date. Therefore, this cumulative regulatory burden analysis focuses on DOE regulations taking place between 2026 and 2032. This information is presented in Table V.23.

DOE does not incorporate any regulations not yet finalized into its analysis, as cost and timing would be speculative. However, stakeholders listed a number of on-going appliance standards as cumulative regulatory burden. Where these DOE appliance standard rulemakings have reached the NOPR stage, DOE includes them in Table V.23 for tracking purposes.

TABLE V.23—COMPLIANCE DATES AND EXPECTED CONVERSION EXPENSES OF FEDERAL ENERGY CONSERVATION STANDARDS AFFECTING CONSUMER WATER HEATER 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 †
Room Air Conditioners 88 FR 34298 (May 26, 2023)	8	3	2026	$24.8 (2021$)	0.4%
Consumer Pool Heaters 88 FR 34624 (May 30, 2023)	20	3	2028	$48.4 (2021$)	4.7%
Commercial Water Heating Equipment †† 87 FR 30610 (May 19, 2022)	14	7	2026	$34.6 (2020$)	4.7%
Consumer Furnaces †† 87 FR 40590 (July 7, 2022)	15	2	2029	$150.6 (2020$)	1.4%
Consumer Clothes Dryers †† 87 FR 51734 (August 23, 2022)	15	3	2027	$149.7 (2020$)	1.8%
Microwave Ovens †† 87 FR 52282 (August 24, 2022)	18	3	2026	$46.1 (2021$)	0.7%
Residential Clothes Washers †† 88 FR 13520 (March 3, 2023)	19	3	2027	$690.3 (2021$)	5.2%
Refrigerators, Freezers, and Refrigerator-Freezers †† 88 FR 12452 (February 27, 2023)	49	3	2027	$1,323.6 (2021$)	3.8%

TABLE V.23—COMPLIANCE DATES AND EXPECTED CONVERSION EXPENSES OF FEDERAL ENERGY CONSERVATION STANDARDS AFFECTING CONSUMER WATER HEATER MANUFACTURERS—Continued

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 †
Miscellaneous Refrigeration Products †† 88 FR 19382 (March 31, 2023)	38	8	2029	$126.9 (2021$)	3.1%
Dishwashers †† 88 FR 32514 (May 19, 2023)	22	2	2027	$125.6 (2021$)	2.1%

* 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 consumer water heaters 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 NOPR publications. Values may change on publication of a Final Rule.

BWC provided a comment on regulations DOE should take into consideration for its cumulative regulatory burden. (BWC, No. 32 at p. 4). Some of the DOE rulemakings BWC listed, such as the consumer boilers standard rulemaking,[165] are not in Table V.23. because the rulemakings are ongoing and do not yet have a proposed standard level or proposed compliance date. Any estimation of cost or timing at this time would be speculative. Additionally, DOE does not list test procedures in Table V.23. When applicable, test procedure costs are considered in the energy conservation standards analysis. The Federal Energy Efficiency Standards Final Rules for Commercial and Multi-family High rise Residential Buildings [166] and Low-rise Residential Buildings Design and Construction [167] rulemaking identified by BWC were not explicitly considered to be cumulative regulatory burden because the regulated entities are not consumer water heater manufacturers, but DOE did incorporate the impact of these final rules in shipment analysis.

In addition to these Federal rulemakings, BWC noted several California governance bodies have ongoing rulemakings regarding Zero NO_X Emissions Standards, including the California Air Resources Board,[168] the Bay Area Air Quality Management District,[169] and the South Coast Air Quality Management District.[170] DOE incorporated a distribution of shipments that are low NO_X & ultra-low NO_X into its shipment analysis, as well as accounted for the differences in manufacturer product costs for low NO_X & ultra-low NO_X and the impact of low NO_X & ultra-low NO_X on the overall NO_X emission savings.

DOE requests information regarding the impact of cumulative regulatory burden on manufacturers of consumer water heaters associated with multiple DOE standards or product-specific regulatory actions of other Federal agencies.

3. National Impact Analysis

This section presents DOE's estimates of the national energy savings and the NPV of consumer benefits that would result from each of the TSLs considered as potential amended standards.

a. Significance of Energy Savings

To estimate the energy savings attributable to potential amended standards for consumer water heaters, 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 first full year of anticipated compliance with amended standards (2030–2059). Table V.24 presents DOE's projections of the national energy savings for each TSL considered for consumer water heaters. The savings were calculated using the approach described in section IV.H.2 of this document.

TABLE V.24—CUMULATIVE NATIONAL ENERGY SAVINGS FOR CONSUMER WATER HEATERS; 30 YEARS OF SHIPMENTS

[2030–2059]

Energy savings	Product class	Trial standard level					
		1	2	3	4	5	6
		quads					
Primary energy	GSWH	0.4	1.8	1.8	1.8	1.8	7.5
	OSWH	0.001	0.001	0.001	0.001	0.001	0.001
	Small ESWH (20 gal $\leq V_{eff} \leq$ 35 gal and FHR <51 gal).	0.00	0.00	1.5	1.5	1.5	1.5
	ESWH (20 gal $\leq V_{eff} \leq$55 gal), excluding Small ESWH.	0.00	24.3	28.5	33.3	34.3	34.3
	ESWH (55 gal $< V_{eff} \leq$120 gal)	0.001	0.001	0.001	0.005	0.01	0.01
	GIWH	0.3	0.4	0.4	0.7	0.8	0.8
	Total	0.7	26.6	32.4	37.4	38.5	44.1

[165] *www.regulations.gov/docket/EERE-2012-BT-STD-0047.*

[166] *www.regulations.gov/docket/EERE-2022-BT-STD-0012.*

[167] *www.regulations.gov/docket/EERE-2022-BT-STD-0013.*

[168] *https://ww2.arb.ca.gov/sites/default/files/2021-10/2022_SSS_October_Workshop_Presentation.pdf.*

[169] *https://www.baaqmd.gov/rules-and-compliance/rule-development/building-appliances.*

[170] *https://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2022-air-quality-management-plan/2022-aqmp-residential-and-commercial-buildings-working-group/2022-aqmd-residential-and-commercial-building-wgm-2.pdf?sfvrsn=6.*

TABLE V.24—CUMULATIVE NATIONAL ENERGY SAVINGS FOR CONSUMER WATER HEATERS; 30 YEARS OF SHIPMENTS—Continued

[2030–2059]

Energy savings	Product class	Trial standard level					
		1	2	3	4	5	6
		quads					
FFC energy	GSWH	0.5	2.0	2.0	2.0	2.0	8.4
	OSWH	0.001	0.002	0.002	0.002	0.002	0.002
	Small ESWH (20 gal ≤V_{eff} ≤35 gal and FHR <51 gal).	0.00	0.00	1.6	1.6	1.6	1.6
	ESWH (20 gal ≤V_{eff} ≤55 gal), excluding Small ESWH.	0.00	24.8	29.1	34.1	35.1	35.1
	ESWH (55 gal <V_{eff} ≤120 gal)	0.001	0.001	0.001	0.005	0.01	0.01
	GIWH	0.3	0.5	0.5	0.7	0.9	0.9
	Total	0.8	27.3	33.3	38.4	39.7	46.0

Note: totals may not equal sums due to rounding.

OMB Circular A–4 [171] 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.[172] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to consumer water heaters. 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.25. The impacts are counted over the lifetime of consumer water heaters purchased in 2030–2059.

TABLE V.25—CUMULATIVE NATIONAL ENERGY SAVINGS FOR CONSUMER WATER HEATERS; 9 YEARS OF SHIPMENTS

[2030–2038]

Energy savings	Product class	Trial standard level					
		1	2	3	4	5	6
		quads					
Primary energy	GSWH	0.1	0.6	0.6	0.6	0.6	2.3
	OSWH	0.000	0.001	0.001	0.001	0.001	0.001
	Small ESWH (20 gal ≤V_{eff} ≤35 gal and FHR <51 gal).	0.00	0.00	0.4	0.4	0.4	0.4
	ESWH (20 gal ≤V_{eff} ≤55 gal), excluding Small ESWH.	0.00	7.3	8.4	9.8	10.1	10.1
	ESWH (55 gal <V_{eff} ≤120 gal)	0.000	0.000	0.000	0.001	0.004	0.004
	GIWH	0.08	0.13	0.13	0.18	0.23	0.23
	Total	0.2	8.0	9.6	11.0	11.4	13.1
FFC energy	GSWH	0.1	0.7	0.7	0.7	0.7	2.6
	OSWH	0.000	0.001	0.001	0.001	0.001	0.001
	Small ESWH (20 gal ≤V_{eff} ≤35 gal and FHR <51 gal).	0.0	0.0	0.4	0.4	0.4	0.4
	ESWH (20 gal ≤V_{eff} ≤55 gal), excluding Small ESWH.	0.0	7.5	8.6	10.1	10.4	10.4
	ESWH (55 gal <V_{eff} ≤120 gal)	0.000	0.000	0.000	0.001	0.004	0.004
	GIWH	0.09	0.15	0.15	0.21	0.25	0.25
	Total	0.2	8.3	9.9	11.4	11.7	13.7

Note: totals may not equal sums due to rounding.

[171] U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. *www.whitehouse.gov/omb/circulars_a004_a-4/* (last accessed May 1, 2023).

[172] Section 325(m) of EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6-year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some products, the compliance period is 5 years rather than 3 years.

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 consumer water heaters. In accordance with OMB's guidelines on regulatory analysis,[173] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table V.26 shows the consumer NPV results with impacts counted over the lifetime of products purchased in 2030–2059.

TABLE V.26—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR CONSUMER WATER HEATERS; 30 YEARS OF SHIPMENTS

[2030–2059]

Discount rate	Product class	Trial standard level					
		1	2	3	4	5	6
		billion 2022$					
3 percent	GSWH	1.6	7.1	7.1	7.1	7.1	10.6
	OSWH	0.01	0.02	0.02	0.02	0.02	0.02
	Small ESWH (20 gal $\leq V_{eff} \leq$35 gal and FHR <51 gal).	0.0	0.0	4.2	4.2	4.2	4.2
	ESWH (20 gal $\leq V_{eff} \leq$55 gal), excluding Small ESWH.	0.0	152	177	213	214	214
	ESWH (55 gal $< V_{eff} \leq$120 gal)	0.005	0.005	0.005	0.03	0.1	0.1
	GIWH	1.3	2.6	2.6	3.9	4.8	4.8
	Total	3.0	161	191	228	230	234
7 percent	GSWH	0.4	2.0	2.0	2.0	2.0	(1.6)
	OSWH	0.004	0.01	0.01	0.01	0.01	0.01
	Small ESWH (20 gal $\leq V_{eff} \leq$35 gal and FHR <51 gal).	0.0	0.0	0.6	0.6	0.6	0.6
	ESWH (20 gal $\leq V_{eff} \leq$55 gal), excluding Small ESWH.	0.0	53.0	61.3	74.6	74.2	74.2
	ESWH (55 gal $< V_{eff} \leq$120 gal)	0.002	0.002	0.002	0.01	0.02	0.02
	GIWH	0.4	0.8	0.8	1.2	1.4	1.4
	Total	0.8	55.8	64.6	78.3	78.1	74.6

Note: totals may not equal sums due to rounding.

The NPV results based on the aforementioned 9-year analytical period are presented in Table V.27. The impacts are counted over the lifetime of products purchased in 2030–2059. As mentioned previously, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V.27—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR CONSUMER WATER HEATERS; 9 YEARS OF SHIPMENTS

[2030–2038]

Discount rate	Product class	Trial standard level					
		1	2	3	4	5	6
		billion 2022$					
3 percent	GSWH	0.6	2.7	2.7	2.7	2.7	1.1
	OSWH	0.005	0.009	0.009	0.009	0.009	0.009
	Small ESWH (20 gal $\leq V_{eff} \leq$35 gal).	0.00	0.00	1.1	1.1	1.1	1.1
	ESWH (20 gal $\leq V_{eff} \leq$55 gal), excluding Small ESWH.	0.00	57	65	78	79	79
	ESWH (55 gal $< V_{eff} \leq$120 gal)	0.002	0.002	0.002	0.01	0.02	0.02
	GIWH	0.5	1.0	1.0	1.4	1.6	1.6
	Total	1.1	60.2	69.5	83.4	84.3	82.7
7 percent	GSWH	0.2	1.0	1.0	1.0	1.0	(2.3)
	OSWH	0.002	0.004	0.004	0.004	0.004	0.004
	Small ESWH (20 gal $\leq V_{eff} \leq$35 gal).	0.00	0.00	0.06	0.06	0.06	0.06
	ESWH (20 gal $\leq V_{eff} \leq$55 gal), excluding Small ESWH.	0.00	26	30	37	37	37
	ESWH (55 gal $< V_{eff} \leq$120 gal)	0.001	0.001	0.001	0.006	0.010	0.010

[173] U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. *www.whitehouse.gov/omb/circulars_a004_a-4/* (last accessed May 1, 2023).

TABLE V.27—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR CONSUMER WATER HEATERS; 9 YEARS OF SHIPMENTS—Continued

[2030–2038]

Discount rate	Product class	Trial standard level					
		1	2	3	4	5	6
		billion 2022$					
	GIWH	0.18	0.39	0.39	0.55	0.63	0.63
	Total	0.4	27.7	31.5	38.4	38.3	35.1

Note: totals may not equal sums due to rounding.

The previous NPV results reflect the use of a default trend to estimate the change in price for consumer water heaters over the analysis period (see section IV.F.1 of this document). DOE also conducted a sensitivity analysis that considered one scenario with a price decline compared to the reference case and one scenario with a price increase compared to the reference case. The results of these alternative cases are presented in appendix 10C of the NOPR 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 consumer water heaters 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 (2030–2059), where these uncertainties are reduced.

The results suggest that the proposed standards would be likely to have a negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 16 of the NOPR TSD presents detailed results regarding anticipated indirect employment impacts.

4. Impact on Utility or Performance of Products

As discussed in section III.E.1.d of this document, DOE has tentatively concluded that the standards proposed in this NOPR would not lessen the utility or performance of the consumer water heaters under consideration in this rulemaking. Manufacturers of these products currently offer units that meet or exceed the proposed standards.

5. Impact of Any Lessening of Competition

DOE considered any lessening of competition that would be likely to result from new or amended standards. As discussed in section III.E.1.e, the Attorney General determines the impact, if any, of any lessening of competition likely to result from a proposed standard, and transmits such determination in writing to the Secretary, together with an analysis of the nature and extent of such impact. To assist the Attorney General in making this determination, DOE has provided DOJ with copies of this NOPR and the accompanying TSD for review. DOE will consider DOJ's comments on the proposed rule in determining whether to proceed to a final rule. DOE will publish and respond to DOJ's comments in that document. DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. In addition, stakeholders may also provide comments separately to DOJ regarding these potential impacts. See the **ADDRESSES** section for information to send comments to DOJ.

6. Need of the Nation To Conserve Energy

Enhanced energy efficiency, where economically justified, improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts (costs) of energy production. Reduced electricity demand due to energy conservation standards is also likely to reduce the cost of maintaining the reliability of the electricity system, particularly during peak-load periods. Chapter 15 in the NOPR TSD presents the estimated impacts on electricity generating capacity, relative to the no-new-standards case, for the TSLs that DOE considered in this rulemaking.

Energy conservation resulting from potential energy conservation standards for consumer water heaters is expected to yield environmental benefits in the form of reduced emissions of certain air pollutants and greenhouse gases. Table V.28 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. DOE reports annual emissions reductions for each TSL in chapter 13 of the NOPR TSD.

TABLE V.28—CUMULATIVE EMISSIONS REDUCTION FOR CONSUMER WATER HEATERS SHIPPED IN 2030–2059

	Trial standard level					
	1	2	3	4	5	6
Power Sector and Site Emissions						
CO_2 (*million metric tons*)	36.3	453	530	633	660	981
CH_4 (*thousand tons*)	0.7	31.5	38.4	44.3	45.6	51.7
N_2O (*thousand tons*)	0.1	4.4	5.3	6.1	6.3	6.9
NO_X (*thousand tons*)	31.9	224	250	311	329	615

TABLE V.28—CUMULATIVE EMISSIONS REDUCTION FOR CONSUMER WATER HEATERS SHIPPED IN 2030–2059—Continued

	Trial standard level					
	1	2	3	4	5	6
SO_2 (*thousand tons*)	0.2	140	174	197	202	200
Hg (*tons*)	0.0	1.0	1.2	1.4	1.4	1.4
Upstream Emissions						
CO_2 (*million metric tons*)	5.1	49	56	68	72	117
CH_4 (*thousand tons*)	517	4,509	5,154	6,300	6,614	11,239
N_2O (*thousand tons*)	0.0	0.2	0.2	0.3	0.3	0.4
NO_X (*thousand tons*)	80.3	764	880	1,069	1,120	1,835
SO_2 (*thousand tons*)	0.0	2.6	3.2	3.6	3.7	3.9
Hg (*tons*)	0.0	0.003	0.004	0.005	0.005	0.005
Total FFC Emissions						
CO_2 (*million metric tons*)	41.4	501	586	702	732	1,098
CH_4 (*thousand tons*)	518	4,541	5,193	6,345	6,660	11,290
N_2O (*thousand tons*)	0.1	4.6	5.6	6.4	6.6	7.2
NO_X (*thousand tons*)	112	988	1,130	1,380	1,448	2,450
SO_2 (*thousand tons*)	0.2	143	177	201	206	204
Hg (*tons*)	0.0	1.0	1.2	1.4	1.4	1.4

Note: totals may not equal sums due to rounding.

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 consumer water heaters. Section IV.L of this document discusses the SC–CO_2 values that DOE used. Table V.29 presents the value of CO_2 emissions reduction at each TSL for each of the SC–CO_2 cases. The time-series of annual values is presented for the proposed TSL in chapter 14 of the NOPR TSD.

TABLE V.29—PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR CONSUMER WATER HEATERS SHIPPED IN 2030–2059

TSL	SC–CO_2 Case			
	Discount rate and statistics			
	5% Average	3% Average	2.5% Average	3% 95th percentile
	Billion 2022$			
1	0.3	1.5	2.4	4.7
2	4.3	19	30	58
3	5.1	22	35	68
4	6.0	27	42	81
5	6.3	28	44	84
6	9.5	42	66	127

As discussed in section IV.L.2, DOE estimated the climate benefits likely to result from the reduced emissions of methane and N_2O that DOE estimated for each of the considered TSLs for consumer water heaters. Table V.30 presents the value of the CH_4 emissions reduction at each TSL, and Table V.31 presents the value of the N_2O emissions reduction at each TSL. The time-series of annual values is presented for the proposed TSL in chapter 14 of the NOPR TSD.

TABLE V.30—PRESENT VALUE OF METHANE EMISSIONS REDUCTION FOR CONSUMER WATER HEATERS SHIPPED IN 2030–2059

TSL	SC–CH_4 Case			
	Discount rate and statistics			
	5% Average	3% Average	2.5% Average	3% 95th percentile
	Billion 2022$			
1	0.2	0.6	0.9	1.7
2	1.8	5.7	8.0	15
3	2.1	6.4	9.1	17
4	2.5	7.8	11	21

TABLE V.30—PRESENT VALUE OF METHANE EMISSIONS REDUCTION FOR CONSUMER WATER HEATERS SHIPPED IN 2030–2059—Continued

TSL	SC–CH_4 Case			
	Discount rate and statistics			
	5% Average	3% Average	2.5% Average	3% 95th percentile
	Billion 2022$			
5	2.6	8.2	12	22
6	4.5	14	20	37

TABLE V.31—PRESENT VALUE OF NITROUS OXIDE EMISSIONS REDUCTION FOR CONSUMER WATER HEATERS SHIPPED IN 2030–2059

TSL	SC–N_2O Case			
	Discount rate and statistics			
	5% Average	3% Average	2.5% Average	3% 95th percentile
	Billion 2022$			
1	0.0003	0.001	0.002	0.003
2	0.02	0.06	0.10	0.17
3	0.02	0.08	0.12	0.20
4	0.02	0.09	0.14	0.23
5	0.02	0.09	0.14	0.24
6	0.02	0.10	0.16	0.26

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other GHG emissions to changes in the future global climate and the potential resulting damages to the global and U.S. economy continues to evolve rapidly. DOE, together with other Federal agencies, will continue to review methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. DOE notes that the proposed standards would be economically justified even without inclusion of monetized benefits of reduced GHG emissions.

DOE also estimated the monetary value of the health benefits associated with NO_X and SO_2 emissions reductions anticipated to result from the considered TSLs for consumer water heaters. The dollar-per-ton values that DOE used are discussed in section IV.L of this document. Table V.32 presents the present value for NO_X emissions reduction for each TSL calculated using 7-percent and 3-percent discount rates, and Table V.33 presents similar results for SO_2 emissions reductions. The results in these tables reflect application of EPA's low dollar-per-ton values, which DOE used to be conservative. The time-series of annual values is presented for the proposed TSL in chapter 14 of the NOPR TSD.

TABLE V.32—PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR CONSUMER WATER HEATERS SHIPPED IN 2030–2059

TSL	3% Discount rate	7% Discount rate
	Billion 2022$	
1	1.2	3.5
2	14	40
3	16	47
4	19	56
5	20	58
6	31	90

TABLE V.33—PRESENT VALUE OF SO_2 EMISSIONS REDUCTION FOR CONSUMER WATER HEATERS SHIPPED IN 2030–2059

TSL	3% Discount rate	7% Discount rate
	Billion 2022$	
1	0.002	0.01
2	3.0	8.4
3	3.6	10

TABLE V.33—PRESENT VALUE OF SO_2 EMISSIONS REDUCTION FOR CONSUMER WATER HEATERS SHIPPED IN 2030–2059—Continued

TSL	3% Discount rate	7% Discount rate
	Billion 2022$	
4	4.1	12
5	4.2	12
6	4.2	12

DOE has not considered the monetary benefits of the reduction of Hg for this proposed rule. 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 Hg, direct PM, and other co-pollutants may be significant.

7. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) No other factors were considered in this analysis.

8. Summary of Economic Impacts

Table V.34 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 consumer water heaters, and are measured for the lifetime of products shipped in 2030–2059. The climate benefits associated with reduced GHG emissions resulting from the adopted standards are global benefits, and are also calculated based on the lifetime of consumer water heaters shipped in 2030–2059.

TABLE V.34—CONSUMER NPV COMBINED WITH PRESENT VALUE OF CLIMATE BENEFITS AND HEALTH BENEFITS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Using 3% discount rate for Consumer NPV and Health Benefits (billion 2022$)						
5% Average SC–GHG case	7.0	216	255	304	310	350
3% Average SC–GHG case	8.6	235	277	330	337	392
2.5% Average SC–GHG case	10	248	292	349	356	422
3% 95th percentile SC–GHG case	13	283	333	398	407	500
Using 7% discount rate for Consumer NPV and Health Benefits (billion 2022$)						
5% Average SC–GHG case	2.6	79	92	110	112	124
3% Average SC–GHG case	4.2	98	113	136	139	166
2.5% Average SC–GHG case	5.3	111	129	155	158	196
3% 95th percentile SC–GHG case	8.4	146	170	204	209	275

B. Conclusion

When considering new or amended energy conservation standards, the standards that DOE adopts for any type (or class) of covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)). In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

For this NOPR, DOE considered the impacts of amended standards for consumer water heaters at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy.

To aid the reader as DOE discusses the benefits and/or burdens of each TSL, tables in this section present a summary of the results of DOE's quantitative analysis for each TSL. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumers who may be disproportionately affected by a national standard and impacts on employment.

DOE also notes that the economics literature provides a wide-ranging discussion of how consumers trade off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements. There is evidence that consumers undervalue future energy savings as a result of (1) a lack of information, (2) a lack of sufficient salience of the long-term or aggregate benefits, (3) a lack of sufficient savings to warrant delaying or altering purchases, (4) excessive focus on the short term, in the form of inconsistent weighting of future energy cost savings relative to available returns on other investments, (5) computational or other difficulties associated with the evaluation of relevant tradeoffs, and (6) a divergence in incentives (for example, between renters and owners, or builders and purchasers). Having less than perfect foresight and a high degree of uncertainty about the future, consumers may trade off these types of investments at a higher than expected rate between current consumption and uncertain future energy cost savings.

In DOE's current regulatory analysis, potential changes in the benefits and costs of a regulation due to changes in consumer purchase decisions are included in two ways. First, if consumers forego the purchase of a product in the standards case, this decreases sales for product manufacturers, and the impact on manufacturers attributed to lost revenue is included in the MIA. Second, DOE accounts for energy savings attributable only to products actually used by consumers in the standards case; if a standard decreases the number of products purchased by consumers, this decreases the potential energy savings from an energy conservation standard. DOE provides estimates of shipments and changes in the volume of product purchases in chapter 9 of the NOPR TSD. However, DOE's current analysis does not explicitly control for heterogeneity in consumer preferences, preferences across subcategories of products or specific features, or consumer price sensitivity variation according to household income.[174]

While DOE is not prepared at present to provide a fuller quantifiable framework for estimating the benefits and costs of changes in consumer purchase decisions due to an energy conservation standard, DOE is committed to developing a framework that can support empirical quantitative tools for improved assessment of the consumer welfare impacts of appliance standards. DOE has posted a paper that discusses the issue of consumer welfare impacts of appliance energy conservation standards, and potential enhancements to the methodology by which these impacts are defined and

[174] P.C. Reiss and M.W. White. Household Electricity Demand, Revisited. *Review of Economic Studies.* 2005. 72(3): pp. 853–883. doi: *10.1111/0034–6527.00354.*

estimated in the regulatory process.[175] DOE welcomes comments on how to more fully assess the potential impact of energy conservation standards on consumer choice and how to quantify this impact in its regulatory analysis in future rulemakings.

1. Benefits and Burdens of TSLs Considered for Consumer Water Heater Standards

Table V.35and Table V.36 summarize the quantitative impacts estimated for each TSL for consumer water heaters. The national impacts are measured over the lifetime of consumer water heaters purchased in the 30-year period that begins in the anticipated year of compliance with amended standards (2030–2059). The energy savings, emissions reductions, and value of emissions reductions refer to full-fuel-cycle results. The efficiency levels contained in each TSL are described in section V.A of this document.

TABLE V.35—SUMMARY OF ANALYTICAL RESULTS FOR CONSUMER WATER HEATER TSLS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Cumulative FFC National Energy Savings						
Quads	0.8	27.3	33.3	38.4	39.7	46.0
Cumulative FFC Emissions Reduction						
CO_2 (*million metric tons*)	41	501	586	702	732	1,098
CH_4 (*thousand tons*)	518	4,541	5,193	6,345	6,660	11,290
N_2O (*thousand tons*)	0.1	4.6	5.6	6.4	6.6	7.2
NO_X (*thousand tons*)	112	988	1,130	1,380	1,448	2,450
SO_2 (*thousand tons*)	0.2	143	177	201	206	204
Hg (*tons*)	0.0	1.0	1.2	1.4	1.4	1.4
Present Value of Monetized Benefits and Costs (3% discount rate, billion 2022$)						
Consumer Operating Cost Savings	5.1	198	241	280	290	326
Climate Benefits *	2.2	25	29	35	36	56
Health Benefits **	3.5	49	57	68	71	102
Total Benefits †	11	271	327	383	397	484
Consumer Incremental Product Costs ‡	2.1	36	50	52	60	93
Consumer Net Benefits	3.0	161	191	228	230	234
Total Net Benefits	8.6	235	277	330	337	392
Present Value of Monetized Benefits and Costs (7% discount rate, billion 2022$)						
Consumer Operating Cost Savings	1.9	75	90	105	109	123
Climate Benefits *	2.2	25	29	35	36	56
Health Benefits **	1.2	17	20	24	25	35
Total Benefits †	5.3	117	139	163	169	214
Consumer Incremental Product Costs ‡	1.1	19	26	27	31	48
Consumer Net Benefits	0.8	56	65	78	78	75
Total Net Benefits	4.2	98	113	136	139	166

Note: This table presents the costs and benefits associated with consumer water heaters shipped in 2030 − 2059. These results include benefits to consumers which accrue after 2059 from the products shipped in 2030–2059.

* To monetize the benefits of reducing greenhouse gas 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). 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.

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

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

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

[175] Sanstad, A.H. *Notes on the Economics of Household Energy Consumption and Technology Choice.* 2010. Lawrence Berkeley National Laboratory. *www1.eere.energy.gov/buildings/appliance_standards/pdfs/consumer_ee_theory.pdf (last accessed May 1, 2023).*

TABLE V.36—SUMMARY OF ANALYTICAL RESULTS FOR CONSUMER WATER HEATER TSLS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Manufacturer Impacts						
Industry NPV (*million 2022$*) (No-new-standards case INPV = 2,554.7)	2,532.9 to 2,602.7	2,347.4 to 2,720.2	2,168.6 to 2,596.0	2,115.9 to 2,590.1	2,044.0 to 2,619.4	1,804.2 to 2,706.9
Industry NPV (*% change*)	(0.9) to 1.9	(8.1) to 6.5	(15.1) to 1.6	(17.2) to 1.4	(20.0) to 2.5	(29.4) to 6.0
Consumer Average LCC Savings (2022$)						
GSWH	17	52	52	52	52	(247)
OSWH	145	165	165	165	165	165
Small ESWH (20 gal ≤ V_{eff} ≤35 gal and FHR <51 gal)	NA	NA	418	418	418	418
ESWH (20 gal ≤V_{eff} ≤55 gal excluding Small ESWH)	NA	1,868	1,868	2,283	2,101	2,101
ESWH (55 gal <V_{eff} ≤120 gal)	501	501	501	599	170	170
GIWH	66	135	135	89	95	95
Shipment-Weighted Average *	25	910	873	982	943	73
Consumer Simple PBP (years)						
GSWH	8.1	7.9	7.9	7.9	7.9	16.4
OSWH	4.4	6.4	6.4	6.4	6.4	6.4
Small ESWH (20 gal ≤V_{eff} ≤35 gal and FHR <51 gal)	NA	NA	8.8	8.8	8.8	8.8
ESWH (≥20 gal and ≤55 gal excluding Small ESWH)	NA	3.0	3.0	2.7	3.0	3.0
ESWH (≥55 gal and ≤120 gal)	0.2	0.2	0.2	0.4	1.5	1.5
GIWH	7.3	5.9	5.9	5.9	6.3	6.3
Shipment-Weighted Average *	3.7	5.4	6.2	6.2	6.4	11.4
Percent of Consumers that Experience a Net Cost						
GSWH	22	36	36	36	36	70
OSWH	9	25	25	25	25	25
Small ESWH	0	0	56	56	56	56
ESWH (≥20 gal and ≤55 gal excluding Small ESWH)	0	25	25	23	30	30
ESWH (≥55 gal and ≤120 gal)	0	0	0	1	42	42
GIWH	13	13	13	29	36	36
Shipment-Weighted Average*	11	27	30	31	35	49

* Weighted by market share in start year of 2030.

DOE first considered TSL 6, which represents the max-tech efficiency levels for all product classes. At TSL 6, the design options for GSWHs and GIWHs include condensing technology; the design options for ESWHs include heat pump technology; and the design options for OSWHs include extra insulation and multi-flue heat exchangers. TSL 6 would require extensive changes to the way manufacturers currently produce water heaters. The percent of shipments expected to meet or exceed the efficiency levels in TSL 6 by the compliance date of the proposed standard is 0.2 percent of shipments for GSWHs, 17 percent of shipments for OSWHs, 1 percent of small ESWH, 5 percent of shipments for electric storage water heaters with an effective storage volume less than 55 gallons (excluding small electric storage water heaters), 11 percent of ESWHs with an effective storage volume greater than or equal to 55 gallons, and 8 percent of shipments for GIWHs. There would be a significant ramp up in manufacturing capacity, especially for gas storage and electric storage water heaters, needed to support the market due and transition to accommodate these advance technologies.

TSL 6 would save an estimated 46.0 quads of energy, an amount DOE considers significant. Under TSL 6, the NPV of consumer benefit would be $75 billion using a discount rate of 7 percent, and $234 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 6 are 1,098 Mt of CO_2, 11,290 thousand tons of CH_4, 7.2 thousand tons of N_2O, 2,450 thousand tons of NO_X, 204 thousand tons of SO_2, and 1.4 tons of Hg. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) at TSL 6 is $56 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 6 is $35 billion using a 7-percent discount rate and $102 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO_2 and NO_X emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 6 is $166 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 6 is $392 billion. The estimated total NPV is provided for additional information, however, DOE primarily relies upon the NPV of consumer benefits when determining whether a

proposed standard level is economically justified.

At TSL 6, consumers will experience an average LCC increase of $247 for GSWHs, which is primarily driven by the total installed cost increases for gas condensing technology. For OSWHs, consumers will experience an average LCC savings of $165 and for GIWHs, consumers will experience an average LCC savings of $95. For electric storage water heaters, consumers will experience an LCC savings. For GSWHs, the consumers experiencing a net LCC cost is 70 percent and for small ESWHs, the consumers experiencing a net LCC cost is 56 percent. While there are LCC savings for ESWHs, DOE notes that the incremental installed costs are more than double those of baseline efficiency products, which can be a burden on consumers replacing their water heater when it fails, particularly lower income homeowners, if they need to find a way to cover the payment up front to purchase and install the replacement.

At TSL 6, the projected change in INPV ranges from a decrease of $750.5 million to an increase of $152.2 million, which corresponds to a decrease of 29.4 percent and an increase of 6.0 percent, respectively. The range of the impacts is driven primarily by the ability of manufacturers to recover their compliance costs. DOE estimates that industry must invest $651.5 million to comply with standards set at TSL 6. DOE believes that manufacturers would need to significantly upgrade their facilities to accommodate gas-condensing technologies for GIWHs as well as heat pump technology for ESWHs. Upgrades to produce heat pump electric storage water heaters include expansion of heat exchanger facilities and inclusion of refrigeration charging systems. In addition, manufacturers would need to expand their component sourcing of compressors and more sophisticated controls to produce these more advanced technology products. DOE estimates that manufacturers would need to scale up production of heat pump electric storage water heaters from approximately 5% of ESWH sales today (0.23 million units in 2023) to 100% of ESWH units in 2030. DOE believes significant research and development efforts would also be needed to support the introduction of a wider variety of heat pump water heater models in the market to meet the various needs of consumers, especially split system heat pump water heaters that would be needed to support the replacement of small electric storage water heaters. Currently, there are very limited split system heat pump water heater models commercially available in the United States, which are produced by only a few manufacturers and are sold in low quantities. DOE is concerned that sufficient products may not be available to support the small electric storage water heaters market, and new products may not be introduced by a large majority of water heater manufacturers by the compliance date of this proposed rule. In sum, DOE is concerned that industry will not be able to transition to 100% of electric storage water heaters to heat pump designs within a 5-year compliance window, as would be necessary to comply with TSL 6.

DOE requests comment on the ability of manufacturers to transition to producing heat pump water heaters within the compliance window.

DOE is also concerned about training the workforce that would be needed to install and service the heat pump water heater market by the compliance date of the standards. ESWHs are typically installed by plumbers. Advance technology water heaters require the ability to work with refrigerants similar to heating, ventilation, and air conditioning servicing contractors. DOE hopes that the emergence of workforce programs supported by the Inflation Reduction Act and the Bipartisan Infrastructure Law will begin to support the training and education of the workforce needed to support the clean energy transition. However, DOE understands this transition will take time and the workforce may not be ready at the scale necessary to support TSL 6.

DOE requests comment on the pace at which workforce development is expected to install and service the heat pump water heater market by the compliance date of the standards.

The Secretary tentatively concludes that at TSL 6 for consumer water heaters, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by economics impacts to manufacturers, primarily driven by the ramp up in scale and offerings needed to support both ESWHs and GWSHs efficiencies at TSL 6, the economic costs for small ESHW consumers (many of whom are low income), and the distinct impact of high initial costs for low-income consumers purchasing replacement water heaters in emergency circumstances. As mentioned above, less than 0.1 percent of gas-storage water heater shipments and approximately 5 percent of all electric storage water heaters shipments currently meet TSL 6 efficiencies. DOE also notes that new technologies have recently been introduced into the heat pump water heater market such as 120-volt water heaters, whose efficiencies are lower than TSL 6. Such 120-volt water heaters can be more readily adopted by more households, lowering installation costs. While DOE expects continued innovation in the heat pump water heat market at this time, DOE is worried that prematurely requiring TSL 6 efficiency levels will remove these new products from the market prematurely. The Secretary is also concerned about the uncertainty in the market to ensure GSWHs and ESWHs will continue to be available to all consumers, including small ESWH replacements. Consequently, the Secretary has tentatively concluded that TSL 6 is not economically justified.

DOE then considered TSL 5, which represents the max-tech efficiency levels for all product classes except for GSWHs, which includes a lower non-condensing efficiency level. At TSL 5, the design options for GSWHs include either gas-actuated or electric flue dampers instead of condensing technologies. For the remainder of the product classes, the efficiency levels and technologies are the same as in TSL 6: that is, for ESWHs, TSL 5 includes max-technology efficiency levels for heat pump water heaters across all ESWH product classes, including small ESWHs. The percent of shipments expected to meet or exceed the efficiency levels in TSL 5 is the same as TSL 6 except approximately 5 percent of shipments for GSWHs are expected to meet by the compliance date of the proposed standards. At TSL 5, the standard would transition all consumer electric storage water heaters to heat pump technology across all effective storage volumes, delivery capacity offerings, and sizes in the market.

TSL 5 would save an estimated 39.7 quads of energy, an amount DOE considers significant. Under TSL 5, the NPV of consumer benefit would be $78 billion using a discount rate of 7 percent, and $230 billion using a discount rate of 3 percent.

At TSL 5, DOE estimates that consumers will see a life cycle cost savings for all product classes. At TSL 5, the average LCC savings is $52 for GSWH consumers, which is driven by the lower installed costs as compared to the TSL 6 condensing level. While the LCC savings are positive for a majority of consumers across TSL 5 product classes, 56 percent of small ESWH consumers will experience a net cost when installing a split system heat pump water heater.

At TSL 5, the projected change in INPV ranges from a decrease of $510.7 million to an increase of $64.7 million, which correspond to a decrease of 20.0 percent and an increase of 2.5 percent, respectively. DOE estimates that industry must invest $424.1 million to comply with standards set at TSL 5. The primary driver of high conversion costs is the industry's investment to meet market demand for heat pump electric storage water heaters. As noted above, DOE estimates that manufacturers would need to scale up production of heat pump electric storage water heaters from approximately 5% of all ESWH units (0.23 million units in 2023) to 100% of units in 2030. As a part of this scale-up, manufacturers would need to develop new split-system heat pumps for the small electric storage water heater market. Manufacturers would likely need to invest in cost optimization of existing designs, in new designs, and in additional manufacturing capacity for heat pump water heaters. For GIWHs, manufacturers would need to update product designs and production tooling to accommodate increased heat exchanger sizes. Additionally, given the greater complexity and assembly time of condensing GIWHs, manufacturers would likely need to add manufacturing lines to maintain production capacity.

Similar to the discussion at TSL 6, DOE's concerns continue to be driven by the ramp up in manufacturing, research, and development that would be needed to support the heat pump water heater market to continue today's volumes. TSL 5 would require the expansion of heat pump lines and the introduction of new products to support the entire market, especially small ESWHs.

The Secretary tentatively concludes that at TSL 5 for consumer water heaters, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the impacts on manufacturers, driven by the uncertainty in the ramp up needed to support a full transition of all volumes to heat pump water heaters for ESWHs, the impacts on consumers of small ESWHs, and the increase in initial costs. While the LCC savings are positive for a majority of consumers across TSL 5 product classes, 56 percent of small ESWH consumers would experience net costs when installing a split system heat pump water heater. DOE is concerned about the increase in first costs for consumers forced to purchase a replacement water heater when their existing water heater fails and the inability for the market to introduce cost-optimized heat pump water heaters as an offering to consumers to help mitigate the initial first cost increase. As at TSL 5, DOE is also concerned about the workforce being ready to service and install at the volumes necessary to support such a transition in 5 years. Consequently, the Secretary has tentatively concluded that TSL 5 is not economically justified.

DOE then considered TSL 4, which represents a lower efficiency level for ESWHs and GIWHs and maintains the same efficiency levels for OSWHs and GSWHs as at TSL 5. At TSL 4, the design options for GSWHs include either gas-actuated or electric flue dampers; the design options for OSWHs include extra insulation and multi-flue heat exchangers; the design options for ESWHs include heat pump technology; and the design options for GIWHs include condensing technology. The percent of shipments in 2030 expected to meet the proposed level in for ESWHs with an effective storage volume less than 55 gallons is 13 percent, which is a significant increase from the max-tech efficiency levels. But for small ESWHs, the percent of shipments expected to meet TSL 4 remains at 1. At TSL 4, the standard would transition all consumer electric storage water heaters to heat pump technology, but at a more moderate efficiency level for non-small ESWHs. DOE still expects this transition to be significant, but DOE notes that manufacturers have more experience producing non-small ESWHs at these efficiency levels due to the prevalence of the ENERGY STAR program. DOE also expects the programs from the Inflation Reduction Act, including the appliance rebates and tax credits, to help support the expansion of this market.

TSL 4 would save an estimated 38.4 quads of energy, an amount DOE considers significant. Under TSL 4, the NPV of consumer benefit would be $78 billion using a discount rate of 7 percent, and $228 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 702 Mt of CO_2, 6,345 thousand tons of CH_4, 6.4 thousand tons of N_2O, 1,380 thousand tons of NO_X, 458 thousand tons of SO_2, and 1.4 tons of Hg. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) at TSL 4 is $35 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 4 is $24 billion using a 7-percent discount rate and $68 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 $136 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 4 is $330 billion. The estimated total NPV is provided for additional information, however DOE primarily relies upon the NPV of consumer benefits when determining whether a proposed standard level is economically justified.

The average LCC across all product classes is positive. However, DOE continues to be concerned about the development of new models that would need to be introduced into the split-system heat pump water heater market to support the small ESWH replacements. As DOE noted in discussing TSL 6, only a few manufacturers produce products today in very small volumes and would not be able to support the entire small ESWH market today. Similar to TSLs 5 and 6, 56 percent of small ESWH consumers will experience a net cost when installing a split system heat pump water heater

At TSL 4, the projected change in INPV ranges from a decrease of $438.8 million to an increase of $35.3 million, which correspond to a decrease of 17.2 percent and an increase of 1.4 percent, respectively. DOE estimates that industry must invest $376.7 million to comply with standards set at TSL 4. For ESWH manufacturers, stepping down from max-tech provides greater flexibility in the design process and reduces the level of model-specific optimization. This results in lower conversion costs. However, manufacturers would still need to develop new split-system heat pumps for the small ESWH market and scale up production capacity for integrated heat pump water heaters. As noted above, DOE estimates that manufacturers would need to scale up production of heat pump electric storage water heaters from approximately 5% of ESWH sales in 2023 to 100% of units in 2030. For GIWH manufacturers, all models would have to incorporate condensing technology. TSL 4 is a step down from max-tech but still represents an efficiency level that has not yet been broadly adopted in by the GIWH market. While 66% of GIWHs are already sold at condensing levels, only 15% of shipments meet TSL 4. Given the greater complexity and assembly time of condensing GIWHs, as well as the increased heat exchanger sizes

necessary to meet this level, manufacturers would likely need to add manufacturing lines to maintain current production capacity.

The Secretary tentatively concludes that at TSL 4 for consumer water heaters, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the manufacturing concerns and by the uncertainty associated with the industry's ability to ramp up production at the levels necessary to meet a standard at TSL 4 within a 5-year period. Given TSL 4 represents a lower efficiency level that would require less model specific optimization, DOE expects the research and development efforts to be smaller and DOE does expect significant ramp of this greater efficiency market segment in response to the incentive programs. However, DOE continues to be concerned about industry's ability to produce more than 3 million units a year, while introducing new innovative products to meet consumers' needs and optimizing to produce lower costs products. As at TSLs 6 and 5, DOE is concerned that the efficiency level required by TSL 4 may preclude the introduction of 120-volt water heaters into the broader market, which DOE considered as a qualitative factor that DOE has considered in its decision-making. Adopting a standard level at TSL 4 would prevent innovation around these technologies (such as reducing their costs). Consequently, the Secretary has tentatively concluded that TSL 4 is not economically justified.

DOE then considered TSL 3, which represents the same levels as TSL 4 except includes a lower efficiency level for ESWHs and GIWHs. For those ESWHs less than 55 gallons of effective storage volume (including small ESWHs), TSL 3 includes an ''entry'' level heat pump efficiency level to accommodate some of the new product innovations that have been recently introduced into the market. At TSL 3, currently available 120–V heat pump water heaters would be able to comply with the required efficiencies. For ESWHs greater than 55 gallons of effective storage volume, TSL 3 includes an incremental increase in heat pump efficiency over the current standards. At TSL 3, the standard would still transition all consumer electric storage water heaters to heat pump technology. As noted earlier, heat pump technology currently comprises approximately 5% of the electric storage water heater market. TSL 3 would shift 100% of electric storage water heaters to heat pumps, driving large investments in design of new heat pump offerings and new product capacity. For GIWHs, TSL 3 still requires condensing technology but can be achieved with simpler or smaller heat exchangers than at TSL 4.

TSL 3 would save an estimated 33.3 quads of energy, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefit would be $65 billion using a discount rate of 7 percent, and $191 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 586 Mt of CO_2, 5,193 thousand tons of CH_4, 5.6 thousand tons of N_2O, 1,130 thousand tons of NO_X, 177 thousand tons of SO_2, and 1.2 tons of Hg. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) at TSL 3 is $29 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 3 is $20 billion using a 7-percent discount rate and $57 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 $113 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 3 is $277 billion. The estimated total NPV is provided for additional information, however DOE primarily relies upon the NPV of consumer benefits when determining whether a proposed standard level is economically justified.

At TSL 3, the average LCC impact is a savings across all product classes. Similar to TSLs 4, 5, and 6, 56 percent of small ESWH consumers will experience a net cost when installing a split system heat pump water heater.

At TSL 3, the projected change in INPV ranges from a decrease of $386.1 million to an increase of $41.2 million, which correspond to a decrease of 15.1 percent and an increase of 1.6 percent, respectively. DOE estimates that industry must invest $32 3.3 million to comply with standards set at TSL 3. Manufacturers would need to develop new split-system heat pumps for the small ESWH market. They would also need to scale up production capacity for integrated heat pump water heaters. For GIWH manufactures, all product lines would have to incorporate condensing technology. However, the industry has extensive experience producing GIWH models that meet TSL 3, as 59% of GIWH sales meet or exceed this level today.

The Secretary tentatively concludes that at TSL 3 for consumer water heaters, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the uncertainty associated with the ability for industry to meet the demand necessary to support the entire market for ESWHs, including the workforce transition needed to service and install all of these HPWHs. For small ESWHs, DOE estimates that the fraction of consumers experiencing a net cost is 56 percent. Based on those costs to small ESWH consumers and the possible difficulty of meeting the market needs within the compliance timeframe, the Secretary has tentatively concluded that TSL 3 is not economically justified.

DOE then considered TSL 2, which represents the baseline efficiency level for small ESWHs and heat pump efficiency levels for all other ESWHs. TSL 2 also includes a condensing level for GIWHs, max-tech efficiency levels for OSWHs, and a moderate increase in efficiency for GSWHs. TSL 2 also aligns most closely with the Joint Stakeholder Recommendation efficiency levels with minor differences to the small ESWH product class as discussed in section IV.C. While DOE recognizes that TSL 2 is not the TSL that maximizes net monetized benefits, DOE has weighed other non-quantified and non-monetized factors in accordance with EPCA in reaching this determination.

TSL 2 would save an estimated 27.3 quads of energy, an amount DOE considers significant. Under TSL 2, the NPV of consumer benefit would be $56 billion using a discount rate of 7 percent, and $161 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 2 are 501 Mt of CO_2, 4,541 thousand tons of CH_4, 4.6 thousand tons of N_2O, 988 thousand tons of NO_X, 143 thousand tons of SO_2, and 1.0 tons of Hg. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) at TSL 3 is $25 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 2 is $17 billion using a 7-percent discount rate and $49 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 $98 billion. Using a 3-percent discount rate for all benefits

and costs, the estimated total NPV at TSL 2 is $235 billion. The estimated total NPV is provided for additional information, however DOE primarily relies upon the NPV of consumer benefits when determining whether a proposed standard level is economically justified.

At TSL 2, the average LCC impact is a savings for all product classes. the average LCC impact is a savings of $52 for GSWHs, savings of $165 for OSWHs, savings of $1,868 for ESWHs (20 gal ≤ V_{eff} ≤55 gal) excluding small ESWHs, savings of $501 for ESWHs (55 gal < V_{eff} ≤120 gal), and savings of $135 for GIWHs. The fraction of consumers experiencing a net LCC cost is 36 percent for GSWHs, 25 percent for OSWHs, 25 percent for ESWHs (20 gal ≤ V_{eff} ≤55 gal) excluding Small ESWHs, 0 percent for ESWHs (55 gal < V_{eff} ≤120 gal), and 13 percent for GIWHs. Consumers of small ESWH (20 gal ≤ V_{eff} ≤35 gal) are not impacted at TSL 2 as the standard is not proposed to be amended.

At TSL 2, the projected change in INPV ranges from a decrease of $207.3 million to an increase of $165.5 million, which correspond to a decrease of 8.1 percent and an increase of 6.5 percent, respectively. DOE estimates that industry must invest $228.1 million to comply with standards set at TSL 2.

At higher TSLs, the primary driver of high conversion costs is the industry's investment to meet market demand for heat pump electric storage water heaters. TSL 2 preserves the existing market for small ESWHs, allowing small ESWHs utilizing only electric resistance technology (*i.e.,* that do not utilize a heat pump) to remain in the market. In turn, this reduces the level of investment needed to meet market demand for heat pump water heaters. DOE estimates industry would need to scale up production of heat pump electric storage water heaters from approximately 5% of ESWHs today to 63% of ESWHs in 2030, a significant reduction from higher TSLs. This approach, while still requiring a significant ramp up in manufacturing capacity for heat pump water heaters, allows for a more incremental transition to heat pump technology. It limits the investment required of manufacturers relative to higher TSLs that would require transitioning the entire ESWH market to heat pump technology and recognizes the benefits of providing additional time for small electric storage water heater designs using heat pump technology to mature. DOE believes that having major manufacturers sign on to the Joint Recommendation is a testament to industry's ability to ramp up capacity to produce the volumes necessary to support the heat pump water heater market that will be required by TSL 2 by the compliance date of the proposed standards.

After considering the analysis and weighing the benefits and burdens, the Secretary has tentatively concluded that standards set at TSL 2 for consumer water heaters would be economically justified. At this TSL, the average LCC savings for consumers of all product classes are expected to be positive. The average LCC savings across all ESWH excluding small ESWHs consumers is $1,867. At TSL 2, the efficiency levels for ESWHs allow for continued development and innovation with 120 V heat pump ESWHs as well as split system heat pump ESWHs. The efficiency levels at TSL 2 also allow for existing small ESWHs to remain on the market, providing an important option for a subset of consumers. 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. These national benefits vastly outweigh the costs. The positive LCC savings—a different way of quantifying consumer benefits—reinforces this conclusion. 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 $25 billion in climate benefits (associated with the average SC–GHG at a 3-percent discount rate), and $17 billion (using a 7-percent discount rate) or $49 billion (using a 3-percent discount rate) in health benefits—the rationale becomes stronger still.

In addition, DOE considered that the efficiency levels across TSL 2 are generally representative of the Joint Stakeholder agreement. More specifically, DOE believes the Joint Stakeholder agreement from a cross-section group of stakeholders provides the Department a good indication of stakeholder views on this rulemaking and provides the Department with some assurance that industry can transition to these levels and the market will see significant benefits as indicated by DOE's analysis.

Accordingly, the Secretary has tentatively concluded that TSL 2 would offer the maximum improvement in efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. Although results are presented here in terms of TSLs, DOE analyzes and evaluates all possible ELs for each product class in its analysis. TSL 2 is comprised of efficiency levels that offer significant LCC savings while keeping the percent of consumers experiencing a net cost at a modest level. Lower income homeowners, in particular, who currently use small ESWHs are significantly less likely to be disproportionately impacted at TSL 2. TSL 2 also reduces the percentage of the market that would be transitioning to heat pump water heaters within a 5-year period. While DOE still understands the ramp up to accommodate heat pump water heaters and condensing GIWHs is significant, DOE believes manufacturers can leverage their existing operations, knowledge, workforce networks, and R&D to scale at a level needed to support a proposed standard at TSL 2. Lastly, TSL 2 most closely represents the recommended standard levels submitted by Joint Stakeholders to DOE, providing further support for standard levels set at TSL 2, a factor the Secretary considers significant.

As discussed in section IV.F.9, DOE does not expect any significant amount of switching across product classes as a result of the proposed standards. There are a number of significant additional costs involved in switching from electric equipment to gas equipment and vice versa, such as replacing an electrical panel or installing new gas lines (both inside and outside of the home) and new venting. These additional costs can possibly exceed $1,000 on top of the installed costs estimated in this proposed rule, making product switching as a result of standards very likely to be a minimal effect at most.

Therefore, based on the above considerations, DOE proposes the conservation standards for consumer water heaters at TSL 2 for those product classes where there are existing applicable UEF standards. For the remaining product classes, DOE proposes to convert the existing standards to the UEF metric based on the amended appendix E test procedure. Altogether, the proposed energy conservation standards for consumer water heaters, which are expressed as UEF, are shown in Table V.37.

TABLE V.37—PROPOSED ENERGY CONSERVATION STANDARDS FOR CONSUMER WATER HEATERS

Product class	Effective storage volume and input rating * (if applicable)	Draw pattern	Uniform energy factor
Gas-fired Storage Water Heater	<20 gal	Very Small	$0.2062 - (0.0020 \times V_{eff})$
		Low	$0.4893 - (0.0027 \times V_{eff})$
		Medium	$0.5758 - (0.0023 \times V_{eff})$
		High	$0.6586 - (0.0020 \times V_{eff})$
	≥20 gal and ≤55 gal	Very Small	$0.3925 - (0.0020 \times V_{eff})$
		Low	$0.6451 - (0.0019 \times V_{eff})$
		Medium	$0.7046 - (0.0017 \times V_{eff})$
		High	$0.7424 - (0.0013 \times V_{eff})$
	>55 gal and ≤100 gal	Very Small	$0.6470 - (0.0006 \times V_{eff})$
		Low	$0.7689 - (0.0005 \times V_{eff})$
		Medium	$0.7897 - (0.0004 \times V_{eff})$
		High	$0.8072 - (0.0003 \times V_{eff})$
	>100 gal	Very Small	$0.1482 - (0.0007 \times V_{eff})$
		Low	$0.4342 - (0.0017 \times V_{eff})$
		Medium	$0.5596 - (0.0020 \times V_{eff})$
		High	$0.6658 - (0.0019 \times V_{eff})$
Oil-fired Storage Water Heater	≤50 gal	Very Small	$0.2909 - (0.0012 \times V_{eff})$
		Low	$0.5730 - (0.0016 \times V_{eff})$
		Medium	$0.6478 - (0.0016 \times V_{eff})$
		High	$0.7215 - (0.0014 \times V_{eff})$
	>50 gal	Very Small	$0.1580 - (0.0009 \times V_{eff})$
		Low	$0.4390 - (0.0020 \times V_{eff})$
		Medium	$0.5389 - (0.0021 \times V_{eff})$
		High	$0.6172 - (0.0018 \times V_{eff})$
Very Small Electric Storage Water Heater.	<20 gal	Very Small	$0.5925 - (0.0059 \times V_{eff})$
		Low	$0.8642 - (0.0030 \times V_{eff})$
		Medium	$0.9096 - (0.0020 \times V_{eff})$
		High	$0.9430 - (0.0012 \times V_{eff})$
Small Electric Storage Water Heater	≥20 gal and ≤35 gal	Very Small	$0.8808 - (0.0008 \times V_{eff})$
		Low	$0.9254 - (0.0003 \times V_{eff})$
Electric Storage Water Heaters	>20 and ≤55 gal (excluding small electric storage water heaters).	Very Small	2.30
		Low	2.30
		Medium	2.30
		High	2.30
	>55 gal and ≤120 gal	Very Small	2.50
		Low	2.50
		Medium	2.50
		High	2.50
	>120 gal	Very Small	$0.3574 - (0.0012 \times V_{eff})$
		Low	$0.7897 - (0.0019 \times V_{eff})$
		Medium	$0.8884 - (0.0017 \times V_{eff})$
		High	$0.9575 - (0.0013 \times V_{eff})$
Tabletop Water Heater	<20 gal	Very Small	$0.5925 - (0.0059 \times V_{eff})$
		Low	$0.8642 - (0.0030 \times V_{eff})$
	≥20 gal and ≤120 gal	Very Small	$0.6323 - (0.0058 \times V_{eff})$
		Low	$0.9188 - (0.0031 \times V_{eff})$
Instantaneous Gas-fired Water Heater	<2 gal and ≤50,000 Btu/h	Very Small	0.64
		Low	0.64
		Medium	0.64
		High	0.64
	<2 gal and >50,000 Btu/h	Very Small	0.89
		Low	0.91
		Medium	0.91
		High	0.93
	≥2 gal and ≤200,000 Btu/h	Very Small	$0.2534 - (0.0018 \times V_{eff})$
		Low	$0.5226 - (0.0022 \times V_{eff})$
		Medium	$0.5919 - (0.0020 \times V_{eff})$
		High	$0.6540 - (0.0017 \times V_{eff})$
Instantaneous Oil-fired Water Heater	<2 gal and ≤210,000 Btu/h	Very Small	0.61
		Low	0.61
		Medium	0.61
		High	0.61
	≥2 gal and ≤210,000 Btu/h	Very Small	$0.2780 - (0.0022 \times V_{eff})$
		Low	$0.5151 - (0.0023 \times V_{eff})$
		Medium	$0.5687 - (0.0021 \times V_{eff})$
		High	$0.6147 - (0.0017 \times V_{eff})$
Instantaneous Electric Water Heater	<2 gal	Very Small	0.91
		Low	0.91
		Medium	0.91
		High	0.92

TABLE V.37—PROPOSED ENERGY CONSERVATION STANDARDS FOR CONSUMER WATER HEATERS—Continued

Product class	Effective storage volume and input rating * (if applicable)	Draw pattern	Uniform energy factor
	≥2 gal	Very Small	$0.8086 - (0.0050 \times V_{eff})$
		Low	$0.9123 - (0.0020 \times V_{eff})$
		Medium	$0.9252 - (0.0015 \times V_{eff})$
		High	$0.9350 - (0.0011 \times V_{eff})$
Grid-Enabled Water Heater	>75 gal	Very Small	$1.0136 - (0.0028 \times V_{eff})$
		Low	$0.9984 - (0.0014 \times V_{eff})$
		Medium	$0.9853 - (0.0010 \times V_{eff})$
		High	$0.9720 - (0.0007 \times V_{eff})$
Gas-fired Circulating Water Heater	≤200,000 Btu/h	Very Small	$0.8000 - (0.0011 \times V_{eff})$
		Low	$0.8100 - (0.0011 \times V_{eff})$
		Medium	$0.8100 - (0.0011 \times V_{eff})$
		High	$0.8100 - (0.0011 \times V_{eff})$
Oil-fired Circulating Water Heater	≤210,000 Btu/h	Very Small	$0.6100 - (0.0011 \times V_{eff})$
		Low	$0.6100 - (0.0011 \times V_{eff})$
		Medium	$0.6100 - (0.0011 \times V_{eff})$
		High	$0.6100 - (0.0011 \times V_{eff})$
Electric Circulating Water Heater	≤12 kW; for heat pump type units ≤24 A at ≤250 V	Very Small	$0.9100 - (0.0011 \times V_{eff})$
		Low	$0.9100 - (0.0011 \times V_{eff})$
		Medium	$0.9100 - (0.0011 \times V_{eff})$
		High	$0.9200 - (0.0011 \times V_{eff})$

* Effective storage volume is the representative value of storage volume as determined in accordance with the DOE test procedure at Appendix E to Subpart B of 10 CFR 430 and applicable sampling plans in 429.17.

As discussed in section IV.C.1.a.iii of this NOPR, DOE analyzed an additional efficiency level for gas-fired instantaneous water heaters as part of this proposed rule that was not analyzed in the preliminary analysis. This efficiency level, presented as EL 3 in this NOPR, generally corresponds to the ENERGY STAR specification version 5.0, which was released on July 18, 2022 and is effective since April 18, 2023. Though the proposed TSL 2 includes EL 2 for gas-fired instantaneous water heaters, DOE is also strongly considering an amended standard at EL 3 for instantaneous water heaters, which would increase the efficiency to an intermediate condensing level across all draw patterns. The Department's NOPR analysis shows that EL 3 for gas-fired instantaneous water heaters translates to an average LCC savings of $89 for consumers, with 29% of consumer experiencing a net cost. The cumulative NPV for consumers at this efficiency level is $2.6 billion using a 3-percent discount rate, and $0.8 billion using a 7-percent discount rate. EL 3 for gas-fired instantaneous water heaters also represents an energy savings of 0.7 quads, compared to the no-new-standards case. These additional benefits and savings from adopting an amended standard at EL 3 instead of EL 2 could be considered significant. DOE believes that manufacturers have experience with designing and producing GIWHs at EL 3, especially as the ENERGY STAR levels gain market share. DOE also understands that there will need to be significant increases in manufacturing capacity in order to meet current market demand for GIWHs. Therefore, DOE is specifically considering EL 3 for GIWHs in the final rule, but DOE understands this level was not chosen by the Joint Stakeholders as part of the recommended agreement submitted to DOE.

DOE requests additional information on the benefits and burdens of a potential amended standard for gas-fired instantaneous water heaters at EL 3, especially with respect to manufacturers being able to scale their entire production to EL 3 in the compliance time frame being considered by this rulemaking.

2. Annualized Benefits and Costs of the Proposed Standards

The annualized net benefit is (1) the annualized national economic value (expressed in 2022$) of the benefits from operating products that meet the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in product purchase costs), and (2) the annualized monetary value of the climate and health benefits from emission reductions.

Table V.38 shows the annualized values for consumer water heaters under TSL 2, expressed in 2022$. The results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and health benefits from reduced NO_X and SO_2 emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated cost of the standards proposed in this rule is $2,235 million per year in increased equipment costs, while the estimated annual benefits are $7,876 million in reduced equipment operating costs, $1,429 million in monetized climate benefits, and $1,805 million in monetized health benefits. In this case, the net monetized benefit would amount to $8,875 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the proposed standards is $2,420 million per year in increased equipment costs, while the estimated annual benefits are $11,357 million in reduced operating costs, $1,429 million in monetized climate benefits, and $2,798 million in monetized health benefits. In this case, the net monetized benefit would amount to $13,164 million per year.

TABLE V.38—ANNUALIZED MONETIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR CONSUMER WATER HEATERS

[TSL 2]

	Billion 2022$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	11.357	10.633	12.096
Climate Benefits *	1.429	1.412	1.446
Health Benefits **	2.798	2.764	2.832
Total Monetized Benefits †	15.584	14.809	16.374
Consumer Incremental Product Costs ‡	2.420	2.488	2.356
Net Monetized Benefits	13.164	12.321	14.018
Change in Producer Cashflow (INPV ††)	(0.021) – 0.017	(0.021) – 0.017	(0.021) – 0.017
7% discount rate			
Consumer Operating Cost Savings	7.876	7.380	8.382
Climate Benefits * (3% discount rate)	1.429	1.412	1.446
Health Benefits **	1.805	1.784	1.825
Total Monetized Benefits †	11.110	10.576	11.653
Consumer Incremental Product Costs ‡	2.235	2.290	2.183
Net Monetized Benefits	8.875	8.286	9.470
Change in Producer Cashflow (INPV ††)	(0.021) – 0.017	(0.021) – 0.017	(0.021) – 0.017

Note: This table presents the costs and benefits associated with consumer water heaters shipped in 2030–2059. These results include benefits to consumers which accrue after 2059 from the products shipped in 2030–2059. The Primary, Low Net Benefits, and High Net Benefits Estimates utilize projections of energy prices from the AEO2023 Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental equipment costs reflect a medium decline rate in the Primary Estimate, a low decline rate in the Low Net Benefits Estimate, and a high decline rate in the High Net Benefits Estimate. The methods used to derive projected price trends are explained in sections IV.F.1 and IV.F.4 of this document. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

* To monetize the benefits of reducing greenhouse gas 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). Climate benefits are calculated using four different estimates of the global SC–GHG (see section IV.L of this document). For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3-percent discount rate are shown, but the Department does not have a single central SC–GHG point estimate, and it emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates.

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

† Total benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate, but the Department does not have a single central SC–GHG point estimate.

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

†† Operating Cost Savings are calculated based on the life cycle costs analysis and national impact analysis as discussed in detail below. See sections IV.F and IV.H. DOE's NIA includes all impacts (both costs and benefits) along the distribution chain beginning with the increased costs to the manufacturer to manufacture the product and ending with the increase in price experienced by the consumer. DOE also separately conducts a detailed analysis on the impacts on manufacturers (the MIA). See section IV.J. In the detailed MIA, DOE models manufacturers' pricing decisions based on assumptions regarding investments, conversion costs, cashflow, and margins. The MIA produces a range of impacts, which is the rule's expected impact on the industry net present value (INPV). The change in industry NPV is the present value of all changes in industry cash flow, including changes in production costs, capital expenditures, and manufacturer profit margins. Change in INPV is calculated using the industry weighted average cost of capital value of 9.6% that is estimated in the manufacturer impact analysis (see chapter 12 of the NOPR TSD for a complete description of the industry weighted average cost of capital). For consumer water heaters, those values are −$21 million and $17 million. DOE accounts for that range of likely impacts in analyzing whether a TSL is economically justified. See section V.A. DOE is presenting the range of impacts to the industry net present value under two markup scenarios: the Preservation of Gross Margin scenario, which is the manufacturer markup scenario used in the calculation of Consumer Operating Cost Savings in this table, and the Preservation of Operating Profit Markup scenario, where DOE assumed manufacturers would not be able to increase per-unit operating profit in proportion to increases in manufacturer production costs. DOE includes the range of estimated INPV in the above table, drawing on the MIA explained further in Section IV.J, to provide additional context for assessing the estimated impacts of this proposal to society, including potential changes in production and consumption, which is consistent with OMB's Circular A–4 and E.O. 12866. If DOE were to include the industry net present value into the net benefit calculation for this proposed rule, the net benefits would range from $13.143 billion to $13.181 billion at 3-percent discount rate and range from $8.854 billion to $8.892 billion at 7-discount rate. DOE seeks comment on this approach.

C. Test Procedure Applicability

Manufacturers, including importers, must use product-specific certification templates to certify compliance to DOE. For consumer water heaters, the certification template reflects the general certification requirements specified at 10 CFR 429.12 and the product-specific requirements specified at 10 CFR 429.17. DOE is not proposing to amend the product-specific certification requirements for these products in this standards rulemaking.

As a result of the proposed standards in this NOPR, DOE is proposing further specificity around certain aspects of the appendix E test procedure to account for the impacts of potential new and amended standards on the distribution of products which would be available on the market as an outcome of a standards final rule. These updates are discussed in the following sections.

1. Efficiency Determinations Using High Temperature Testing

As discussed section III.B of this NOPR, the test procedure for consumer water heaters at appendix E (as amended by the June 2023 TP Final

Rule) includes provisions for high temperature testing of certain electric resistance storage water heaters (*i.e.,* setting the tank temperature to the highest temperature which allows the product to still deliver water at a nominal 125 °F with the use of a mixing valve). Until the compliance date of amended standards, manufacturers must use the normal temperature testing method for representations and compliance with the current energy conservation standards, with the high temperature test method being for optional additional representations only.

In the June 2023 TP Final Rule, DOE described how the high temperature test method would put products with the ability to increase effective storage volume through elevated storage temperatures on the same footing as products which have larger storage volumes—*i.e.,* to create an equivalent basis of comparison for products which can offer the same effective storage capacity. As discussed in that final rule, when standards were promulgated in the December 2016 Conversion Factor Final Rule requiring heat pump efficiencies for electric storage water heaters above 55 gallons of rated storage volume, DOE observed a market shift towards smaller electric storage water heater sizes where there the standards did not require heat pump technology. A new market began to emerge for consumers who still desired effective storage volumes above 55 gallons but did not want to install heat pump water heaters: electric resistance storage water heaters less than 55 gallons in rated storage volume with significantly higher effective storage volumes due to higher storage tank temperatures. 88 FR 40406, 40446.

DOE noted that it has recently become aware of products that are being marketed to consumers with ''capacity boosting'' capabilities which can avoid the need to install a larger storage-type water heater if used continuously in a high-temperature setting. The products are equipped with user-operable modes which set the water heater to boost the storage tank temperature and use a built-in mixing valve (or one installed at the point of manufacture) to automatically maintain the delivery temperature. For example, DOE noted in the June 2023 TP Final Rule that one manufacturer produces 30-, 40-, and 50-gallon water heaters with an ''X-High Setting'' claiming to provide the same amount of hot water (''Effective Capacity,'' as the manufacturer refers to it) as significantly larger water heaters with a more typical storage tank temperature of 125 °F—such as an 80-gallon capacity for the 50-gallon model, 64-gallon capacity for the 40-gallon model, and 48-gallon capacity for the 30-gallon model. Another manufacturer produces a 55-gallon water heater with a variety of settings allowing the user to get ''performance equivalency'' of a 65-, 80-, or 100-gallon tank, stating that the tank raises the temperature safely up to 170 °F. *Id.* In addition, DOE notes that most water heaters on the market today, including products without a specific ''capacity boosting'' mode, have a user-operable thermostat that can be adjusted to temperatures exceeding 125 °F. DOE believes consumers rarely modify their water heater temperature settings today. However, if additional hot water capacity were desired, a consumer could increase the thermostat setting on their water heater and use a mixing valve to temper the water to the desired outlet temperature while storing it at a much hotter temperature, similar to how the water heaters with a ''capacity boosting'' mode and mixing valve would operate.

As stated in the July 2022 TP SNOPR and the June 2023 TP Final Rule, consumers would be expected to use the high temperature mode on such water heaters as part of the regular operation of their water heater because consumers are electing to purchase the water heater based on its capacity boosting ability. Accordingly, for such products, DOE expected that a representative average use cycle would include some portion of time in high temperature mode. 87 FR 42270, 42279; 88 FR 40406, 40447. In particular, for electric resistance water heaters that can be permanently set at a high temperature to boost capacity, including water heaters with and without a specific capacity boosting mode (but not including water heaters that are set at a high temperature as part of a demand-response program), DOE believes that a representative average use cycle in the test procedure must encompass the ''capacity boosting'' capability as this is the mode that the consumer will likely be using once the water heater is installed in the field, as discussed later in this section.

In cases where a water heater has the ability to be permanently set to store water at a higher temperature than the delivered water temperature setpoint, households could purchase an undersized water heater and operate it continuously in a high-temperature mode or setting to provide sufficient hot water to the residence while using a smaller tank than would otherwise be required. DOE notes that the 40-gallon model and the 50-gallon models with a capacity boosting mode that were previously discussed are advertised by the manufacturer as being capable of providing effective capacities greater than 55 gallons, which is the volume threshold above which products must comply to heat pump-level energy conservation standards (see 10 CFR 430.32(d)).

However, until the June 2023 TP Final Rule, there did not exist a method which could capture the effect of storage capacity boosting in this manner. By implementing the high temperature test method for the subset of products that are expected to be operated this way in the field, DOE can now ensure that representations for such products are accurate and provide consumers with the means to directly compare these products to the larger water heaters they will likely compete with. Therefore, in this NOPR, DOE is proposing that certain electric storage-type water heaters would be required to use the high temperature test method for representations and compliance. The high temperature test method would apply only to certain electric storage water heaters, and DOE's reasoning for proposing only a subset to comply with this is outlined in the paragraphs that follow.

In this NOPR, DOE proposes not to amend the current standards for small electric storage water heaters. For these products, the standard is achievable with electric resistance heating elements and use of heat pump technology is not necessary. As shown in the market assessment (appendix 3A of the TSD), the most common rated storage volume for all other electric storage water heaters in the current market corresponds to a nominal volume of 40 gallons. Small electric storage water heaters are smaller than this current preferred capacity, thus, if some consumers that currently rely on 40-gallon water heaters choose to transition to smaller water heaters, DOE expects that there is a high likelihood that small electric storage water heaters would be installed at a higher temperature setpoint with a mixing valve (whether built-in or installed in the field) to achieve the same capacity as a 40-gallon water heater.

Further, in response to the March 2022 Preliminary Analysis, the CA IOUs stated that thermostatic mixing valves are relatively inexpensive, widely available, and required by the plumbing code in at least one state. The CA IOUs indicated that a water heater with a mixing valve can use a 3:1 ratio of 150 °F hot water to 60 °F cold water to achieve a 125 °F normal delivery temperature. The commenter stated that mixing valves can increase the water heater's effective FHR, such that an

electric resistance model with a lower rated volume and a mixing valve installed can deliver the same amount of hot water as a model with a higher rated volume and no mixing valve. Thus, the CA IOUs expressed concern that electric resistance storage water heaters with mixing valves could claim a significant share of the market if DOE were to adopt a standard level allowing electric resistance technology for products larger than 30 gallons or in the medium or high draw patterns. (CA IOUs, No. 52 at p. 8) DOE notes that small electric storage water heaters would include some products above 30 gallons in the very small or low draw patterns.

Based on this information, DOE understands that if the proposed standards are ultimately adopted for electric storage water heaters, some consumers may choose to install smaller products (*i.e.,* models less than or equal to 35 gallons) that utilize electric resistance technology with a mixing valve and set the water heater at a higher tank temperature to increase capacity, rather than installing a water heater using heat pump technology with a larger volume. In response to the concerns raised by the CA IOUs, DOE investigated the theoretical effective volume increases that could result from a 35-gallon water heater being set to storage water at higher temperatures. DOE calculated the effective storage volume of a water heater with a rated storage volume of 35 gallons, at various mean tank temperatures, according to the effective storage volume calculation methodology established in the June 2023 TP Final Rule, assuming that the delivery temperature would be maintained at a normal range (120 °F ±5 °F). The results are shown in Table V.39.

TABLE V.39—EFFECTIVE STORAGE VOLUME OF A WATER HEATER WITH A 35-GALLON RATED STORAGE VOLUME AT VARIOUS MEAN TANK TEMPERATURES

Mean tank temperature (°F)	V_{eff} of water heater with 35-gallon V_r (gallons) *
125	35
130	** 38
135	*** 41
140	44
145	47
150	50
155	53
160	56
165	59
170	62

* V_{eff} is the effective storage volume. V_r is the rated storage volume.

** If the storage temperature is not greater than 130 °F, then the rated effective storage volume is equal to the rated storage volume. See section 6.3.1.1 of the appendix E test procedure. This was not applied when calculating V_{eff} in this table in order to clearly illustrate the impact of increasing the storage tank temperature.

*** If the proposed approach in this NOPR is finalized, a unit performing at 135 °F would not need to test per the high temperature test method, and thus it would be rated at an effective storage volume equal to rated storage volume also.

As stated before, DOE aims to ensure that the representations of UEF, FHR, and effective storage volume are accurate and reflective of the typical field application, and also provide a means of direct comparison between products which have the same effective capacities and cater to the same consumer needs. Based on the expectation that smaller electric resistance storage water heaters would be installed with mixing valves to compete with larger heat pump water heaters, high temperature testing is expected to be representative of typical average use cycle for these electric resistance storage water heaters. Hence, DOE has tentatively determined that the high temperature test method should apply to certain electric resistance storage water heaters that are capable of being operated in a permanent mode or setting that allows them to provide a larger effective stored volume capacity than their physical rated volume.

However, DOE notes that some electric resistance storage water heaters would be unlikely to be operated in a high temperature setting for an extended period of time, and for these water heaters DOE has tentatively determined that testing at a more typical temperature setpoint (125 °F ± 5 °F) is still representative of the average use cycle. These would include water heaters that are unable to heat and store water at a setpoint above 135 °F, water heaters that only temporarily raise the stored water temperature, and demand-response water heaters which only raise the stored water temperature in response to demand-response signals. For these types of electric resistance storage water heaters, DOE has tentatively determined that the high temperature test method would not produce results representative of an average use cycle. Therefore, DOE proposes that these types would be exempt from the high temperature test method.

Water heaters are commonly factory-set to a default setting of 120 °F by manufacturers in order to reduce the risk of scalding, and product literature for consumer water heaters typically includes warnings about the risk of scaling at setpoint temperatures above 125 °F. However, as discussed previously, most water heaters have user-operable thermostat control settings that allow the user to set the water heater to heat and store water at temperatures well above 125 °F. When the water heater is operated in such a manner, manufacturers recommend the installation of a mixing valve in order to temper the delivery water. Consumers may desire to raise the tank storage setpoint higher than 125 °F for a number of reasons. DOE found that manufacturers identified the following potential use cases for higher-temperature storage in their product literature: (1) increasing the hot water delivery capacity of the water heater, (2) operation with a clothes washer or dishwasher without its own heating element, or (3) to reduce bacterial growth in certain cases. The nominal setpoint temperature that is recommended for these types of applications is 140 °F. DOE is also aware that some jurisdictions may have plumbing codes which mandate a minimum temperature of 140 °F for storage-type water heaters and indirect-fired hot water storage tanks (along with the installation of ASSE 1017-conforming mixing valves).[176]

These findings indicate that the ability to increase the stored water temperature can provide consumer utility beyond simply increasing capacity (such as for households with dishwashers or clothes washers without heating elements, or for households needing to reduce potential for bacterial growth). However, as discussed previously, the ability to increase capacity by heating and storing water at an elevated temperature could result in some consumers choosing to install smaller products (*i.e.,* models less than or equal to 35 gallons) that utilize electric resistance technology with a mixing valve and set the water heater at a higher tank temperature to increase capacity, rather than installing a water heater using heat pump technology with a larger volume. As shown in Table V.39 storing water at 140 °F would increase the effective storage capacity of a 35-gallon tank to 44 gallons as compared to when the water is stored at 125 °F. DOE reasons that water heaters with the ability to heat and store water at higher temperatures are increasingly more likely to be used to replace larger water

[176] For example, the city of Nashua, NH has an ordinance requiring water heaters to be maintained at a minimum temperature of 140 °F and be equipped with a temperature-controlling device conforming to ASSE 1017. See: *https://www.nashuanh.gov/ArchiveCenter/ViewFile/Item/6680.*

heaters as the maximum setpoint temperature increases, making high temperature testing more representative for water heaters with higher maximum temperatures. However, DOE also seeks to avoid negatively impacting the product utility for consumers who find utility from heating water above 120 °F. DOE, therefore, proposes that water heaters not capable of storing water beyond 135 °F would not be subject to high temperature testing. DOE tentatively concludes that water heaters with a maximum setpoint temperature of 135 °F (or lower) would be less likely to be used in a high temperature mode for increasing capacity, such that testing in the normal temperature mode continues to be representative. In addition, DOE tentatively concludes that the ability to heat water up to 135 °F would not impact the utility of these products for consumers who desire hotter water for certain situations. Therefore, a maximum setpoint temperature of 135 °F provides balance between preserving utility and limiting the likelihood that the unit will be used permanently in a high temperature mode to avoid installing a larger water heater that may be subject to more stringent standards.

DOE requests comment on its proposal to exempt from high temperature testing any water heaters that cannot heat and store water above 135 °F. DOE is particularly interested in whether there would be any reduction in product utility if a water heater were to limit the maximum setpoint temperature to 135 °F.

Additionally, some electric resistance water heaters could offer high temperature modes that allow for setpoints above the intended delivery temperature to boost delivery capacity, but only temporarily before automatically reverting to the normal temperature mode. This contrasts with several models that are currently available, which remain in the high temperature setting until the consumer changes the mode or setting to deactivate the high temperature mode. Temporary modes would be intended for occasional use in situations in which there is a short-term increased demand for hot water, while non-temporary modes would be more likely to be used long-term. In the June 2023 TP Final Rule, DOE discussed comments it received from stakeholders regarding water heaters with high temperature modes. Specifically, stakeholders indicated that high temperature modes are not intended to be the primary mode of operation and should not be used continuously, and that testing in these modes would not reflect their intended use. 88 FR 40406, 40449.

DOE understands that temporary high temperature modes would be unlikely to be used long-term because they would automatically return the setpoint to a more typical temperature after a certain period of time has elapsed. Because these temporary modes cannot be used permanently, DOE has tentatively determined that units capable of storing water at a setpoint above 135 °F only through a temporary, consumer-initiated, high temperature mode lasting no longer than 120 hours should not be subject to high temperature testing. DOE expects that such products would operate in non-high temperature modes for the majority of the time and therefore testing in the high temperature mode would not be representative. DOE is proposing to limit the high temperature mode duration to 120 hours as a reasonable amount of time that demand may be temporarily higher than normal (such as when guests are visiting). Further, DOE expects that models with permanent high temperature modes, whether shipped from the factory with that mode as the default mode or simply as a user-selectable mode, would be likely to be used continuously in the high temperature mode. Therefore, DOE tentatively concludes it is representative to test such water heaters in the high temperature modes and is proposing to require such testing.

Additionally, in the June 2023 TP Final Rule, DOE discussed how demand-response water heaters can undergo periods of high-temperature water storage in response to utility grid signals (*i.e.,* advanced load-up). In the rulemaking stages prior to the publication of the June 2023 TP Final Rule, DOE had initially proposed that demand-response water heaters would not be subject to high temperature testing, because the additional energy consumption from high-temperature water storage is compensated for by periods of water heater inactivity (*i.e.,* a curtailment period). As such, demand-response water heaters do not engage in high-temperature water storage in order to directly increase capacity over a representative average use cycle of 24 hours. 88 FR 40406, 40449. For these reasons, DOE continues to find it appropriate to exempt from high temperature testing any water heaters that can only heat and store water at temperatures above 135 °F in response to instructions received from a utility or third-party demand-response program.

DOE is proposing to amend 10 CFR 429.17(a) to add a requirement that representations for all electric storage water heaters that are capable of heating and storing water above 135 °F, except for those that meet the definition of ''heat pump-type'' water heater,[177] those that are only capable of heating and storing water above 135 °F temporarily, or those that that are only capable of heating the stored water above 135 °F in response to instructions received from a utility or third-party demand-response program, shall be tested using the high temperature testing method presented in section 5.1.2 of the appendix E test procedure, as amended by the June 2023 TP Final Rule. Water heaters that are only capable of heating and storing water above 135 °F temporarily or are capable of heating the stored water above 135 °F only in response to instructions received from a utility or third-party demand-response program are exempt from this requirement. As a result, the UEF, delivery capacity (either FHR or maximum GPM), and effective storage volume for electric resistance storage water heaters (specifically those which allow the user to increase the storage tank temperature) would be determined in accordance with the highest tank temperature setting available on the water heater with a mixing valve installed. The applicable standard would then be based on the effective storage volume as determined during testing. For example if high temperature testing yields a delivery capacity corresponding to either the low draw pattern or the very small draw pattern and the effective storage volume does not exceed 35 gallons, then the standard for the small electric storage water heater class, which can be met using electric resistance heating elements, would apply to the water heater. However, if high temperature testing results in the water heater model being in the medium or high draw pattern, or if the effective storage volume goes above 35 gallons, then the standards for the appropriate class based on the test results, which currently can only be met through use of heat pump technology, would apply to the water heater.

DOE requests feedback on its tentative determination that high temperature testing should be used for electric resistance storage water heaters that offer the user the ability to increase the storage tank temperature permanently

[177] The definition of ''water heater'' at 10 CFR 430.2 specifies heat pump type units have a maximum current rating of 24 amperes at a voltage no greater than 250 volts, and are products designed to transfer thermal energy from one temperature level to a higher temperature level for the purpose of heating water, including all ancillary equipment such as fans, storage tanks, pumps, or controls necessary for the device to perform its function.

beyond a setpoint of 135 °F. DOE also requests feedback on its proposal to exempt from high temperature testing any water heaters that cannot heat and store water above 135 °F, or that can only do so temporarily for a period of 120-hour or less before returning to the normal operating mode, or that can only do so in response to instructions received from a utility or third-party demand-response program.

2. Circulating Water Heaters

a. Storage Tank for Circulating Heat Pump Water Heaters

In the June 2023 TP Final Rule, DOE established provisions in section 4.10 requiring circulating heat pump water heaters to be tested in a pairing with a 40-gallon (±5 gallons) electric storage water heater in the medium draw pattern that has a UEF rating equal to the minimum UEF required at 10 CFR 430.32(d) rounded to the nearest 0.01. 88 FR 40406, 40467. This test procedure provision was developed with feedback from stakeholders stating that an electric resistance storage water heater is the most likely type of tank that is paired with circulating heat pump water heaters in the field. DOE further surmises that it is unlikely for consumers to pair a circulating heat pump water heater with an integrated heat pump water heater because they would already receive the energy-saving benefits of the integrated heat pump water heater. The specifications of the electric storage water heater at section 4.10 reflect a baseline electric storage water heater in the most prevalent size.

However, such an electric storage water heater would not comply with the proposed standards in this NOPR because products in the medium draw pattern would be required to meet UEF levels only achievable by heat pump technology. To address this, DOE is proposing to amend section 4.10 of the appendix E test procedure to instead require the separate storage tank to be a minimally-compliant electric storage water heater that is 30 gallons ±5 gallons and in the low draw pattern to reflect the products which would remain using electric resistance heating as a result of the proposed standards.

DOE requests feedback on the proposed separate storage tank requirements for circulating heat pump water heaters.

b. Product-Specific Enforcement Provisions for Circulating Water Heaters

As discussed in section III.B of this document, the June 2023 TP Final Rule updated the test method for consumer water heaters to provide additional instructions for testing circulating water heaters and low-temperature water heaters for UEF, which includes testing with a separate tank. 88 FR 40406. The June 2023 TP Final Rule requires circulating water heaters to comply with new test procedure once amended energy conservation standards are adopted and this NOPR proposes to amend the energy conservation standards for these products to account for the changes to the test method. Because the separate storage tank used for testing to determine the FHR and UEF ratings is not part of the basic model number of the circulating water heater, DOE is proposing product-specific enforcement provisions to delineate the steps that the Department would take to perform testing on a circulating water heater. As discussed in the paragraphs that follow, DOE intends to test circulating water heaters with a tank that is as close as possible to the tank which was used for the certification rating.

First, DOE proposes that the effective storage volume of the circulating water heater would be determined during the assessment or enforcement test so that, in the case wherein DOE cannot acquire the exact tank which was paired for the circulating water heater's rating, compliance with standards would be assessed on the basis of the tank used during assessment or enforcement testing.

Second, DOE proposes that, if the manufacturer of the circulating water heater certifies the tank that was used to determine the circulating water heater's ratings, the Department would use the same model of electric storage water heater or unfired hot water storage tank as a first step. If this is not possible (*e.g.,* if that tank model is discontinued or otherwise unavailable), DOE proposes to test with as similar a tank as possible.

Specifically, for heat pump circulating water heaters, DOE proposes to use another eligible electric storage water heater with a rated storage volume that is within ±3 gallons of the rated storage volume of the electric storage water heater used to determine the certified ratings of the electric heat pump circulating water heater. If that is not possible, DOE proposes to use another eligible electric storage water heater.

For all other circulating water heaters (which would be tested with unfired hot water storage tanks), DOE proposes to use another eligible unfired hot water storage tank from the same tank manufacturer with the same storage volume. If one is not available from that tank manufacturer, DOE would next attempt to find a tank with the same volume and R-value from another tank manufacturer. If that is not successful, DOE proposes to test with an eligible tank from the original tank manufacturer, but with a volume that is within ±5 gallons of the original tank. Should that also not be feasible, the Department proposes that it would use such a tank from a different tank manufacturer. Lastly, if there are still no unfired hot water storage tanks which meet these descriptions, DOE proposes to test the circulating water heater with another eligible unfired hot water storage tank (having a certified storage volume between 80 gallons and 120 gallons and with a certified R-value that meets but does not exceed the standard set at 10 CFR 431.110(a)).

DOE requests feedback on the proposed product-specific enforcement provisions for circulating water heaters.

3. Determination of Storage Volume for Water Heaters Less Than 2 Gallons

This NOPR proposes to establish new UEF-based standards for electric and gas storage-type water heaters with less than 20 gallons of effective storage volume. In its market assessment (see chapter 3 of the TSD), DOE has found models of consumer electric storage-type water heaters which are less than 2 gallons in nominal volume. In order for manufacturers to determine compliance for these products, the test procedure must include provisions for calculating the rated storage volume and effective storage volume.

The current method to determine storage tank volume in the appendix E test procedure, as amended by the June 2023 TP Final Rule, states:

For water heaters with a rated storage volume greater than or equal to 2 gallons and for separate storage tanks used for testing circulating water heaters, determine the storage capacity, of the water heater or separate storage tank under test, in gallons (liters), by subtracting the tare weight from the gross weight of the storage tank when completely filled with water at the supply water temperature specified in section 2.3.

(*See* section 5.2.1 of the amended appendix E test procedure); 88 FR 40406, 40478.

However, this method does not explicitly cover storage-type water heaters less than 2 gallons which will be covered under the proposed new UEF-based standards. Therefore, in this NOPR, DOE is proposing to amend section 5.2.1 such that it is applicable to water heaters of all volumes and not restricted to only products greater than or equal to 2 gallons.

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 proposed/final regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this proposed regulatory action constitutes a ''significant regulatory action'' within the scope of section 3(f)(1) of E.O. 12866. Accordingly, pursuant to section 6(a)(3)(C) of E.O. 12866, DOE has provided to OIRA an assessment, including the underlying analysis, of benefits and costs anticipated from the proposed regulatory action, together with, to the extent feasible, a quantification of those costs; and an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, and an explanation why the planned regulatory action is preferable to the identified potential alternatives. These assessments are summarized in this preamble and further detail can be found in the technical support document for this proposed rulemaking.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website (*www.energy.gov/gc/office-general-counsel*). DOE has prepared the following IRFA for the products that are the subject of this rulemaking.

For manufacturers of consumer water heaters, 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 consumer water heaters is classified under NAICS 335220, ''Major Household Appliance Manufacturing.'' The SBA sets a threshold of 1,500 employees or fewer for an entity to be considered as a small business for this category.

1. Description of Reasons Why Action Is Being Considered

EPCA prescribed energy conservation standards for consumer water heaters (42 U.S.C. 6295(e)(1)), and directed DOE to conduct two cycles of rulemakings [178] to determine whether to amend these standards. (42 U.S.C. 6295(e)(4)) EPCA further provides that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1))

2. Objectives of, and Legal Basis for, Rule

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including consumer water heaters. Any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary of Energy determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. 6295(o)(3)(B)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

3. Description on Estimated Number of Small Entities Regulated

To estimate the number of companies that could be small business manufacturers of products covered by this proposed rulemaking, DOE conducted a market survey using public information and subscription-based company reports to identify potential small manufacturers. DOE's research involved DOE's Compliance Certification Database (''CCD''),[179] AHRI's Directory of Certified Product Performance,[180] individual company websites, and market research tools

[178] DOE completed the first of these rulemaking cycles on January 17, 2001, by publishing in the **Federal Register** a final rule amending the energy conservation standards for consumer water heaters. 66 FR 4474. Subsequently, DOE completed the second rulemaking cycle to amend the standards for consumer water heaters by publishing a final rule in the **Federal Register** on April 16, 2010. 75 FR 20112.

[179] U.S. Department of Energy's Compliance Certification Database is available at *regulations.doe.gov/certification-data* (last accessed April 1, 2023).

[180] AHRI's Directory of Certified Product Performance is available at *https://www.ahridirectory.org/Search/SearchHome?ReturnUrl=%2f* (last accessed April 1, 2023).

[56] The Dun & Bradstreet subscription login is available at *app.dnbhoovers.com.*

(*e.g.,* reports from Dun & Bradstreet [56]) to create a list of companies that manufacture, produce, import, or assemble the products covered by this rulemaking. DOE also asked stakeholders and industry representatives if they were aware of any other small manufacturers during manufacturer interviews and at DOE public meetings.

DOE identified 22 OEMs of consumer water heaters sold in the United States. Of the twenty-two OEMs, DOE identified 2 small, domestic manufacturers affected by proposed amended standards for gas-fired storage water heater, oil-fired storage water heater, or electric storage water heater products. The first small businesses is an OEM of oil-fired storage water heaters. The second small business is an OEM of electric storage water heaters.

DOE requests comment the number of small, domestic OEMs in the industry.

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

The first small businesses is an OEM that certifies 3 models of oil-fired storage water heaters. One of the three models would meet the proposed standard. Given the small and shrinking market for oil-fired storage water heaters, DOE does not expect the small manufacturer would redesign non-compliant models. Rather, the company would likely reduce their range of model offerings. At this point in time, DOE does not anticipate significant conversion costs but does solicit input.

DOE requests comments on the potential impacts of the proposed standard on small business manufacturing of oil-fired storage water heaters, including the extent of model redesign and manufacturing lines changes necessitated by standards.

The second small business is an OEM that certifies nine models of electric storage water heaters. The company offers two small ESWHs, four electric storage water heaters with an effective storage volume greater than or equal to 20 gallons and less than or equal to 55 gallons, and three ESWHs with effective storage volumes above 55 gallons. The two small ESWH models would not require redesign. Three non-small ESWHs would not meet the proposed standard, while one of the four non-small ESWHs is a heat pump that would require minimal redesign to meet the proposed standard. DOE expects the company would expand heat pump offering rather than redesign the electric resistance products that do not meet the proposed standard. The company offers three ESWHs with effective volumes above 55 gallons. All three of these are heat pumps but do not meet the proposed standard. After reviewing the three ESWHs with effective volumes above 55 gallons, DOE believes the three models could be updated to meet the proposed standard. In total, the company would need to redesign up to seven models.

DOE assumed the company would need to invest the equivalent to one year of all consumer water heater R&D resources to update its product lines. DOE does not anticipate significant capital conversion costs, as the company offers a broad line of heat pump ESWHs today. DOE estimates total conversion costs to be $200,000 for the small manufacturer. Based on market research tools, DOE estimated the company's annual revenue to be $10 million. Taking into account the five-year conversion period, DOE expects conversion costs to be less than 1% of conversion period revenue.

DOE requests comments on the potential impacts of the proposed standard on small business manufacturing of electric storage water heaters, including the extent of model redesign and manufacturing lines changes necessitated by standards.

Finally, DOE has tentatively determined that there are no small business manufacturers of consumer water heaters which currently have EF-based standards and are being transitioned to the UEF metric as proposed in this NOPR.

DOE requests information on whether any small businesses would be impacted by the new requirements to determine UEF ratings for consumer water heaters that have new UEF-based standards proposed in this rulemaking.

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

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

6. Significant Alternatives to the Rule

The discussion in the previous section analyzes impacts on small businesses that would result from DOE's proposed rule, represented by TSL 2. In reviewing alternatives to the proposed rule, DOE examined energy conservation standards set at lower efficiency levels. While 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 compared to the energy savings at TSL 2.

Based on the presented discussion, establishing standards at TSL 2 balances the benefits of the energy savings with the potential burdens placed on consumer water heater manufacturers, including small business manufacturers. Accordingly, DOE does not propose one of the other TSLs considered in the analysis, or the other policy alternatives examined as part of the regulatory impact analysis and included in chapter 17 of the NOPR TSD.

Additional compliance flexibilities may be available through other means. EPCA provides that a manufacturer whose annual gross revenue from all of its operations does not exceed $8 million may apply for an exemption from all or part of an energy conservation standard for a period not longer than 24 months after the effective date of a final rule establishing the standard. (42 U.S.C. 6295(t)) Additionally, manufacturers subject to DOE's energy efficiency standards may apply to DOE's Office of Hearings and Appeals for exception relief under certain circumstances. Manufacturers should refer to 10 CFR part 430, subpart E, and 10 CFR part 1003 for additional details.

C. Review Under the Paperwork Reduction Act

Manufacturers of consumer water heaters must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for consumer water heaters, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including consumer water heaters. (*See generally* 10 CFR part 429). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless

that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

DOE is analyzing this proposed regulation in accordance with the National Environmental Policy Act of 1969 (''NEPA'') and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for rulemakings that establish energy conservation standards for consumer products or industrial equipment. 10 CFR part 1021, subpart D, appendix B5.1. DOE anticipates that this rulemaking qualifies for categorical exclusion B5.1 because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, none of the exceptions identified in categorical exclusion B5.1(b) apply, no extraordinary circumstances exist that require further environmental analysis, and it otherwise meets the requirements for application of a categorical exclusion. See 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final rule.

E. Review Under Executive Order 13132

E.O. 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) Therefore, no further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, section 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf*.

Although this proposed rule does not contain a Federal intergovernmental mandate, it may require expenditures of $100 million or more in any one year by the private sector. Such expenditures may include: (1) investment in research and development and in capital expenditures by consumer water heaters manufacturers in the years between the final rule and the compliance date for the new standards and (2) incremental additional expenditures by consumers to purchase higher-efficiency consumer water heaters, starting at the compliance date for the applicable standard.

Section 202 of UMRA authorizes a Federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. (2 U.S.C. 1532(c)) The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of this NOPR and the TSD for this proposed rule respond to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. (2 U.S.C. 1535(a)) DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the proposed rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law. As required by 42 U.S.C. 6295(m), this proposed rule would establish amended energy conservation standards for consumer water heaters that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and

economically justified, as required by 6295(o)(2)(A) and 6295(o)(3)(B). A full discussion of the alternatives considered by DOE is presented in chapter 17 of the TSD for this proposed rule.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (Mar. 15, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf*. DOE has reviewed this NOPR under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that this regulatory action, which proposes amended energy conservation standards for consumer water heaters, is not a significant energy action because the proposed standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on this proposed rule.

L. Information Quality

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (''OSTP''), issued its Final Information Quality Bulletin for Peer Review (''the Bulletin''). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.'' 70 FR 2664, 2667.

In response to OMB's Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and has prepared a report describing that peer review.[181] 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.[182]

VII. Public Participation

A. Attendance at the Public Meeting

The time and date of the public meeting webinar are listed in the **DATES** section at the beginning of this document.

Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website at *www.energy.gov/eere/buildings/public-meetings-and-comment-deadlines*. Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this document. The request and advance copy of statements must be received at least one week before the public meeting and are to be emailed. Please include a telephone number to enable DOE staff to make follow-up contact, if needed.

[181] 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 April 1, 2023).

[182] The report is available at *www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards*.

C. Conduct of the Public Meeting Webinar

DOE will designate a DOE official to preside at the public meeting webinar and may also use a professional facilitator to aid discussion. The webinar will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA. (42 U.S.C. 6306) A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the public meeting webinar, interested parties may submit further comments on the proceedings, as well as on any aspect of the rulemaking, until the end of the comment period.

The public meeting webinar will be conducted in an informal, conference style. DOE will present a general overview of the topics addressed in this rulemaking, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting webinar will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the previous procedures that may be needed for the proper conduct of the public meeting webinar.

A transcript of the public meeting webinar will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this document and will be accessible on the DOE website. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *www.regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (''faxes'') will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except

information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) DOE requests comment on the methodology used to present the change in producer cashflow (INPV) in the monetized benefits and cost tables (I.3, I.4, and V.38 of this document).

(2) DOE requests comment on its proposed deferral of consideration of amended, more-stringent standards for circulating water heaters.

(3) DOE requests comment on its proposal to limit the tabletop water heater designation to products in the very small and low draw patterns.

(4) DOE requests comment on the outlook for the emergence of 120 V heat pump water heaters, information regarding how their design and operation may differ from 240 V heat pump water heaters, and data on performance characteristics and efficiencies.

(5) DOE seeks further information that would assist in potentially re-evaluating the stringency of EL 2, especially data regarding the technologies employed in 45-gallon medium draw pattern products at a UEF of 3.50.

(6) DOE requests comment on the potential design specifications, manufacturing processes, and efficiencies of split-system heat pump water heaters.

(7) DOE requests comment on the analysis assumptions used to estimate shipping costs for consumer water heaters.

(8) DOE requests comment on the cost-efficiency results in this engineering analysis.

(9) DOE requests comment on the analytical approach used to determine equivalent baseline standards for circulating water heaters.

(10) DOE seeks comment from interested parties regarding the appropriateness of the converted UEF-based standards presented in Table IV.30 and whether products on the market can meet or exceed the proposed levels. If products are found to generally exceed the proposed levels, the Department requests information and data on the UEF of products within these product classes.

(11) DOE seeks comments about DOE's approach for distribution channels and markup values.

(12) DOE requests comments on its approach for taking into account electrification efforts in its shipments analysis.

(13) DOE requests comments on its approach for developing efficiency trends after 2030.

(14) DOE requests comments on its approach and value of the rebound effect for consumer water heaters.

(15) DOE requests comments on its approach for product price projections.

(16) DOE requests comments on its approach to monetizing the impact of the rebound effect.

(17) DOE requests comments on its approach to estimate low-income consumer impacts for higher efficiency standards.

(18) DOE requests comment on the ability of manufacturers to transition to producing heat pump water heaters within the compliance window.

(19) DOE requests comment on the pace at which workforce development is expected to install and service the heat pump water heater market by the compliance date of the standards.

(20) DOE requests additional information on the benefits and burdens of a potential amended standard for gas-fired instantaneous water heaters at EL 3, especially with respect to impacts to manufacturers of these products and the ability for industry to convert to this efficiency level as being potential burdens to adopting EL 3.

(21) DOE requests feedback on its tentative determination that high temperature testing is only representative of an average 24-hour use cycle for electric resistance storage water heaters that offer the user the ability to increase the storage tank temperature.

(22) DOE requests feedback on the proposed separate storage tank requirements for circulating heat pump water heaters.

(23) DOE requests feedback on the proposed product-specific enforcement provisions for circulating water heaters.

(24) DOE requests comments on the potential impacts of the proposed standard on small business manufacturing of oil-fired storage water heaters, including the extent of model redesign and manufacturing lines changes necessitated by standards.

(25) DOE requests comments on the potential impacts of the proposed standard on small business manufacturing of electric storage water heaters, including the extent of model redesign and manufacturing lines changes necessitated by standards.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking and announcement of public meeting.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on July 13, 2023, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on July 14, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons set forth in the preamble, DOE proposes to amend parts 429 and 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

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

■ 2. Amend § 429.17 by adding paragraph (a)(1)(ii)(E) to read as follows:

§ 429.17 Water heaters.

(a) * * *

(1) * * *

(ii) * * *

(E) For an electric storage water heater that has a permanent mode or setting in which it is capable of heating and storing water above 135 °F, where permanent mode or setting means a mode of operation that is continuous and does not require any external consumer intervention to maintain for longer than 120 hours, except for those that meet the definition of ''heat pump-type'' water heater at 10 CFR 430.2 or that are only capable of heating the stored water above 135 °F in response to instructions received from a utility or third-party demand-response program, the following applies:

(1) To demonstrate compliance with the energy conservation standards in 430.32(d)(1), any represented value of uniform energy factor shall be determined based on testing in accordance with section 5.1.1 of appendix E of subpart B to 10 CFR part 430.

(2) To demonstrate compliance with the energy conservation standards in § 430.32(d)(2), any represented value of uniform energy factor shall be determined based on high temperature testing in accordance with section 5.1.2 of appendix E of subpart B to 10 CFR part 430.

* * * * *

■ 3. Amend § 429.134 by adding paragraph (d)(4) to read as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(d) * * *

(4) *Circulating water heaters.* A storage tank for testing will be selected as described in paragraphs (i) and (ii). The effective storage volume of the circulating water heater determined in testing will be measured in accordance with appendix E to subpart B of 10 CFR part 430 with the storage tank that is used for testing.

(i) *Electric heat pump circulating water heaters.* For UEF and first-hour rating testing, electric heat pump circulating water heaters will be tested with a minimally-compliant electric storage water heater (as defined at 10 CFR 430.2) that has a rated storage volume of between 25 and 35 gallons, and is in the low draw pattern, as determined in accordance with appendix E to subpart B of 10 CFR part 430 and the standards set at 10 CFR 430.32(d). If the manufacturer certifies the specific model of electric storage water heater used for testing to determine the certified UEF and first-hour rating of the electric heat pump circulating water heater, that model of electric storage water heater will be used for testing. If this is not possible (such as if the electric storage water heater model is no longer available or has been discontinued), testing will be performed with an electric storage water heater that has a minimally-compliant UEF rating, in the low draw pattern, and a rated storage volume that is within ± 3 gallons of the rated storage volume of the electric storage water heater used to determine the certified ratings of the electric heat pump circulating water heater (but not less than 25 gallons and not greater than 35 gallons). If no such model is available, then testing will be performed with a minimally-compliant electric storage water heater that has a rated storage volume of between 25 and 35 gallons and is in the low draw pattern.

(ii) *All other circulating water heaters.* For UEF and first-hour rating testing, circulating water heaters are paired with unfired hot water storage tanks (''UFHWSTs'') that have certified storage volumes between 80 and 120 gallons and are at exactly the minimum thermal insulation standard, in terms of R-value, for UFHWSTs, as per the standards set at 10 CFR 431.110(a). Testing will be performed as follows:

(A) If the manufacturer certifies the specific model of UFHWST used for testing to determine the certified UEF and first-hour rating of the circulating water heater, that model of UFHWST will be used for testing.

(B) If it is not possible to perform testing with the same model of UFHWST certified by the manufacturer, testing will be carried out with a different model of UFHWST accordingly:

(*1*) Testing will be performed with an UFHWST from the same manufacturer as the certified UFHWST, with the same certified storage volume as the certified UFHWST, and with a certified R-value that meets but does not exceed the standard set at 10 CFR 431.110(a). If this is not possible,

(*2*) Testing will be performed with an UFHWST from a different manufacturer than the certified UFHWST, with the same certified storage volume as the certified UFHWST, and with a certified R-value that meets but does not exceed the standard set at 10 CFR 431.110(a). If this is not possible,

(*3*) Testing will be performed with an UFHWST from the same manufacturer as the certified UFHWST, having a certified storage volume within ±5 gallons of the certified UFHWST, and with a certified R-value that meets but does not exceed the standard set at 10 CFR 431.110(a). If this is not possible,

(*4*) Testing will be performed with an UFHWST from a different manufacturer than the certified UFHWST, having a certified storage volume within ±5 gallons of the certified UFHWST, and with a certified R-value that meets but does not exceed the standard set at 10 CFR 431.110(a). If this is not possible,

(*5*) Testing will be performed with an UFHWST having a certified storage volume between 80 gallons and 120 gallons and with a certified R-value that meets but does not exceed the standard set at 10 CFR 431.110(a).

* * * * *

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 4. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 5. Amend § 430.2 by:

■ a. Adding the definitions in alphabetical order of ''Electric circulating water heater'', ''Gas-fired circulating water heater'', and ''Oil-fired circulating water heater''; and

■ b. Revising the definition of ''Tabletop water heater''.

The revision and additions read as follows:

§ 430.2 Definitions.

* * * * *

Electric circulating water heater means a circulating water heater with an input of 12 kW or less; contains no more than one gallon of water per 4,000 Btu/h of input (including heat pump-only units with power inputs of no more than 24 A at 250 V).

* * * * *

Gas-fired circulating water heater means a circulating water heater with a nominal input of 200,000 Btu/h or less; contains no more than one gallon of water per 4,000 Btu/h of input.

* * * * *

Oil-fired circulating water heater means a circulating water heater with a nominal input of 210,000 Btu/h or less; contains no more than one gallon of water per 4,000 Btu/h of input.

* * * * *

Tabletop water heater means a water heater in a rectangular box enclosure designed to slide into a kitchen countertop space with typical dimensions of 36 inches high, 25 inches deep, and 24 inches wide, and with a certified first-hour rating that results in either the very small draw pattern or the low draw pattern, as specified in Table I at appendix E to this subpart.

* * * * *

■ 6. Amend § 430.23 by revising paragraph (e) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(e) *Water heaters.*

(1) The estimated annual operating cost is calculated as:

(i) For a gas-fired or oil-fired water heater, the sum of: The product of the annual gas or oil energy consumption, determined according to section 6.3.11 or section 6.4.7 of appendix E of this subpart, times the representative average unit cost of gas or oil, as appropriate, in dollars per Btu as provided by the Secretary; plus the product of the annual electric energy consumption, determined according to section 6.3.10 or section 6.4.6 of appendix E of this subpart, times the representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary. Round the resulting sum to the nearest dollar per year.

(ii) For an electric water heater, the product of the annual energy consumption, determined according to section 6.3.10 or 6.4.6 of appendix E of this subpart, times the representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary. Round the resulting product to the nearest dollar per year.

(2) For an individual unit, the uniform energy factor is rounded to the nearest 0.01 and determined in accordance with section 6.3.8 or section 6.4.4 of appendix E of this subpart.

* * * * *

■ 7. Appendix E to subpart B of part 430 is amended by revising the Note, sections 4.10, 5.1.2 and 5.2.1 to read as follows:

Appendix E To Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Water Heaters

Note: Prior to December 18, 2023, representations with respect to the energy use or efficiency of consumer water heaters covered by this test method, including compliance certifications, must be based on testing conducted in accordance with either this appendix as it now appears or appendix E as it appeared at 10 CFR part 430, subpart B revised as of January 1, 2021. Prior to June 15, 2024, representations with respect to the energy use or efficiency of residential-duty commercial water heaters covered by this test method, including compliance certifications, must be based on testing conducted in accordance with either this appendix as it now appears or appendix E as it appeared at 10 CFR part 430, subpart B revised as of January 1, 2021.

On and after December 18, 2023, representations with respect to energy use or efficiency of consumer water heaters covered by this test method, including compliance certifications, must be based on testing conducted in accordance with this appendix, except as described in the paragraphs that follow. On and after June 15, 2024, representations with respect to energy use or efficiency of residential-duty commercial water heaters covered by this test method, including compliance certifications, must be based on testing conducted in accordance with this appendix, except as follows.

Prior to [*date 5 years after date of publication of the final rule in the* **Federal Register**], consumer water heaters subject to section 4.10 of this appendix may optionally apply the requirements of section 4.10 of this appendix. For residential-duty commercial water heaters subject to section 4.10 of this appendix the requirements of section 4.10 of this appendix may optionally be applied prior to the compliance date of any final rule reviewing potential amended energy conservation standards for this equipment published after June 21, 2023.

Prior to [*date 5 years after date of publication of the final rule in the* **Federal Register**], consumer water heaters subject to section 5.1.2 of this appendix (as specified at 10 CFR 429.17(a)(1)(ii)(E)) may optionally apply the requirements of section 5.1.2 of this appendix in lieu of the requirements in section 5.1.1 of this appendix.

On or after [*date 5 years after date of publication of the final rule in the* **Federal Register**], representations with respect to energy use or efficiency of consumer water heaters subject to sections 4.10 and section 5.1.2 of this appendix must be based on testing conducted in accordance with those provisions.

* * * * *

4.10 *Storage Tank Requirement for Circulating Water Heaters.* On or after the compliance date of a final rule reviewing potential amended energy conservation standards for these products published after June 21, 2023, when testing a gas-fired, oil-fired, or electric resistance circulating water heater (*i.e.,* any circulating water heater that does not use a heat pump), the tank to be used for testing shall be an unfired hot water storage tank having volume between 80 and 120 gallons (364–546 liters) determined using the method specified in section 5.2.1 that meets but does not exceed the minimum energy conservation standards required according to 10 CFR 431.110. When testing a heat pump circulating water heater, the tank to be used for testing shall be an electric storage water heater that has a measured volume of 30 gallons (±5 gallons), has a First-Hour Rating greater than or equal to 18 gallons and less than 51 gallons resulting in classification under the low draw pattern, and has a rated UEF equal to the minimum UEF standard specified at 10 CFR 430.32(d), rounded to the nearest 0.01. If the circulating water heater is supplied with a separate non-integrated circulating pump, install this pump as per the manufacturer's installation instructions and include its power consumption in energy use measurements.

* * * * *

5. * * *

5.1.2 *High Temperature Testing.* This paragraph applies to electric storage water heaters that have a permanent mode or setting in which the water heater is capable of heating and storing water above 135 °F, where permanent mode or setting means a mode of operation that is continuous and does not require any external consumer intervention to maintain for longer than 120 hours, except for those that meet the definition of ''heat pump-type'' water heater at 10 CFR 430.2 or that are only capable of heating the stored water above 135 °F in response to instructions received from a utility or third-party demand-response program.

For those equipped with factory-installed or built-in mixing valves, set the unit to maintain the highest mean tank temperature possible while delivering water at 125 °F ±5 °F. For those not so equipped, install an ASSE 1017-certified mixing valve in accordance with the provisions in section 4.3 and adjust the valve to deliver water at 125 °F ±5 °F when the water heater is operating at its highest storage tank temperature setpoint. Maintain this setting throughout the entirety of the test.

5.2 * * *

5.2.1 *Determination of Storage Tank Volume.* For water heaters and separate storage tanks used for testing circulating water heaters, determine the storage capacity, $V_{st,}$ of the water heater or separate storage tank under test, in gallons (liters), by subtracting the tare weight, W_t, (measured while the tank is empty) from the gross weight of the storage tank when completely filled with water at the supply water temperature specified in section 2.3 of this appendix, W_f, (with all air eliminated and line pressure applied as described in section 2.6 of this appendix) and dividing the resulting net weight by the density of water at the measured temperature.

* * * * *

■ 8. Amend § 430.32 by revising paragraph (d) to read as follows:

§ 430.32 Energy and water conservation standard and their compliance dates.

* * * * *

(d) *Water Heaters.*

(1) Prior to [*date 5 years after date of publication of the final rule in the* **Federal Register**], the uniform energy factor of water heaters shall not be less than the following:

Product class	Rated storage volume and input rating (if applicable)	Draw pattern	Uniform energy factor *
Gas-fired Storage Water Heater	≥20 gal and ≤55 gal	Very Small	$0.3456 - (0.0020 \times V_r)$
		Low	$0.5982 - (0.0019 \times V_r)$
		Medium	$0.6483 - (0.0017 \times V_r)$
		High	$0.6920 - (0.0013 \times V_r)$
	>55 gal and ≤100 gal	Very Small	$0.6470 - (0.0006 \times V_r)$
		Low	$0.7689 - (0.0005 \times V_r)$
		Medium	$0.7897 - (0.0004 \times V_r)$
		High	$0.8072 - (0.0003 \times V_r)$
Oil-fired Storage Water Heater	≤50 gal	Very Small	$0.2509 - (0.0012 \times V_r)$
		Low	$0.5330 - (0.0016 \times V_r)$
		Medium	$0.6078 - (0.0016 \times V_r)$
		High	$0.6815 - (0.0014 \times V_r)$
Electric Storage Water Heaters	≥20 gal and ≤55 gal	Very Small	$0.8808 - (0.0008 \times V_r)$
		Low	$0.9254 - (0.0003 \times V_r)$
		Medium	$0.9307 - (0.0002 \times V_r)$
		High	$0.9349 - (0.0001 \times V_r)$
	>55 gal and ≤120 gal	Very Small	$1.9236 - (0.0011 \times V_r)$
		Low	$2.0440 - (0.0011 \times V_r)$
		Medium	$2.1171 - (0.0011 \times V_r)$
		High	$2.2418 - (0.0011 \times V_r)$
Tabletop Water Heater	≥20 gal and ≤120 gal	Very Small	$0.6323 - (0.0058 \times V_r)$
		Low	$0.9188 - (0.0031 \times V_r)$
		Medium	$0.9577 - (0.0023 \times V_r)$
		High	$0.9884 - (0.0016 \times V_r)$
Instantaneous Gas-fired Water Heater	<2 gal and >50,000 Btu/h	Very Small	0.80
		Low	0.81
		Medium	0.81
		High	0.81
Instantaneous Electric Water Heater	<2 gal	Very Small	0.91
		Low	0.91
		Medium	0.91
		High	0.92
Grid-enabled Water Heater	>75 gal	Very Small	$1.0136 - (0.0028 \times V_r)$
		Low	$0.9984 - (0.0014 \times V_r)$
		Medium	$0.9853 - (0.0010 \times V_r)$
		High	$0.9720 - (0.0007 \times V_r)$

* V_r is the rated storage volume (in gallons), as determined pursuant to 10 CFR 429.17.

(2) On or after [*date 5 years after date of publication of the final rule in the* **Federal Register**], the uniform energy factor of water heaters shall not be less than the following:

Product class	Rated storage volume and input rating (if applicable)	Draw pattern	Uniform energy factor *
Gas-fired Storage Water Heater	<20 gal	Very Small	$0.2062 - (0.0020 \times V_{eff})$
		Low	$0.4893 - (0.0027 \times V_{eff})$
		Medium	$0.5758 - (0.0023 \times V_{eff})$
		High	$0.6586 - (0.0020 \times V_{eff})$
	≥20 gal and ≤55 gal	Very Small	$0.3925 - (0.0020 \times V_{eff})$
		Low	$0.6451 - (0.0019 \times V_{eff})$
		Medium	$0.7046 - (0.0017 \times V_{eff})$
		High	$0.7424 - (0.0013 \times V_{eff})$
	>55 gal and ≤100 gal	Very Small	$0.6470 - (0.0006 \times V_{eff})$
		Low	$0.7689 - (0.0005 \times V_{eff})$
		Medium	$0.7897 - (0.0004 \times V_{eff})$
		High	$0.8072 - (0.0003 \times V_{eff})$
	>100 gal	Very Small	$0.1482 - (0.0007 \times V_{eff})$
		Low	$0.4342 - (0.0017 \times V_{eff})$
		Medium	$0.5596 - (0.0020 \times V_{eff})$
		High	$0.6658 - (0.0019 \times V_{eff})$
Oil-fired Storage Water Heater	≤50 gal	Very Small	$0.2909 - (0.0012 \times V_{eff})$
		Low	$0.5730 - (0.0016 \times V_{eff})$
		Medium	$0.6478 - (0.0016 \times V_{eff})$
		High	$0.7215 - (0.0014 \times V_{eff})$
	>50 gal	Very Small	$0.1580 - (0.0009 \times V_{eff})$
		Low	$0.4390 - (0.0020 \times V_{eff})$
		Medium	$0.5389 - (0.0021 \times V_{eff})$
		High	$0.6172 - (0.0018 \times V_{eff})$
Very Small Electric Storage Water Heater	<20 gal	Very Small	$0.5925 - (0.0059 \times V_{eff})$
		Low	$0.8642 - (0.0030 \times V_{eff})$

Product class	Rated storage volume and input rating (if applicable)	Draw pattern	Uniform energy factor *
		Medium	$0.9096 - (0.0020 \times V_{eff})$
		High	$0.9430 - (0.0012 \times V_{eff})$
Small Electric Storage Water Heater	≥20 gal and ≤35 gal	Very Small	$0.8808 - (0.0008 \times V_{eff})$
		Low	$0.9254 - (0.0003 \times V_{eff})$
Electric Storage Water Heaters	>20 and ≤55 gal (excluding small electric storage water heaters).	Very Small	2.30
		Low	2.30
		Medium	2.30
		High	2.30
	>55 gal and ≤120 gal	Very Small	2.50
		Low	2.50
		Medium	2.50
		High	2.50
	>120 gal	Very Small	$0.3574 - (0.0012 \times V_{eff})$
		Low	$0.7897 - (0.0019 \times V_{eff})$
		Medium	$0.8884 - (0.0017 \times V_{eff})$
		High	$0.9575 - (0.0013 \times V_{eff})$
Tabletop Water Heater	<20 gal	Very Small	$0.5925 - (0.0059 \times V_{eff})$
		Low	$0.8642 - (0.0030 \times V_{eff})$
	≥20 gal and ≤120 gal	Very Small	$0.6323 - (0.0058 \times V_{eff})$
		Low	$0.9188 - (0.0031 \times V_{eff})$
Instantaneous Gas-fired Water Heater	<2 gal and ≤50,000 Btu/h	Very Small	0.64
		Low	0.64
		Medium	0.64
		High	0.64
	<2 gal and >50,000 Btu/h	Very Small	0.89
		Low	0.91
		Medium	0.91
		High	0.93
	≥2 gal and ≤200,000 Btu/h	Very Small	$0.2534 - (0.0018 \times V_{eff})$
		Low	$0.5226 - (0.0022 \times V_{eff})$
		Medium	$0.5919 - (0.0020 \times V_{eff})$
		High	$0.6540 - (0.0017 \times V_{eff})$
Instantaneous Oil-fired Water Heater	<2 gal and ≤210,000 Btu/h	Very Small	0.61
		Low	0.61
		Medium	0.61
		High	0.61
	≥2 gal and ≤210,000 Btu/h	Very Small	$0.2780 - (0.0022 \times V_{eff})$
		Low	$0.5151 - (0.0023 \times V_{eff})$
		Medium	$0.5687 - (0.0021 \times V_{eff})$
		High	$0.6147 - (0.0017 \times V_{eff})$
Instantaneous Electric Water Heater	<2 gal	Very Small	0.91
		Low	0.91
		Medium	0.91
		High	0.92
	≥2 gal	Very Small	$0.8086 - (0.0050 \times V_{eff})$
		Low	$0.9123 - (0.0020 \times V_{eff})$
		Medium	$0.9252 - (0.0015 \times V_{eff})$
		High	$0.9350 - (0.0011 \times V_{eff})$
Grid-Enabled Water Heater	>75 gal	Very Small	$1.0136 - (0.0028 \times V_{eff})$
		Low	$0.9984 - (0.0014 \times V_{eff})$
		Medium	$0.9853 - (0.0010 \times V_{eff})$
		High	$0.9720 - (0.0007 \times V_{eff})$
Gas-fired Circulating Water Heater	≤200,000 Btu/h	Very Small	$0.8000 - (0.0011 \times V_{eff})$
		Low	$0.8100 - (0.0011 \times V_{eff})$
		Medium	$0.8100 - (0.0011 \times V_{eff})$
		High	$0.8100 - (0.0011 \times V_{eff})$
Oil-fired Circulating Water Heater	≤210,000 Btu/h	Very Small	$0.6100 - (0.0011 \times V_{eff})$
		Low	$0.6100 - (0.0011 \times V_{eff})$
		Medium	$0.6100 - (0.0011 \times V_{eff})$
		High	$0.6100 - (0.0011 \times V_{eff})$
Electric Circulating Water Heater	≤12 kW; for heat pump type units ≤24 A at ≤250 V.	Very Small	$0.9100 - (0.0011 \times V_{eff})$
		Low	$0.9100 - (0.0011 \times V_{eff})$
		Medium	$0.9100 - (0.0011 \times V_{eff})$
		High	$0.9200 - (0.0011 \times V_{eff})$

* V_{eff} is the Effective Storage Volume (in gallons), as determined pursuant to 10 CFR 429.17.

* * * * *

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Part IV

Environmental Protection Agency

40 CFR Part 751

Carbon Tetrachloride (CTC); Regulation Under the Toxic Substances Control Act (TSCA); Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 751

[EPA–HQ–OPPT–2020–0592; FRL–8206–01–OCSPP]

RIN 2070–AK82

Carbon Tetrachloride (CTC); Regulation Under the Toxic Substances Control Act (TSCA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to address the unreasonable risk of injury to human health presented by carbon tetrachloride (CTC) under its conditions of use as documented in EPA's 2020 Risk Evaluation for Carbon Tetrachloride and 2022 Revised Unreasonable Risk Determination for Carbon Tetrachloride pursuant to the Toxic Substances Control Act (TSCA). CTC is a volatile, organic compound that is primarily used as a feedstock (*i.e.,* processed as a reactant) in the making of products such as refrigerants, aerosol propellants, and foam-blowing agents. TSCA requires that EPA address by rule any unreasonable risk of injury to health or the environment identified in a TSCA risk evaluation and apply requirements to the extent necessary so that the chemical no longer presents unreasonable risk. EPA determined that CTC presents an unreasonable risk of injury to health due to cancer from chronic inhalation and dermal exposures and liver toxicity from chronic inhalation, chronic dermal, and acute dermal exposures in the workplace. To address the identified unreasonable risk, EPA is proposing under TSCA to establish workplace safety requirements for most conditions of use, including the condition of use related to the making of low Global Warming Potential (GWP) hydrofluoroolefins (HFOs), prohibit the manufacture (including import), processing, distribution in commerce, and industrial/commercial use of CTC for conditions of use where information indicates use of CTC has already been phased out, and establish recordkeeping and downstream notification requirements. The use of CTC in low GWP HFOs is particularly important in the Agency's efforts to support the American Innovation and Manufacturing Act of 2020 (AIM Act) and the Kigali Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, which was ratified on October 26, 2022.

DATES: Comments must be received on or before September 11, 2023. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best ensured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before August 28, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2020–0592, 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 or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Claudia Menasche, Existing Chemicals Risk Management Division (7404M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number (202) 564–3391; email address: *CarbonTetrachlorideTSCA@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture (defined under TSCA to include import), process, distribute in commerce, use, or dispose of CTC. The following list of 2022 North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- NAICS code 325—Chemical Manufacturing;
- NAICS code 327—Nonmetallic Mineral Product Manufacturing;
- NAICS code 331—Primary Metal Manufacturing;
- NAICS code 562—Waste Management and Remediation Services;
- NAICS code 325110—Petrochemical Manufacturing;
- NAICS code 325120—Industrial Gas Manufacturing;
- NAICS code 325180—Other Basic Inorganic Chemical Manufacturing;
- NAICS code 325194—Cyclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing;
- NAICS code 325199—All Other Basic Organic Chemical Manufacturing;
- NAICS code 325211—Plastics Material and Resin Manufacturing;
- NAICS code 325320—Pesticide and Other Agricultural Chemical Manufacturing;
- NAICS code 325998—All Other Miscellaneous Chemical Product and Preparation Manufacturing;
- NAICS code 327310—Cement Manufacturing;
- NAICS code 327992—Ground or Treated Mineral and Earth Manufacturing;
- NAICS code 331410—Nonferrous Metal (except Aluminum) Smelting and Refining;
- NAICS code 562211—Hazardous Waste Treatment and Disposal; and
- NAICS code 562213—Solid Waste Combustors and Incinerators.

This action may also affect certain entities through pre-existing import, including import certification, and export notification rules under TSCA. Persons who import any chemical substance governed by a final TSCA section 6(a) rule are subject to the TSCA section 13 (15 U.S.C. 2612), which requires that the Secretary of the Treasury ''refuse entry into the customs territory of the United States'' of any substance, mixture, or article containing a chemical substance or mixture that fails to comply with any rule issued under TSCA or that ''is offered for entry in violation'' of TSCA or certain rules or orders issued under TSCA, including rules issued under TSCA section 6(a). Persons who import any chemical substance in bulk form, as part of a mixture, or as part of an article (if required by rule) are also subject to TSCA section 13 import certification requirements and the corresponding regulations at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. Those persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this proposed rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

If you have any questions regarding the applicability of this proposed action

to a particular entity, consult the technical information contact listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the Agency's authority for taking this action?

Under TSCA section 6(a) (15 U.S.C. 2605(a)), if the U.S. Environmental Protection Agency (hereinafter EPA or ''the Agency'') determines through a TSCA section 6(b) risk evaluation that a chemical substance presents an unreasonable risk of injury to health or the environment, EPA must by rule apply one or more requirements listed in section 6(a) to the extent necessary so that the chemical substance or mixture no longer presents such risk.

C. What action is the Agency taking?

Pursuant to TSCA section 6(b), EPA determined that CTC presents an unreasonable risk of injury to health, without consideration of costs or other nonrisk factors, including an unreasonable risk to potentially exposed or susceptible subpopulations (PESS) identified as relevant to the 2020 Risk Evaluation for Carbon Tetrachloride, under the conditions of use (Refs. 1, 2, and 3). A detailed description of the conditions of use that drive EPA's determination that CTC presents an unreasonable risk is provided in Unit III.B.1. Accordingly, to address the unreasonable risk, EPA is proposing, under TSCA section 6(a) to:

(i) Require a CTC workplace chemical protection program (WCPP), which would include an existing chemical exposure limit (ECEL) of 0.03 ppm as an 8-hour time-weighted average (TWA) to address risk from inhalation exposure in combination with direct dermal contact controls (DDCC) for the following conditions of use. EPA is also proposing working with the regulated community and industrial hygiene experts to develop methodologies to measure CTC concentrations at or below the ECEL. The WCPP would apply to the manufacturing (including import) of CTC and other conditions of use which account for essentially all of the production volume of CTC (Ref. 4), as outlined in Unit IV.A.1.:

- Domestic manufacture;
- Import;
- Processing as a reactant in the production of HCFCs, HFCs, HFOs, and perchloroethylene (PCE);
- Incorporation into formulation, mixture or reaction products in agricultural products manufacturing and other basic organic and inorganic chemical manufacturing;
- Repackaging for use as a laboratory chemical;
- Recycling;
- Industrial and commercial use as an industrial processing aid in the manufacture of agricultural products;
- Industrial and commercial use in the elimination of nitrogen trichloride in the production of chlorine and caustic soda; and
- Disposal.

(ii) Require use of a fume hood and dermal personal protective equipment (PPE) for the industrial and commercial use as a laboratory chemical, as outlined in Unit IV.A.2.;

(iii) Prohibit these additional conditions of use, for which the Agency understands use of CTC has already been phased out, as outlined in Unit IV.A.3.:

- Incorporation into formulation, mixture or reaction products in petrochemical-derived manufacturing;
- Industrial and commercial use as an industrial processing aid in the manufacture of petrochemicals-derived products;
- Industrial and commercial use in the manufacture of other basic chemicals (including manufacturing of chlorinated compounds used in solvents, adhesives, asphalt, and paints and coatings), except for use in the elimination of nitrogen trichloride in the production of chlorine and caustic soda (for which EPA is proposing a WCPP);
- Industrial and commercial use in metal recovery;
- Industrial and commercial use as an additive; and
- Industrial and commercial use in specialty uses by the U.S. Department of Defense (DoD).

(iv) Require manufacturers (including importers), processors, and distributors to provide downstream notification of the requirements, as outlined in Unit IV.A.4.

(v) Require recordkeeping, as outlined in Unit IV.A.4.

EPA notes that not all TSCA conditions of use of CTC are subject to regulation under this proposal. As described in the 2020 Risk Evaluation for Carbon Tetrachloride (Ref. 1) and the 2022 Revised Unreasonable Risk Determination for Carbon Tetrachloride (Ref. 3), two conditions of use of CTC do not drive the unreasonable risk: distribution in commerce and processing as a reactant/intermediate in reactive ion etching. EPA is not proposing any restrictions for the processing of CTC as a reactant/intermediate in reactive ion etching.

However, under TSCA section 6(a), EPA may select from among a suite of risk management requirements in TSCA section 6(a), including requirements related to distribution in commerce, as part of its regulatory options to address the unreasonable risk; EPA's proposed regulatory action and primary alternative regulatory action include prohibitions on the distribution in commerce of CTC for certain downstream conditions of use.

The 2020 Risk Evaluation (Ref. 1) and the 2022 Revised Unreasonable Risk Determination (Ref. 3) contain the full list of CTC's conditions of use that were evaluated for risk to health or the environment. The term ''conditions of use'' is defined in TSCA section 3(4) to mean the circumstances under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of. As mentioned, a detailed description of the conditions of use that drive EPA's determination that CTC presents an unreasonable risk is provided in Unit III.B.1. In addition, Unit III.B.2. contains a description of the conditions of use that do not drive the unreasonable risk of CTC.

In addition, EPA is proposing to amend the general provision of 40 CFR part 751, subpart A, to define ''authorized person,'' ''direct dermal contact,'' ''ECEL,'' ''exposure group,'' ''owner or operator,'' ''potentially exposed person,'' and ''regulated area'' so that these definitions may be commonly applied to this and other rules under TSCA section 6 that would be codified under 40 CFR part 751. EPA is requesting public comment on all aspects of this proposal.

D. Why is the Agency taking this action?

Under TSCA section 6(a), ''[i]f the Administrator determines in accordance with subsection (b)(4)(A) that the manufacture, processing, distribution in commerce, use or disposal of a chemical substance or mixture, or that any combination of such activities, presents an unreasonable risk of injury to health or the environment, the Administrator shall by rule . . . apply one or more of the [section 6(a)] requirements to such substance or mixture to the extent necessary so that the chemical substance no longer presents such risk.'' CTC was the subject of a risk evaluation under TSCA section 6(b)(4)(A) that was issued in November 2020 (2020 Risk Evaluation) (Ref. 1). In addition, EPA issued a revised unreasonable risk determination for CTC in December 2022 (Ref. 3), determining that CTC, as a whole chemical substance, presents an unreasonable risk of injury to health under the conditions of use. As a result, EPA is proposing to take action to the extent necessary so that CTC no longer

presents such risk. The unreasonable risk is described in Unit III.B.3. and the conditions of use that drive the unreasonable risk for CTC are described in Unit III.B.1.

EPA is not proposing a complete ban on CTC. CTC is primarily used as a feedstock to make products such as refrigerants, aerosol propellants, and foam-blowing agents. Requirements under the Montreal Protocol and Title VI of the Clean Air Act (CAA), which were included in the CAA Amendments of 1990 and are codified at 42 U.S.C. Chapter 85, Subchapter VI, led to a phaseout of CTC production in the United States for most non-feedstock domestic uses, such as degreasers and fire suppressants. In addition, the Consumer Product Safety Commission (CPSC) banned the use of CTC in consumer products (excluding unavoidable residues not exceeding 10 ppm atmospheric concentration) in 1970. The Agency has considered the benefits of CTC for various uses as required under TSCA section 6(c)(2)(A) and (B), and recognizes that continued use of CTC in some TSCA conditions of use should be maintained for several reasons. The use of CTC may provide benefits that complement the Agency's efforts to address climate-damaging HFCs under the AIM Act and the Kigali Amendment to the Montreal Protocol, and supporting human health and environmental protection under these programs. In addition, the use of CTC may provide other benefits due to certain unique properties of CTC (*e.g.,* it does not react with the process gasses when used as a process agent in the manufacture of agricultural products (Ref. 5). Finally, strict workplace controls can be implemented to address unreasonable risk across many conditions of use. For some workplaces, EPA understands that existing controls may already reduce exposures enough to meet the inhalation exposure concentration limit proposed in this rulemaking or to prevent direct dermal contact with CTC. For these reasons, this rule proposes to allow CTC's continued use with additional worker protection to address unreasonable risk for several conditions of use, including the processing of CTC as a reactant in the production of HFOs.

E. What are the estimated incremental impacts of this Action?

EPA's Economic Analysis of the estimated incremental impacts associated with this rulemaking can be found in the rulemaking docket (Ref. 4). As described in more detail in the Economic Analysis and in Units VI.D. and X.D., EPA's estimate of the incremental costs of this proposed rule is $18.8 million per year annualized over 20-years at a 3% discount rate and $18.5 million per year at a 7% discount rate (Ref. 4). The estimated cost of the primary alternative regulatory action is $2.3 million per year annualized over 20-years at both a 3% and 7% discount rate. While the cost of the proposed regulatory action is higher than the cost of the primary alternative regulatory action, the proposed regulatory action is the action with the least uncertainty regarding the protection afforded to workers, requires regulated entities to consider more protective controls in the hierarchy, and lessens the burden on workers. Under the WCPP, regulated entities would be required to implement the hierarchy of controls and only consider respirators and dermal PPE after all other steps have been taken to reduce exposures using other and more effective controls in the hierarchy (Ref. 8). The primary alternative regulatory action, on the other hand, would neither allow nor require regulated entities to consider other, more effective exposure controls in the hierarchy. In addition, the Agency recognizes that workplaces have unique processes and equipment in place and that varying levels of respiratory APFs may be needed for different workplaces. Therefore, there is uncertainty as to whether a specific respiratory APF or a dermal PPE would be sufficient for all workplaces so that CTC no longer presents unreasonable risk. Finally, there is an unquantified cost to workers associated with prolonged use of respirators, which could interfere with work tasks. The potential for respirator use to cause discomfort and productivity losses could lead companies to offer higher wages as compensation, but the extent of this effect is unknown and thus unquantified. To the extent that this unquantified cost of respirator use applies more to prescriptive controls, it is an unmonetized benefit of the proposed regulatory action relative to the primary alternative action. More details regarding the rationale for the proposed regulatory action and the primary alternative regulatory action are in Unit IV and Unit V. The costs are estimated as incremental to baseline conditions, including current use of personal protective equipment. The costs represent a high-end cost estimate because the high estimates for the number of entities and workers affected by the regulation were used. To the extent that EPA's approach overestimates the number of entities subject to the regulation, actual realized costs of this action will be lower. These costs take into consideration the proposed requirements to mitigate unreasonable risk of injury to health from CTC under the conditions of use. Costs are higher for the proposed action compared to the primary alternative action because the proposed action would require a WCPP for many conditions of use, which includes monitoring and WCPP recordkeeping requirements that are more costly than the primary alternative action's prescriptive controls requirement. In the primary alternative action, facilities will not incur monitoring or WCPP recordkeeping costs, but will need to provide a respirator to all employees. The cost of the primary alternative action's prescriptive controls option includes the PPE. The cost estimates include the equipment itself, as well as the costs of a medical evaluation, fit testing, and equipment cleaning that ensure proper use and maintenance of the PPE. There is an unquantified cost to workers associated with prolonged use of respirators, which could interfere with work tasks. The potential for respirator use to cause discomfort and productivity losses could lead companies to offer higher wages as compensation, but the extent of this effect is unknown and thus unquantified. To the extent that this unquantified cost of respirator use applies more to prescriptive controls, it is an unmonetized benefit of the proposed regulatory action relative to the primary alternative action. More details regarding the rationale for the proposed regulatory action and the primary alternative regulatory action are in Unit IV and Unit V

Unit IV. details which actions apply to which conditions of use. EPA estimates that 30 firms associated with 71 sites may be manufacturing (including importing), processing, or releasing CTC.

Industry is expected to incur costs associated with performing inspections, documenting efforts to meet the regulatory requirements associated with the WCPP, including reducing exposure and occurrences of exposure, monitoring, respirators and dermal PPE, training on the use of respirators and dermal PPE, and notification and recordkeeping burdens and costs associated with the WCPP. Industry is also expected to incur equipment costs associated with dermal PPE for laboratory use. EPA assumes that industry would not incur equipment costs associated with the fume hood requirement for laboratory settings because they are considered to be part of baseline industry practices. All manufacturers (including importers),

processors, and distributors will bear downstream notification and recordkeeping costs.

EPA estimates that the proposed rule would affect at least four small entities. EPA compared the highest annualized per-facility cost of the proposed regulatory action with ultimate parent company annual revenues of the affected small businesses. EPA found impacts under 1% of annual revenues for three of the four small entities. One small entity was estimated to have a cost-to-revenue impact ratio greater than 1%, and that entity would incur a cost-to-impact ratio of between 1% and 3%. EPA requests public comments regarding the number of small businesses subject to the proposed rule and the potential impacts of the proposed rule on these small businesses.

EPA's Economic Analysis for the rule monetized the benefits from avoided cases of adrenal and liver cancers. Cancer avoidance benefits are calculated based on reductions in inhalation exposure using the 2020 Risk Evaluation for Carbon Tetrachloride (Ref. 1) for those uses which are continuing but with a WCPP in place. Therefore, benefits are only calculated for the WCPP in the proposed regulatory action, which could include respiratory protection, and prescriptive workplace controls in the primary alternative regulatory action. The estimated monetized benefit of the proposed regulatory action ranges from approximately $0.09 to $0.1 million per year annualized over 20-years at a 3% discount rate and from $0.04 to $0.07 million per year at a 7% discount rate. The estimated monetized benefit of the primary alternative regulatory action is $.09 to $.1 million per year annualized over 20-years at a 3% discount rate and $.04 to $.07 million per year at a 7% discount rate. The APFs of respirators required under the prescriptive workplace controls primary alternative regulatory action are higher on average than those expected to be required based on projected monitoring outcomes under the ECEL as part of the WCPP under the proposed regulatory action. To estimate the costs and benefits of respirators under the ECEL, the Economic Analysis generated a likely distribution of air monitoring outcomes at CTC facilities. This distribution was used to project the number of facilities that would require each APF. These estimates are subject to uncertainties, and there could be facilities with higher or lower air exposures than estimated in the Economic Analysis. In practice, the WCPP would require facility personnel to select appropriate PPE based on actual monitored levels to ensure adequate protection. Under the prescriptive workplace controls in the primary alternative regulatory action, the APFs of respirators for each condition of use are based on high-end exposure scenarios to ensure that workers are sufficiently protected, without accounting for differences in air exposures across facilities, including the unique processes and engineering controls that may already be implemented. This results in more workers wearing higher APFs in the primary alternative regulatory action. The quantified benefits from the primary alternative regulatory action are comparable to those of the proposed action, with a difference of less than five percent between the benefits of the two regulatory options.

Using the high-end estimates for the number of entities and workers affected by the proposed regulation, the monetized net benefit of the proposed regulatory action, which is negative, is −$18.7 million per year annualized over 20-years at a 3% discount rate and ranges from −$18.5 to −$18.4 million per year at a 7% discount rate. The monetized net benefit of the primary alternative regulatory action is also negative and ranges from −$2.3 to −$2.2 million per year annualized over 20-years at a 3% discount rate and is −$2.3 million per year at a 7% discount rate. The range in the monetized net benefits estimate at each discount rate reflects uncertainty in cancer risk reductions given the shorter exposure durations being considered and the life stage at which the changes in exposure occur. Although the estimated monetized net benefits are negative, there are also non-monetized benefits due to other potential avoided adverse health effects associated with CTC exposure, including liver, reproductive, renal, developmental, and central nervous system (CNS) toxicity endpoints. These are serious health endpoints, even though the change in risk due to CTC exposure was not quantified in the 2020 Risk Evaluation for Carbon Tetrachloride.

Section 6.6 of the Economic Analysis, addressing environmental justice impacts, provides sociodemographic data on communities and workers in industries affected by the rule and people that live in proximity to potentially affected facilities. EPA analyzed the baseline conditions facing communities near CTC and HFO manufacturing facilities as well as those of workers in the same industry and county as CTC facilities and HFO manufacturing facilities.

The environmental justice analysis found that, across the entire population within 1- and 3-miles of CTC facilities, there are higher percentages of people who identify as Black and living below the poverty line and a similar percentage of people who identify as Hispanic compared to the national averages. CTC facilities are concentrated in Texas and Louisiana, especially near Houston and Baton Rouge.

F. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *https://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be 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.*

II. Background

A. Overview of Carbon Tetrachloride

This proposed rule applies to CTC (CASRN 56–23–5) and is specifically intended to address the unreasonable risks of injury to health EPA identified in the 2020 Risk Evaluation for Carbon Tetrachloride (Ref. 1) and the 2022 Revised Unreasonable Risk Determination for Carbon Tetrachloride (Ref. 3), as described in Unit III.B.3. CTC is a volatile organic compound that is primarily used as a feedstock in the production of HCFCs, HFCs, and HFOs. EPA identified liver toxicity and cancer adverse effects from chronic inhalation and dermal exposures, as well as liver toxicity from acute dermal exposures in the workplace as the basis for the unreasonable risk determination for CTC (Ref. 1, 2, and 3).

According to data collected as a result of EPA's 2016 and 2020 Chemical Data Reporting (CDR) Rule, in Reporting Years (RY) 2015 and 2019, between 100 and 250 million pounds of CTC were manufactured or imported in the United States (Ref. 4). CTC's use as a feedstock in the production of HCFCs, HFCs, and HFOs is described in Unit III.B.1., with a description of proposed requirements to address the unreasonable risk in Unit IV.A.

B. Regulatory Actions Pertaining to Carbon Tetrachloride

CTC is subject to numerous State, Federal, and international regulations restricting and regulating its use; a summary of the regulatory actions pertaining to CTC is in the docket (Refs. 1 and 6).

C. Consideration of Occupational Safety and Health Administration (OSHA) Occupational Health Standards in TSCA Risk Evaluations and TSCA Risk Management Actions

Although EPA must consider and factor in, to the extent practicable, certain non-risk factors as part of TSCA section 6(a) rulemaking (see TSCA section 6(c)(2)), EPA must nonetheless still ensure that the selected regulatory requirements apply ''to the extent necessary so that the chemical substance or mixture no longer presents [unreasonable] risk.'' 15 U.S.C. 2605(a). This requirement to eliminate unreasonable risk is distinguishable from approaches mandated by some other laws, including the Occupational Safety and Health Act (OSH Act), which includes both significant risk and feasibility (technical and economic) considerations in the setting of standards.

Congress intended for EPA to consider occupational risks from chemicals it evaluates under TSCA, among other potential exposures, as relevant and appropriate. As noted previously, TSCA section 6(b) requires EPA to evaluate risks to PESS identified as relevant by the Administrator. TSCA section 3(12) defines the term ''potentially exposed or susceptible subpopulation'' as ''a group of individuals within the general population identified by the Administrator who, due to either greater susceptibility or greater exposure, may be at greater risk than the general population of adverse health effects from exposure to a chemical substance or mixture, such as infants, children, pregnant women, workers, or the elderly.''

The OSH Act similarly requires OSHA to evaluate risk specific to workers prior to promulgating new or revised standards and requires OSHA standards to substantially reduce significant risk to the extent feasible, even if workers are exposed over a full working lifetime. *See* 29 U.S.C. 655(b)(5); *Indus. Union Dep't, AFL–CIO* v. *Am. Petroleum Inst.,* 448 U.S. 607, 642 (1980) (plurality opinion).

Thus, the standards for chemical hazards that OSHA promulgates under the OSH Act share a broadly similar purpose with the standards that EPA promulgates under TSCA section 6(a). The control measures OSHA and EPA require to satisfy the objectives of their respective statutes may also, in many circumstances, overlap or coincide. However, as this section outlines, there are important differences between EPA's and OSHA's regulatory approaches and jurisdiction, and EPA considers these differences when deciding whether and how to account for OSHA requirements when evaluating and addressing potential unreasonable risk to workers so that compliance requirements are clearly explained to the regulated community.

1. *OSHA Requirements.*

OSHA's mission is to ensure that employees work in safe and healthful conditions. The OSH Act establishes requirements that each employer comply with the General Duty Clause of the Act (29 U.S.C. 654(a)), as well as with occupational safety and health standards issued under the Act.

a. *General Duty Clause of the OSH Act.*

The General Duty Clause of the OSH Act requires employers to keep their workplaces free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees. The General Duty Clause is cast in general terms, and does not establish specific requirements like exposure limits, PPE, or other specific protective measures that EPA could potentially consider when developing its risk evaluations or risk management requirements. OSHA, under limited circumstances, has cited the General Duty Clause for regulating exposure to chemicals. To prove a violation of the General Duty Clause, OSHA must prove employer or industry recognition of the hazard, that the hazard was causing or likely to cause death or serious physical harm, and a feasible method to eliminate or materially reduce the hazard was available.

In rare situations, OSHA has cited employers for violation of the General Duty Clause where exposures were below a chemical-specific Permissible Exposure Limit (PEL), a time weighted average (TWA) based on an employee's average airborne exposure in any 8-hour work shift of a 40-hour work week which shall not be exceeded (Ref. 7). In such situations, OSHA must demonstrate that the employer had actual knowledge that the PEL was inadequate to protect its employees from death or serious physical harm. Because of the heavy evidentiary burden on OSHA to establish violations of the General Duty Clause, it is not frequently used to cite employers for employee exposure to chemical hazards.

b. *OSHA Standards.*

OSHA standards are issued pursuant to the OSH Act and are found in title 29 of the CFR. There are separate standards for general industry, construction, maritime and agriculture sectors, and general standards applicable to a number of sectors (*e.g.,* OSHA's Respiratory Protection standard). OSHA has numerous standards that apply to employers who operate chemical manufacturing and processing facilities, as well as to downstream employers whose employees may be occupationally exposed to hazardous chemicals.

OSHA sets legally enforceable limits on the airborne concentrations of hazardous chemicals, referred to as PELs, established for employers to protect their workers against the health effects of exposure to hazardous substances (29 CFR part 1910, subpart Z, part 1915, subpart Z, and part 1926, subparts D and Z). Under section 6(a) of the OSH Act, OSHA was permitted an initial 2-year window after the passage of the Act to adopt ''any national consensus standard and any established Federal standard.'' 29 U.S.C. 655(a). OSHA used this authority in 1971 to establish PELs that were adopted from Federal health standards originally set by the U.S. Department of Labor through the Walsh-Healy Act, in which approximately 400 Occupational Exposure Limits (OELs) were selected based on the American Conference of Governmental Industrial Hygienists (ACGIH) 1968 list of Threshold Limit Values (TLVs). In addition, about 25 exposure limits recommended by the American Standards Association (now called the American National Standards Institute) (ANSI) were adopted as PELs.

Following the 2-year window provided under section 6(a) of the OSH Act for the adoption of national consensus and existing Federal standards, OSHA issued health standards following the requirements in section 6(b) of the Act. OSHA has established approximately 30 PELs under section 6(b)(5) as part of comprehensive substance-specific standards that include additional requirements for protective measures such as use of PPE, establishment of regulated areas, exposure assessment, hygiene facilities, medical surveillance, and training. These ancillary provisions in substance-specific OSHA standards further mitigate residual risk that could be present due to exposure at the PEL.

Many OSHA PELs have not been updated since they were established in 1971, including the PEL for CTC. In

many instances, scientific evidence has accumulated suggesting that the current limits of many PELs are not sufficiently protective. On October 10, 2014, OSHA published a **Federal Register** document in which it recognized that many of its PELs are outdated and inadequate for ensuring protection of worker health (79 FR 61384, October 14, 2014). In addition, health standards issued under section 6(b)(5) of the OSH Act must reduce significant risk only to the extent that it was technologically and economically feasible at the time they were issued. OSHA's legal requirement to demonstrate that its section 6(b)(5) standards are technologically and economically feasible at the time they are promulgated often precludes OSHA from imposing exposure control requirements sufficient to ensure that the chemical substance no longer presents a significant risk to workers. As described in that notice, while new advancements or developments in science and technology from the time a PEL is promulgated may improve the scientific basis for making findings of significant risk, technical feasibility or economic feasibility, OSHA has been unable to update most of the PELs established in 1971 and they remain frozen at levels at which they were initially adopted (79 FR 61384, October 10, 2014). One example of how industries have evolved in the intervening 50 years as to what is technologically and economically feasible is the halogenated solvent cleaning industry, which, in response to EPA's National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated under Section 112 of the 1990 CAA Amendments (see National Emissions Standards for Halogenated Solvent Cleaning, 40 CFR part 63, subpart T), has made equipment improvements that conserve solvent resources and reduce workplace exposure.

In sum, the great majority of OSHA's chemical standards are outdated or do not sufficiently reduce risk to workers. While it is possible in some cases that the OSHA standards for some chemicals reviewed under TSCA will eliminate unreasonable risk, based on EPA's experience thus far in conducting occupational risk assessments under TSCA EPA believes that OSHA chemical standards would in general be unlikely to address unreasonable risk to workers within the meaning of TSCA, since TSCA section 6(b) unreasonable risk determinations may account for unreasonable risk to more sensitive endpoints and working populations than OSHA's risk evaluations typically contemplate, and EPA is obligated to apply TSCA section 6(a) risk management requirements to the extent necessary so that the unreasonable risk is no longer presented.

Because the requirements and application of TSCA and OSHA regulatory analyses differ, and because many of OSHA's chemical-specific standards are based on outdated information regarding the technological and economic feasibility of the standards and the risks associated with exposure, it is necessary for EPA to conduct risk evaluations and, where it finds unreasonable risk to workers, develop risk management requirements for chemical substances that OSHA also regulates, and it is expected that EPA's findings and requirements may sometimes diverge from OSHA's. However, it is also appropriate that EPA consider the chemical standards that OSHA has already developed to limit the compliance burden to employers by aligning management approaches required by the agencies, where alignment will adequately address unreasonable risk to workers. The following section discusses EPA's consideration of OSHA standards in its risk evaluation and management strategies under TSCA.

2. *Consideration of OSHA standards in TSCA risk evaluations.*

When characterizing the risk during risk evaluation under TSCA, EPA believes it is appropriate to evaluate the levels of risk present in scenarios where no mitigation measures are assumed to be in place for the purpose of determining unreasonable risk (see Unit II.C.2.a.). (It should be noted that there are some cases where scenarios may reflect certain mitigation measures, such as in instances where exposure estimates are based on monitoring data at facilities that have existing engineering controls in place. For example, the Chemical Manufacturing Area Sources NESHAP, last updated in 2012, requires that certain chemical manufacturing synthetic area sources that installed controls obtain a title V permit under the CAA, requiring sources to obtain and operate in compliance with an operating permit (40 CFR part 63, subpart VVVVVV) (77 FR 75740, December 21, 2012). Consequently, emissions monitoring from facilities meeting the NESHAP would reflect emissions reduction resulting from existing engineering controls already in place to meet the standards.) In addition, EPA believes it may be appropriate to also evaluate the levels of risk present in scenarios considering applicable OSHA requirements as well as scenarios considering industry or sector best practices for industrial hygiene that are clearly articulated to the Agency. EPA may evaluate risk under scenarios that consider industry or sector best practices for industrial hygiene that are clearly articulated to the Agency, when doing so serves to inform its risk management efforts. Characterizing risks using scenarios that reflect different levels of mitigation can help inform potential risk management actions by providing information that could be used during risk management to tailor risk mitigation appropriately to address any unreasonable risk identified (see Unit II.C.2.b. and Unit II.C.3.).

a. *Risk characterization for unreasonable risk determination.*

When making unreasonable risk determinations as informed by TSCA risk evaluations, EPA cannot assume as a general matter that all workers are always equipped with and appropriately using sufficient PPE, although it does not question the veracity of public comments received on 2020 Risk Evaluation for Carbon Tetrachloride regarding the occupational safety practices often followed by industry respondents. When characterizing the risk to human health from occupational exposures during risk evaluation under TSCA, EPA believes it is appropriate to evaluate the levels of risk present in scenarios where PPE is not assumed to be used by workers. This approach of not assuming PPE use by workers considers the risk to PESS (workers and occupational non-users (ONUs)) who may not be covered by OSHA standards, such as self-employed individuals and public sector workers who are not covered by a State Plan. Mitigation scenarios included in the EPA risk evaluation in order to inform its risk management efforts (*e.g.,* scenarios considering use of PPE) likely represent current practice in many facilities where companies effectively address worker and bystander safety requirements. However, the Agency cannot assume that all facilities across all uses of the chemical substance will have adopted these practices for the purposes of making the TSCA risk determination.

Therefore, EPA makes its determinations of unreasonable risk based on scenarios that do not assume compliance with OSHA standards, including any applicable exposure limits or requirements for use of respiratory protection or other PPE. Making unreasonable risk determinations based on such scenarios should not be viewed as an indication that EPA believes there are no occupational safety protections in place at any location, or that there is

widespread noncompliance with applicable OSHA standards. Rather, it reflects EPA's recognition that unreasonable risk may exist for subpopulations of workers that may be highly exposed because they are not covered by OSHA standards, such as self-employed individuals and public sector workers who are not covered by an OSHA State Plan, or because their employer is out of compliance with OSHA standards, or because EPA finds unreasonable risk for purposes of TSCA notwithstanding assumed compliance with existing OSHA requirements.

b. *Risk evaluation to inform risk management requirements*

In addition to the scenarios described previously, EPA risk evaluations may characterize the levels of risk present in scenarios considering applicable OSHA requirements (*e.g.,* chemical-specific PELs and/or chemical-specific health standards with PELs and additional ancillary provisions) as well as scenarios considering industry or sector best practices for industrial hygiene that are clearly articulated to the Agency to help inform risk management decisions.

3. *Consideration of OSHA standards in TSCA risk management actions.*

When undertaking risk management actions, EPA: (1) develops occupational risk mitigation measures to address any unreasonable risk identified by EPA, striving for compatibility with applicable OSHA requirements and industry best practices, including appropriate application of the hierarchy of controls, when those measures would address an unreasonable risk; and (2) ensures that EPA requirements apply to all potentially exposed workers in accordance with TSCA requirements. Consistent with TSCA section 9(d), EPA consults and coordinates TSCA activities with OSHA and other relevant Federal agencies for the purpose of achieving the maximum applicability of TSCA while avoiding the imposition of duplicative requirements.

Informed by the mitigation scenarios and information gathered during the risk evaluation and risk management process, the Agency might propose rules to require risk management practices that may already be common practice in many or most facilities. Adopting clear, broadly applicable regulatory standards will foster compliance across all facilities (ensuring a level playing field) and ensure protections for all affected workers, especially in cases where current OSHA standards may not apply to them or not be sufficient to address the unreasonable risk.

For evaluation scenarios which involve OSHA chemical-specific PELs, EPA's risk evaluation in some cases may illustrate that limiting exposure to OSHA's PEL would result in acceptable levels of risk under TSCA under certain conditions of use. In these cases, TSCA risk management requirements could incorporate and reinforce requirements in OSHA standards and ensure that risks are addressed, including for circumstances where OSHA requirements are not applicable (*e.g.,* public sector workers not covered by an OSHA State plan, and self-employed workers) by asserting TSCA compliance/enforcement as well. EPA's risk evaluation may also find unreasonable risk under TSCA associated with some occupational conditions of use, even when the applicable OSHA requirements are being met. In these cases, EPA would need to develop risk management requirements beyond those included in OSHA's standards.

4. *Carbon Tetrachloride and OSHA requirements.*

EPA incorporated the considerations described earlier in this unit in the 2020 Risk Evaluation (Ref. 1), the 2022 Revised Unreasonable Risk Determination (Ref. 3), and this rulemaking. Specifically, in the TSCA 2020 Risk Evaluation, EPA presented risk estimates based on workers' exposures with and without respiratory protection. Additional consideration of OSHA standards in the 2022 Revised Unreasonable Risk Determination is discussed further in the **Federal Register** document of December 27, 2022 (87 FR 79303) (FRL–9948–02–OCSPP), announcing the availability of the Final Revised Unreasonable Risk Determination for Carbon Tetrachloride. In Unit III.B.4. and Unit V., EPA outlines the importance of considering the hierarchy of controls utilized by the industrial hygiene community (hereafter referred to as ''hierarchy of controls'') when developing risk management actions in general, and specifically when determining if and how regulated entities may meet a risk-based exposure limit for CTC.

The hierarchy of controls includes: elimination of the hazard, substitution with a less hazardous substance, engineering controls, administrative controls such as training or exclusion zones with warning signs, and, finally, use of PPE (Ref. 8). Under the hierarchy of controls, the use of respirators and dermal PPE should only be considered after all other steps have been taken to reduce exposures. As discussed in Units IV.A. and V.A.1., EPA's risk management approach would not rely solely or primarily on the use of respirators and dermal PPE to address unreasonable risk to workers; instead, EPA is proposing a WCPP for most conditions of use and prohibitions for certain uses. The WCPP would require consideration of the hierarchy of controls before use of respirators and other PPE. The WCPP is discussed in full in Units IV.A.1. and V.A.1.

In accordance with the approach described earlier in Unit II.C.3., EPA intends for this regulation to be as compatible as possible with the existing OSHA standards, with additional requirements as necessary to address the unreasonable risk. One notable difference between the WCPP and the OSHA standards are the exposure limits. This WCPP would include an Existing Chemical Exposure Limit (ECEL) of 0.03 ppm as an 8-hour TWA to address unreasonable risk for cancer and chronic toxicity for non-cancer effects. EPA recognizes that for CTC, the ECEL would be significantly lower than the 1971 OSHA PEL (10 ppm as an 8-hour TWA). In addition to the distinctions in statutory requirements described in this unit, EPA has identified several factors contributing to the differences in these levels, summarized here.

The TSCA ECEL value for CTC is a lower value than the OSHA PEL (and other existing occupational exposure limits (OELs), discussed in Unit II.C.5) for many reasons, including the age of the data and studies the values are based on and that the values may not fully capture either the complete database of studies considered in the 2020 Risk Evaluation for Carbon Tetrachloride or more recent advances in modeling and scientific interpretation of toxicological data applied in the calculation of the CTC ECEL, in particular CTC's carcinogenicity. EPA considers the CTC ECEL to represent the best available science under TSCA section 26(h), because it was derived from information in the 2020 Risk Evaluation for Carbon Tetrachloride, which was subject to peer review, and was the result of a systematic review process that investigated the reasonably available information in order to identify relevant adverse health effects (Ref. 1). Additionally, by using the information from the 2020 Risk Evaluation for Carbon Tetrachloride, the ECEL incorporates advanced modeling and peer-reviewed methodologies, and accounts for exposures to potentially exposed and susceptible subpopulations, as required by TSCA. For example, the CTC ECEL is based on a study conducted in 2007, which was rated a high quality study during the systematic review process and was the principal study used to derive the IRIS reference concentration for liver effects

(Ref. 1). The data from the 2007 study used to derive the IRIS reference concentration for liver effects for the CTC ECEL is more recent than the data OSHA had available when OSHA set the PEL for CTC in 1971. OSHA attempted to reduce the CTC PEL in 1989 from 10 ppm to 2 ppm after new data about CTC cancer risk became available, but, as explained later in this unit, the reduced CTC PEL was later vacated by court order.

For CTC, the EPA ECEL is an 8-hour occupational inhalation exposure limit based on liver cancer and takes into consideration the uncertainties identified in the 2020 Risk Evaluation for Carbon Tetrachloride (Ref. 9). The ECEL represents the concentration at which an adult human, including a member of a potentially exposed or susceptible subpopulation, would be unlikely to suffer adverse effects if exposed for a working lifetime. EPA has determined as a matter of risk management policy that ensuring exposures remain at or below the ECEL will eliminate any unreasonable risk of injury to health driven by inhalation exposures. In addition to the ECEL, as part of this rulemaking EPA is proposing an ECEL action level, a value based on two-thirds of the ECEL, that would trigger additional monitoring to ensure that workers are not exposed to concentrations above the ECEL.

For CTC, the ECEL of 0.03 ppm is based on the most sensitive point of departure (POD) across cancer, chronic non-cancer, and acute endpoints. EPA identified cancer PODs for inhalation exposures based on liver tumor effects observed in mice. The chronic PODs for inhalation exposures are based on a study observing increased fatty changes in rodent livers. As explained in the ECEL memo, the point of departure for liver cancer was the basis of the CTC ECEL. Additional information on the ECEL and how it was derived can be found in Unit IV.A.1.b.i. Overall, based on strong evidence in highly rated animal studies, the weight of the scientific evidence supported liver cancer effects following CTC exposure (Ref. 1). Monitoring data submitted via public comment by a trade association during the 2020 Risk Evaluation for Carbon Tetrachloride indicating exposures near or below the ECEL supports EPA's confidence that meeting the ECEL is feasible for facilities engaging in the use of CTC (Ref. 10).

The OSHA PEL for CTC of 10 ppm as an 8-hour TWA was established in 1971 (29 CFR 1910.1000 Table Z–2). OSHA is required to promulgate a standard that reduces significant risk to the extent that it is technologically and economically feasible to do so (Ref. 7). A 1989 update to 2 ppm based on a quantitative cancer risk assessment—a level at which ''residual risk continues to be significant,'' according to OSHA's 1989 final rule preamble—was later vacated by court order, reverting to the original PEL of 10 ppm, because the court found OSHA had not made sufficiently detailed findings that the new PEL would eliminate significant risk and would be feasible in each industry in which the chemical was used (see 54 FR 2332, 2679 through2681 ; *AFL–CIO* v. *OSHA,* 965 F.2d 962 (11th Cir. 1992)). Most original PELs were based on acute health effects only observable at higher concentrations as more sensitive chronic studies, including the chronic exposure studies used to inform the CTC ECEL, were not available at the time the PEL was established (see, *e.g.,* 79 FR 61383, 61388). As discussed in Units IV.A.1.b.i. and VII.D., the TSCA ECEL represents the best available science at the time of publication of the 2020 Risk Evaluation for CTC. As described earlier, in a 2014 request for information OSHA described how, while new developments in science and technology from the time the PEL for CTC was established in 1971 may improve the scientific basis for making findings of significant risk, technical feasibility, or economic feasibility as required under section 6(b)(5) of the OSH Act, OSHA has been unable to update the PEL for CTC and it remains at the level that was originally adopted in 1971 (79 FR 61383, October 10, 2014).

5. *Carbon Tetrachloride and Other Occupational Exposure Limits*

EPA is aware of other occupational exposure recommendations or limits for CTC, including the ACGIH TLV, the California Division of Occupational Safety and Health (Cal/OSHA) PEL, and the National Institute for Occupational Safety and Health (NIOSH) Recommended Exposure Limit (REL).

a. ACGIH TLV

The 1996 ACGIH TLV is 5 ppm (Ref. 11). This 8-hour TWA TLV recommended by the ACGIH in 1996 has a different endpoint than the CTC ECEL and instead of being based on the 2007 study indicating a liver cancer endpoint is based on broad liver toxicity that was observed in several earlier studies in rodents, primates, and humans exposed to CTC concentrations of 10 ppm and above. Additionally, a PBPK model used by ACGIH to develop a Short-Term Exposure Limit (STEL) TLV indicated that acute exposure at 10 ppm results in equivalent liver metabolism as a chronic occupational exposure at 5 ppm, which results in a much lower liver concentration than the level that caused toxicity in rats. Therefore, ACGIH recommended an 8-hour TWA TLV of 5 ppm as long as the 15-minute STEL did not exceed 10 ppm. However, even ACGIH's TLV report acknowledges that the 5 ppm value is not protective of susceptible subpopulations, and there were no uncertainty factors assigned to account for inter- or intra-species variability (Ref. 11). Additionally, while ACGIH designated CTC as a suspected human carcinogen in 2001 based on a threshold mode of action, it did not update its 1996 TLV to derive

a TLV based on cancer.

b. *NIOSH REL.*

The 1975 NIOSH REL for CTC is 2 ppm was originally based on systemic effects and local effects on the skin and eyes. The 1975 NIOSH REL for CTC was a 10-hour TWA in a 40-hour work week (Ref. 12). In 1989, as part of a joint project with OSHA, NIOSH changed the 10-hour TWA to a 60-minute STEL and added the Ca designation (potential occupational carcinogen). In general, RELs that are set as STELs or ceilings instead of 8- or 10-hour TWAs are typically based on concern for acute health effects, but in the case of CTC, NIOSH also recognized its carcinogenicity.

c. *Cal/OSHA PEL.*

Generally, Cal/OSHA updates its PELs every other year. The Cal/OSHA PEL is 2 ppm, lower than the 1971 OSHA PEL of 10 ppm, and equivalent to the NIOSH REL and the vacated 1989 OSHA PEL, which was based on a quantitative cancer risk assessment but was acknowledged by OSHA to leave significant residual risk. Despite the Cal/OSHA PEL being equivalent to the vacated 1989 OSHA PEL based on cancer, Cal/OSHA did not perform a quantitative cancer risk assessment, and the Cal/OSHA PEL cites the 1989 NIOSH 60-min STEL.

D. Summary of EPA's Risk Evaluation Activities on Carbon Tetrachloride

In December 2016, EPA selected CTC as one of the first 10 chemicals for risk evaluation under TSCA section 6. EPA published the Scope of the Risk Evaluation for Carbon Tetrachloride in July 2017 (82 FR 31592, July 7, 2017) (FRL–9963–57), and, after receiving public comments, published the problem formulation in June 2018 (83 FR 26998, June 11, 2018) (FRL–9978–40). In January 2020, EPA published a draft risk evaluation (85 FR 4658, January 27, 2020) (FRL–10003–92), and, after public comment and peer review by the Science Advisory Committee on

Chemicals (SACC), EPA issued the Risk Evaluation for Carbon Tetrachloride in November 2020 in accordance with TSCA section 6(b) (Ref. 1) (85 FR 70147, November 4, 2020) (FRL–10015–51). EPA subsequently issued a Draft Revised Unreasonable Risk Determination for Carbon Tetrachloride in August 2022 (87 FR 52766, August 29, 2022) (FRL–9948–01–OCSPP), and, after public notice and receipt of comments, published a Revised Unreasonable Risk Determination for Carbon Tetrachloride in December 2022 (Ref. 3) (87 FR 79303, December 27, 2022) (FRL–9948–02–OCSPP). The 2020 Risk Evaluation for Carbon Tetrachloride and supplemental materials are in docket ID No. EPA–HQ–OPPT–2019–0499, and the 2022 Revised Unreasonable Risk Determination for Carbon Tetrachloride and additional materials supporting the risk evaluation process in docket ID No. EPA–HQ–OPPT–2016–0733.

1. *2020 Risk Evaluation.*

In the 2020 Risk Evaluation for Carbon Tetrachloride (Ref. 1), EPA evaluated risks associated with 15 conditions of use within the following categories: manufacture (including import), processing, distribution in commerce, industrial and commercial use, and disposal. Descriptions of the conditions of use that drive unreasonable risk are in Unit III.B.1. The 2020 Risk Evaluation for Carbon Tetrachloride identified significant adverse health effects associated with short-term and long-term exposure to CTC, specifically cancer and liver toxicity from chronic inhalation and dermal exposures. Additional risks associated with liver toxicity and central nervous system effects were identified for acute inhalation exposures. A further discussion of the unreasonable risk of CTC is in Unit III.B.3.

2. *2022 Revised Unreasonable Risk Determination.*

EPA has been revisiting specific aspects of its first ten TSCA existing chemical risk evaluations, including the 2020 Risk Evaluation for Carbon Tetrachloride, to ensure that the risk evaluations upon which risk management decisions are made better align with TSCA's objective of protecting health and the environment. For CTC, EPA revised the original unreasonable risk determination based on the 2020 Risk Evaluation for Carbon Tetrachloride and issued a final Revised Unreasonable Risk Determination for Carbon Tetrachloride in December 2022 (Ref. 3). EPA revised the risk determination for the 2020 Risk Evaluation for Carbon Tetrachloride pursuant to TSCA section 6(b) and Executive Order 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,'' and other Administration priorities (Ref. 3). The revisions consisted of making the risk determination for the whole chemical substance rather than for individual conditions of use (which resulted in the revised risk determination superseding the prior ''no unreasonable risk'' determinations and the withdrawal of the associated TSCA section 6(i)(1) ''no unreasonable risk'' order); and clarifying that the risk determination does not reflect an assumption that all workers are always provided and appropriately wear PPE (Ref. 3).

In determining whether CTC presents unreasonable risk under the conditions of use, EPA considered relevant risk-related factors, including, but not limited to: the effects of the chemical substance on health (including cancer and non-cancer risks) and human exposure to the substance under the conditions of use (including duration, magnitude and frequency of exposure); the effects of the chemical substance on the environment and environmental exposure under the conditions of use; the population exposed (including any potentially exposed or susceptible subpopulations); the severity of hazard (including the nature of the hazard, the irreversibility of the hazard); and uncertainties, including the strengths, and limitations associated with the information used to calculate the risk estimates.

EPA determined that CTC presents an unreasonable risk of injury to health. This unreasonable risk determination is driven by risks to workers and ONUs (workers who do not directly handle the chemical but perform work in an area where the chemical is present). EPA did not identify risks of injury to the environment that drive the unreasonable risk determination for CTC (Ref. 1). The CTC conditions of use that drive EPA's determination that the chemical substance poses unreasonable risk to health are listed in the unreasonable risk determination (Ref. 3) and in Unit III.B.1., with descriptions to aid chemical manufacturers, processors, and users in determining how their particular use or activity would be impacted by the proposed regulatory provisions. The conditions of use that do not drive the unreasonable risk for CTC (distribution in commerce and processing as a reactant/intermediate in reactive ion etching) are also listed in the unreasonable risk determination (Ref. 3) and in Unit III.B.2. EPA's proposed regulatory action and primary alternative regulatory action include prohibitions on the distribution in commerce of CTC for certain downstream uses, but do not include any restrictions for the processing as a reactant/intermediate in reactive ion etching.

3. *Fenceline Screening Analysis.*

The 2020 Risk Evaluation for Carbon Tetrachloride excluded the assessment of certain exposure pathways that were or could be regulated under another EPA-administered statute (see Section 1.4.3 of the 2020 Risk Evaluation for Carbon Tetrachloride) (Refs. 1 and 3). This resulted in the surface water, drinking water, and ambient air pathways for CTC exposure not being assessed for human health risk to the general population. In June 2021, EPA made a policy announcement on the path forward for TSCA chemical risk evaluations, indicating that EPA would, among other things, examine whether the exclusion of certain exposure pathways from the risk evaluations could lead to a failure to identify and protect fenceline communities (Ref. 13). EPA then conducted a screening analysis to identify where there may be potential risks to people living near the fenceline of facilities releasing CTC.

In order to assess the potential risk to the general population in proximity to a facility releasing CTC, EPA developed the TSCA Screening Level Approach for Assessing Ambient Air and Water Exposures to Fenceline Communities Version 1.0, which was presented to the SACC in March 2022, with a report issued by the SACC on May 18, 2022 (Ref. 14). This analysis and a follow up screening level analysis to consider SACC feedback are discussed in Unit VI.A.

III. Regulatory Approach

A. Background

Under TSCA section 6(a), if the Administrator determines through a TSCA section 6(b) risk evaluation that the manufacture (including import), processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or any combination of such activities, presents an unreasonable risk of injury to health or the environment, EPA must by rule apply one or more of the following requirements to the extent necessary so that the chemical substance or mixture no longer presents such risk.

- Prohibit or otherwise restrict the manufacturing, processing, or distribution in commerce of the substance or mixture, or limit the amount of such substance or mixture which may be manufactured, processed,

or distributed in commerce (TSCA section 6(a)(1)).

- Prohibit or otherwise restrict the manufacturing, processing, or distribution in commerce of the substance or mixture for a particular use or above a specific concentration for a particular use (TSCA section 6(a)(2)).
- Limit the amount of the substance or mixture which may be manufactured, processed, or distributed in commerce for a particular use or above a specific concentration for a particular use specified (TSCA section 6(a)(2)).
- Require clear and adequate minimum warnings and instructions with respect to the substance or mixture's use, distribution in commerce, or disposal, or any combination of those activities, to be marked on or accompanying the substance or mixture (TSCA section 6(a)(3)).
- Require manufacturers and processors of the substance or mixture to make and retain certain records, or conduct certain monitoring or testing (TSCA section 6(a)(4)).
- Prohibit or otherwise regulate any manner or method of commercial use of the substance or mixture (TSCA section 6(a)(5)).
- Prohibit or otherwise regulate any manner or method of disposal of the substance or mixture, or any article containing such substance or mixture, by its manufacturer or processor or by any person who uses or disposes of it for commercial purposes (TSCA section 6(a)(6)).
- Direct manufacturers or processors of the substance or mixture to give notice of the unreasonable risk determination to distributors, certain other persons, and the public, and to replace or repurchase the substance or mixture (TSCA section 6(a)(7)).

As described in Unit III.B.4, EPA assessed how the TSCA section 6(a) requirements could be applied to address the unreasonable risk identified in the 2020 Risk Evaluation for Carbon Tetrachloride and the final revised unreasonable risk determination, so that CTC no longer presents such unreasonable risk. EPA's proposed regulatory action and a primary alternative regulatory action are described in Unit IV. EPA is requesting public comment on all elements of the proposed regulatory action and the primary alternative regulatory action and is providing notice that based on consideration of comments and any new information submitted to EPA during the comment period on this proposed rule, EPA may in the final rule modify elements of the proposed regulatory action. The public should understand that the Agency's consideration of public comments could result in changes to elements of the proposed and alternative regulatory actions when this rule is finalized. For example, elements such as timelines for implementation could be lengthened or shortened, ECELs could be modified, or the WCPP could have conditions added or eliminated.

Under the authority of TSCA section 6(g), EPA may consider granting a time-limited exemption from a requirement of a TSCA section 6(a) rule for a specific condition of use if EPA finds that: (1) The specific condition of use is a critical or essential use for which no technically and economically feasible, safer alternative is available, taking into consideration hazard and exposure; (2) compliance with the requirement, as applied with respect to the specific condition of use, would significantly disrupt the national economy, national security, or critical infrastructure; or (3) the specific condition of use of the chemical substance, as compared to reasonably available alternatives, provides a substantial benefit to health, the environment, or public safety. Based on reasonably available information, EPA has analyzed the need for an exemption and is not proposing to grant an exemption from the rule requirements at this time. EPA is requesting public comment regarding the need for exemptions from the rule (and under what specific circumstances) pursuant to the provisions of TSCA section 6(g). Based on information submitted to EPA during the comment period on this proposed rule, EPA may issue a supplemental notice proposing an exemption under TSCA section 6(g). EPA is also requesting comment on, in lieu of proposing a 6(g) exemption in a separate regulatory action, whether any elements of the primary alternative regulatory action should be considered in combination with elements of the proposed regulatory action as EPA develops the final regulatory action.

TSCA section 6(c)(2)(C) requires that, in deciding whether to prohibit or restrict in a manner that substantially prevents a specific condition of use and in setting an appropriate transition period for such action, EPA consider, to the extent practicable, whether technically and economically feasible alternatives that benefit health or the environment will be reasonably available as a substitute when the proposed prohibition or restriction takes effect. Unit V.B. includes more information regarding EPA's consideration of alternatives, and Unit VI. provides more information on EPA's considerations more broadly under TSCA section 6(c)(2).

EPA carried out required consultations as described in this unit and also considered impacts on children's environmental health as part of its approach to developing this TSCA section 6 regulatory action.

1. *Consultations.*

EPA conducted consultations and outreach as part of development of this proposed regulatory action. The Agency held a federalism consultation from December 17, 2020, until February 17, 2021, as part of this rulemaking process and pursuant to Executive Order 13132 (see description in Unit X.E.). During the consultation, EPA met with State and local officials early in the process of developing the proposed action in order to receive meaningful and timely input into its development (Ref. 15). During the consultation, participants and EPA discussed preemption, EPA's authority under TSCA section 6 to regulate identified unreasonable risk, and what activities would be potentially regulated in the proposed rule, and the relationship between TSCA and existing statutes (Ref. 15). EPA received no written comments as part of this consultation.

CTC is not manufactured (including imported), processed, distributed in commerce, or regulated by Tribal governments. However, EPA consulted with Tribal officials during the development of this proposed action (Ref. 16). The Agency held a Tribal consultation from December 7, 2020, through March 12, 2021, with meetings held on January 6 and 12, 2021. Tribal officials were given the opportunity to meaningfully interact with EPA risk managers concerning the status of risk management. During the consultation, EPA discussed risk management under TSCA section 6(a), findings from the 2020 Risk Evaluation for Carbon Tetrachloride, types of information that would be helpful to inform risk management, principles for transparency during the risk management process, and types of information EPA is seeking from Tribes (Ref. 16). EPA received no written comments as part of this consultation.

In addition to the formal consultations, EPA also conducted outreach to advocates for communities that might be subject to disproportionate exposure to CTC, such as minority populations, low-income populations, and indigenous peoples. EPA's Environmental Justice (EJ) consultation occurred from February 2, 2021, through April 2, 2021 (Ref. 17). On February 2 and 18, 2021, EPA held public meetings as part of this consultation. These meetings were held pursuant to and in compliance with Executive Orders

12898 and 14008. EPA received one written comment following the EJ meeting, in addition to oral comments provided during the consultation (Ref. 17). Commenters supported strong regulation of CTC to protect lower-income communities and workers. In addition, commenters recommended EPA conduct analysis of additional exposure pathways, including air and water.

Units X.C., X.E., X.F. and X.J. provide more information regarding the consultations.

2. *Other stakeholder consultations.*

In addition to the formal consultations described in Unit X., EPA attended a Small Business Administration (SBA) Roundtable on December 4, 2020, and held a public webinar on December 10, 2020. At both events EPA staff provided an overview of the TSCA risk management process and the findings in the 2020 Risk Evaluation for Carbon Tetrachloride (Ref. 1). Attendees of these meetings were given an opportunity to voice their concerns on both the risk evaluation and risk management.

Furthermore, EPA has engaged in discussions with representatives from different industries, non-governmental organizations, technical experts, and users of CTC. A list of external meetings held during the development of this proposed rule is in the docket (Ref. 18); meeting materials and summaries are also in the docket. The purpose of these discussions was to hear from users, academics, manufacturers, and members of the public health community about practices related to industrial and commercial uses of CTC; public health impacts of CTC; the importance of CTC in the various uses subject to this proposed rule; frequently used substitute chemicals or alternative methods; engineering control measures and personal protective equipment currently in use or feasibly adoptable; and other risk-reduction approaches that may have already been adopted or considered for industrial or commercial uses.

3. *Children's environmental health.*

The Agency's 2021 Policy on Children's Health (Ref. 19) requires EPA to protect children from environmental exposures by consistently and explicitly considering early life exposures (from conception, infancy, early childhood and through adolescence until 21 years of age) and lifelong health in all human health decisions through identifying and integrating children's health data and information when conducting risk assessments. TSCA section 6(b)(4)(A) also requires EPA to conduct risk evaluations ''to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment . . . including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by the Administrator, under the conditions of use.'' Infants, children, and pregnant women are listed as examples of subpopulations that may be considered relevant ''potentially exposed or susceptible subpopulations'' in the TSCA section 3(12) definition of that term. In addition, TSCA section 6(a) requires EPA to apply one or more risk management requirements under TSCA section 6(a) so that CTC no longer presents an unreasonable risk (including unreasonable risk to PESS).

The 2020 Risk Evaluation for Carbon Tetrachloride considered impacts on workers ages 17 and older from occupational use from inhalation and dermal exposures, as applicable. The risk evaluation considered males (≤16 years of age) and females of reproductive age (≤16 years of age) for both dermal and inhalation exposures. While risks to children (workers 17 through 20 years of age) are not disproportionate, effects observed in studies include cancer and liver toxicity from chronic inhalation and dermal exposures and central nervous system impairment from acute inhalation exposure. The risks identified would be addressed by both the proposed regulatory action and primary alternative action described in Unit IV.

B. Regulatory Assessment of Carbon Tetrachloride

1. *Description of conditions of use that drive the unreasonable risk.*

This unit describes the TSCA conditions of use that drive EPA's unreasonable risk determination for the chemical substance CTC. Condition of use descriptions were obtained from EPA sources such as the 2020 Risk Evaluation for Carbon Tetrachloride and related documents, and include clarifications based on the CDR use codes, as well as the Organisation for Economic Co-operation and Development (OECD) harmonized use codes and feedback from stakeholders regarding how they describe their uses. For additional description of the conditions of use, including process descriptions and worker activities considered in the risk evaluation, see the Problem Formulation of the 2020 Risk Evaluation for Carbon Tetrachloride, the 2020 Risk Evaluation for Carbon Tetrachloride, and supplemental files (Refs. 1 and 20). EPA acknowledges that some of the terms used in this unit may also be defined under other statutes; however, the descriptions in this unit are intended to provide clarity to the regulated entities subject to the provisions of this rule under TSCA section 6(a).

a. *Manufacturing.*

i. *Domestic manufacture.*

This condition of use refers to making or producing a chemical substance within the United States (including manufacturing for export), including the extraction of a component chemical substance from a previously existing chemical substance or a complex combination of substances. For purposes of this proposed rule, this condition of use does not include CTC generated as a byproduct, which was not evaluated in the 2020 Risk Evaluation for Carbon Tetrachloride (Ref. 1). As explained in Section 1.4.2.3 of the 2020 Risk Evaluation for Carbon Tetrachloride, EPA anticipates that any risks presented by the presence of CTC generated as byproduct during the manufacture of 1,2-dichloroethane is being assessed in the risk evaluation for 1,2-dichloroethane (Ref. 21).

ii. *Import.*

Import refers to the act of causing a chemical substance or mixture to arrive within the customs territory of the United States. This condition of use includes loading/unloading and repackaging associated with import.

b. *Processing.*

i. *Processing as a reactant in the production of hydrochlorofluorocarbon, hydrofluorocarbon, hydrofluoroolefin, and perchloroethylene.*

CTC serves as a feedstock in the production of another chemical product via a chemical reaction in which CTC is consumed. Currently, CTC is used as a reactant to manufacture HCFCs, HFCs, HFOs, and PCE, which are used in the making of a variety of products including refrigerants, aerosol propellants, and foam-blowing agents. The specifics of the reaction process (*e.g.,* use and types of catalysts, reaction temperature) vary depending on the product being produced; however, a typical reaction process involves unloading CTC from containers and feeding into the reaction vessel(s), where CTC either completely or partially reacts with other raw materials to form the final product. Following the reaction, the product may be purified to remove unreacted CTC or other materials if needed.

ii. *Processing: Incorporation into formulation, mixtures, or reaction products (petrochemicals-derived manufacturing; agricultural products manufacturing; other basic organic and inorganic chemical manufacturing).*

Incorporation into formulation, mixture, or reaction products refers to the process of mixing or blending several raw materials to obtain a single product or preparation or formulation. CTC is incorporated into hydrochloric acid (HCl), vinyl chloride, ethylene dichloride (EDC), chloroform, hafnium tetrachloride, thiophosgene, and methylene chloride. CTC may be incorporated into various products and formulations at varying concentrations for further distribution. For example, CTC may be unloaded from transport containers either directly into mixing equipment or into an intermediate storage vessel either manually or through automation via a pumping system. Mixing of components can occur in either a batch or continuous system. The mixture that contains CTC may be used as a reactant to manufacture a chlorinated compound that is subsequently formulated into a product or a processing aid used to aid in the manufacture of formulated products, including agricultural chemicals, petrochemicals-derived products, and any other basic organic and inorganic chemical manufacturing.

iii. *Processing: Repackaging for use as a laboratory chemical.*

Repackaging means the physical transfer of a chemical substance or mixture, as is, from one container to another container or containers in preparation for distribution of the chemical substance or mixture in commerce. Depending on the product, formulation products may be filtered prior to packaging. Final packaging occurs either through manual dispensing from transfer lines or through utilization of an automatic system. Typically, repackaging sites receive the chemical in bulk containers and transfer the chemical from the bulk container into another smaller container in preparation for distribution in commerce.

iv. *Processing: Recycling.*

This condition of use refers to the process of treating generated spent chemical (which would otherwise be disposed of as waste) that is collected on-site or transported to third-party sites for reclamation/recycling. Certain spent chemicals, such as CTC, can be restored to a condition that permits reuse via reclamation/recycling. The reclamation/recycling process involves an initial vapor recovery (*e.g.,* condensation, adsorption, and absorption) or mechanical separation step (*e.g.,* decanting, filtering, draining, settling and centrifuging) followed by distillation, purification, and final packaging.

c. *Industrial and commercial use.*

i. *Industrial and commercial use as an industrial processing aid in the manufacture of petrochemical-derived products and agricultural products.*

A processing aid is a ''chemical that is added to a reaction mixture to aid in the manufacture or synthesis of another chemical substance but is not intended to remain in or become part of the product or product mixture.'' Additionally, processing agents are intended to improve the processing characteristics or the operation of process equipment, but not intended to affect the function of a substance or article created. CTC is used as a processing aid/agent to aid in the manufacture of formulated products, including agricultural chemicals and petrochemical-derived products. The condition of use includes the use of CTC as a process agent in the manufacture of chlorosulphonated polyolefin; the use of CTC in the manufacture of stryene butadiene rubber; the use of CTC in the manufacture of endosulfan (insecticide); the use of CTC in the manufacture of 1-1 Bis (4-chlorophenyl) 2,2,2-trichloroethanol (dicofol insecticide); and the use of CTC in the production of tralomethrin (insecticide) (Ref. 1).

ii. *Industrial and commercial use in the manufacture of other basic chemicals (including chlorinated compounds used in solvents, adhesives, asphalt, paints and coatings, and elimination of nitrogen trichloride in the production of chlorine and caustic soda).*

In addition to the other industrial and commercial uses for CTC outlined in this unit, CTC is used as a processing aid/agent in basic organic and inorganic chemical manufacturing. CTC may be used as a processing agent in the manufacturing of chlorinated compounds that are subsequently used in the formulation of solvents, adhesives, asphalt, and paints and coatings; in the manufacturing of chlorinated paraffins (*e.g.,* plasticizer in rubber, paints, adhesives, sealants, plastics), and chlorinated rubber (*e.g.,* additive in paints, adhesives); and in the manufacturing of inorganic chlorinated compounds, such as in the production of chlorine and caustic soda and the recovery of chlorine in tail gas from the production of chlorine.

iii. *Industrial and commercial use in metal recovery.*

CTC is used as a processing aid or agent to aid in metal recovery.

iv. *Industrial and commercial use as an additive.*

Additives are chemicals combined with a chemical product to enhance the properties of the product. Additives typically stay mixed within the finished product and remain unreacted. The risk evaluation examined the use of CTC as an additive for the manufacture of petrochemical-derived products and agricultural products. CTC is used as an additive in fuel and in plastic components used in the automotive industry.

v. *Industrial and commercial use in specialty uses by the U.S. Department of Defense.*

During the risk evaluation, DoD provided monitoring data for CTC uses in various processes that include worker activities such as cleaning and sampling residual metal and ash; destruction of munitions and storage of resulting liquid waste; and sampling of energetics with solvent.

vi. *Industrial and commercial use as a laboratory chemical.*

For laboratory uses, CTC is typically received in small containers and used in small quantities on a laboratory bench in a fume cupboard or hood. After use, waste CTC is collected and disposed or recycled.

After the risk evaluation was published, DoD did further analysis and provided additional information clarifying their current use of CTC as a laboratory chemical and risk management measures implemented. DoD provided information on their use of CTC as a laboratory chemical in chemical weapons destruction, indicating that CTC is used in small amounts in a confined, laboratory-like setting with advanced engineering controls. There is no waste CTC generated during this process.

d. *Disposal.*

This condition of use refers to the process of disposing generated wasted streams from each of the conditions of use of CTC, that are collected and transported to third-party sites, such as waste incineration sites, for disposal.

e. *Terminology in this proposed rule.*

For the purposes of this proposed rulemaking, ''occupational conditions of use'' refers to the TSCA conditions of use described in Units III.B.1.a. through d. Although EPA identified both industrial and commercial uses in the 2020 Risk Evaluation for Carbon Tetrachloride for purposes of distinguishing exposure scenarios, the Agency clarified then and clarifies now that EPA interprets the authority over ''any manner or method of commercial use'' under TSCA section 6(a)(5) to reach both. In the 2020 Risk Evaluation for Carbon Tetrachloride, EPA identified and assessed all known, intended, and reasonably foreseen uses of CTC.

EPA is not proposing to incorporate the descriptions of known, intended or reasonably foreseen conditions of uses

of CTC presented in Unit III.B.1.a. through d. into the regulatory text as definitions because these conditions of use represent those evaluated in the 2020 Risk Evaluation for Carbon Tetrachloride. EPA requests comment on whether EPA should promulgate definitions for those conditions of use evaluated in the 2020 Risk Evaluation for Carbon Tetrachloride, and, if so, whether the descriptions in this unit are consistent with the conditions of use evaluated in the 2020 Risk Evaluation for Carbon Tetrachloride and whether they provide a sufficient level of detail to improve the clarity and readability of the regulation if EPA were to promulgate a regulation that contains a list of all prohibited or otherwise regulated industrial and commercial conditions of use.

EPA further notes that this proposed rule does not apply to any substance excluded from the definition of ''chemical substance'' under TSCA section 3(2)(B)(ii) through (vi). Those exclusions include, but are not limited to, any pesticide (as defined by the Federal Insecticide, Fungicide, and Rodenticide Act) when manufactured, processed, or distributed in commerce for use as a pesticide; and any food, food additive, drug, cosmetic, or device, as defined in section 201 of the Federal Food, Drug, and Cosmetic Act (FFDCA), when manufactured, processed, or distributed in commerce for use as a food, food additive, drug, cosmetic or device. EPA did not identify any use of CTC that falls under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act or the Federal Food, Drug, and Cosmetic Act (FFDCA).

2. *Description of conditions of use that do not drive the unreasonable risk.*

As described in the 2020 Risk Evaluation for Carbon Tetrachloride (Ref. 1) and the 2022 Revised Unreasonable Risk Determination for Carbon Tetrachloride (Ref. 3), two conditions of use of CTC do not drive the unreasonable risk determination: distribution in commerce; and processing as a reactant/intermediate in reactive ion etching, which is a microfabrication technique used in miniature electronic component manufacturing that involves using ion bombardment and reactive gas, such as small quantities of CTC, to selectively etch wafers.

As outlined in Unit II.D.2., EPA revised the risk determination for the 2020 Risk Evaluation for Carbon Tetrachloride pursuant to TSCA section 6(b) and consistent with Executive Order 13990 and other Administration priorities (Ref. 3). The 2022 Revised Risk Determination for Carbon Tetrachloride is based on the whole chemical substance instead of individual conditions of use. Consistent with the statutory requirements of TSCA section 6(a), EPA is proposing risk management regulatory action to the extent necessary so that CTC no longer presents an unreasonable risk. EPA's proposed risk management action focuses primarily on the conditions of use that drive the unreasonable risk (described in Unit III.B.1). However, it should be noted that, under TSCA section 6(a), EPA is not limited to regulating the specific activities found to drive unreasonable risk and may select from among a suite of risk management requirements in TSCA section 6(a) related to manufacture (including import), processing, distribution in commerce, commercial use, and disposal as part of its regulatory options to address the unreasonable risk. EPA's proposed regulatory action and primary alternative regulatory action, described in Unit IV.A and Unit IV.B., include prohibitions on the distribution in commerce of CTC for certain downstream conditions of use, but do not include any restrictions for the processing of CTC as a reactant/intermediate in reactive ion etching.

3. *Description of unreasonable risk under the conditions of use.*

EPA has determined that CTC presents an unreasonable risk of injury to human health under the conditions of use based on cancer and acute and chronic toxicity for non-cancer effects. As described in the 2020 Risk Evaluation for Carbon Tetrachloride and the July 2022 errata memorandum correcting risk estimates for acute dermal exposures, EPA identified cancer and liver toxicity adverse effects from chronic inhalation and dermal exposures as well as liver toxicity from acute dermal exposures to CTC (Refs. 1, 2, and 3). Cancer adverse effects (*e.g.,* liver, pheochromocytoma, neuroblastoma) were identified for chronic inhalation and dermal exposures. In the 2020 Risk Evaluation for Carbon Tetrachloride, EPA presented two approaches for the assessment of carcinogenic risk from CTC: a linear extrapolation approach for adrenal gland and brain tumors in conjunction with a threshold approach for assessing risks for liver tumors. The approaches are based on conclusions on the mode of action for the different cancer tumors evaluated. The threshold approach used for the risk calculations for the POD for liver cancer were recommended during the peer review by the Science Advisory Committee on Chemicals (SACC). For chronic and acute non-cancer inhalation exposure scenarios to CTC, liver toxicity due to fatty change in the liver was indicative of cellular damage and selected as the most sensitive non-cancer endpoint. However, EPA also identified additional risks associated with other adverse effects (*e.g.,* immediate and temporary depression of the central nervous system, kidney toxicity, reproductive and developmental toxicity, irritation and sensitization, and genetic toxicity) resulting from acute and chronic exposures (Ref. 1). By targeting liver cancer for risk management, EPA's action will also eliminate the acute, chronic non-cancer, and additional cancer risks from CTC (Ref. 9). Unit VI.A. summarizes the health effects and the magnitude of the exposures.

To make the unreasonable risk determination for CTC, EPA evaluated exposures to human receptors including workers and occupational non-users (ONUs) using reasonably available monitoring and modeling data for inhalation and dermal exposures. EPA did not evaluate risks to consumers or bystanders to consumer use because the CPSC banned the use of CTC in consumer products (excluding unavoidable residues not exceeding 10 ppm atmospheric concentration) in 1970. After the 2020 Risk Evaluation for Carbon Tetrachloride was completed, EPA conducted a screening level analysis to assess potential risks from the air and water pathways to fenceline communities. A discussion of EPA's analysis and the expected effects of this rulemaking on fenceline communities is in Unit VI.A.

For the 2020 Risk Evaluation for Carbon Tetrachloride, EPA considered PESS and identified groups of individuals with greater exposure to CTC relative to the general population, including: (1) workers of either gender (>16 years old), including pregnant women, and (2) individual workers who do not use CTC but may be indirectly exposed due to their proximity to the user who is directly handling CTC (ONUs) (Ref. 1). All PESS are included in the quantitative and qualitative analyses described in the 2020 Risk Evaluation for Carbon Tetrachloride and were considered in the determination of unreasonable risk for CTC. As discussed in Unit II.D and Unit VI.A., the 2020 Risk Evaluation for Carbon Tetrachloride excluded the air and water exposure pathways to the general population from the published risk evaluation and may have caused some risks to be unaccounted for in the risk evaluation. EPA considers people in the vicinity of facilities releasing CTC and exposed to CTC through ambient air and

drinking or surface water pathways to constitute a subset of the general population and categorizes them as fenceline communities; they may also be considered PESS. See Unit VI.A. for further discussion on assessing risk to fenceline communities.

4. *Description of TSCA section 6 requirements for risk management.*

EPA considered the TSCA section 6(a) requirements (listed in Unit III.A.) to identify which ones have the potential to eliminate the unreasonable risk for CTC.

As required under TSCA, EPA developed a proposed regulatory action and one primary alternative regulatory action, which are described in Units IV.A. and IV.B., respectively. To identify and select a regulatory action, EPA considered the two routes of exposure driving the unreasonable risk, inhalation and dermal, and the exposed populations. For occupational conditions of use (see Unit III.B.1.), EPA considered how it could directly regulate manufacturing (including import), processing, distribution in commerce, industrial and commercial use, or disposal to address the unreasonable risk.

As required by TSCA section 6(c)(2), EPA considered several factors, in addition to identified unreasonable risk, when selecting among possible TSCA section 6(a) requirements. To the extent practicable, EPA factored into its decisions: (i) The effects of CTC on health and the magnitude of exposure of human beings to CTC, (ii) the effects of CTC on the environment and the magnitude of exposure of the environment to CTC, (iii) the benefits of CTC for various uses, and (iv) the reasonably ascertainable economic consequences of the rule. In evaluating the reasonably ascertainable economic consequences of the rule, EPA considered: (i) The likely effect of the rule on the national economy, small business, technological innovation, the environment, and public health, (ii) the costs and benefits of the proposed regulatory action and of the primary alternative regulatory action considered, and (iii) the cost effectiveness of the proposed regulatory action and of the primary alternative regulatory action considered. See Unit VI. for further discussion related to TSCA section 6(c)(2)(A) considerations, including the statement of effects of the proposed rule with respect to these considerations.

EPA also considered the regulatory authorities under statutes administered by other agencies such as OSHA's implementation of the OSH Act, as well as other EPA-administered statutes to examine: (1) whether there are opportunities for all or part of this risk management action to be addressed under other statutes, such that a referral may be warranted under TSCA sections 9(a) or 9(b); or (2) whether TSCA section 6(a) regulation could include alignment of requirements and definitions in and under existing statutes and regulations to minimize confusion to the regulated entities and the general public.

In addition, EPA followed other TSCA requirements such as considering the availability of alternatives when contemplating a prohibition or a substantial restriction (TSCA section 6(c)(2)(C), as outlined in Unit V.B.), and setting proposed compliance dates in accordance with the requirements in TSCA section 6(d)(1)(B) (described in the proposed and alternative regulatory action in Units IV.A and IV.B.).

To the extent information was reasonably available, EPA considered pollution prevention strategies and the hierarchy of controls adopted by OSHA and NIOSH when selecting regulatory actions, with the goal of identifying risk management control methods that are permanent, feasible, and effective. EPA also considered how to address the unreasonable risk while providing flexibility to the regulated entity, where appropriate, and took into account the information presented in the 2020 Risk Evaluation for Carbon Tetrachloride, as well as additional input from stakeholders (as described in Unit III.A.) and anticipated compliance strategies from regulated entities.

Taken together, these considerations led EPA to the proposed regulatory action and primary alternative regulatory action described in Unit IV. Additional details related to how the requirements in this unit were incorporated into development of those actions are in Unit V.

IV. Proposed Regulatory and Alternative Regulatory Actions

This unit describes the proposed regulatory action by EPA so that CTC will no longer present an unreasonable risk of injury to health. In addition, as indicated by TSCA section 6(c)(2)(A), EPA must consider the costs and benefits and the cost-effectiveness of the proposed regulatory action and one or more primary alternative regulatory actions. In the case of CTC, the proposed regulatory action is described in Unit IV.A. and the primary alternative regulatory action considered is described in Unit IV.B. This unit also describes the proposed compliance timeframes. The rationale for the proposed and alternative regulatory actions and associated compliance timeframes are discussed in this unit and in more detail in Unit V.A.

A. Proposed Regulatory Action

EPA is proposing under TSCA section 6(a) to: (1) Require a WCPP, including an ECEL and DDCC requirements, for the manufacturing (including import) of CTC and for other conditions of use (accounting for essentially all of the production volume of CTC manufactured annually) that occur in industrial settings or in tightly controlled, closed systems, where monitoring data submitted for the 2020 Risk Evaluation for Carbon Tetrachloride indicate values below the ECEL, or where technically and economically feasible safer alternatives may not be reasonably available, or where industry has indicated a reliance on CTC and EPA has found that an ECEL and DDCC requirements would address the unreasonable risk; (2) Require prescriptive controls for one condition of use, industrial and commercial use as a laboratory chemical, where codifying existing practices of use of a fume hood for all laboratory uses (and for DoD's use of CTC as a laboratory chemical codifying advanced engineering controls) and requiring dermal PPE would address the unreasonable risk; and (3) Prohibit certain processing, industrial, and commercial conditions of use and the manufacture, processing, and distribution for those uses, which the Agency understands have already been phased out. EPA is also proposing to require recordkeeping and to require manufacturers (including importers), processors, and distributors of CTC for any use to provide downstream notification of regulatory requirements. As the manufacture and processing of CTC presents an unreasonable risk to health in the United States, the manufacture and processing of CTC for export would also be prohibited or restricted in accordance with TSCA section 12(a)(2).

1. *Workplace Chemical Protection Program (WCPP) for certain manufacturing, processing, industrial and commercial uses, and disposal.*

a. *Overview.*

As described in Unit III.B.4, under TSCA section 6(a), EPA is required to issue a regulation applying one or more of the TSCA section 6(a) requirements to the extent necessary so that the unreasonable risk of injury to human health or the environment from a chemical substance is no longer present. The TSCA section 6(a) requirements provide EPA the authority to limit or prohibit a number of activities, including, but not limited to, restricting

or regulating the manufacture, processing, distribution in commerce, commercial use, or disposal of the chemical substance. Given this statutory authority, EPA may find it appropriate in certain circumstances to propose a WCPP for certain occupational conditions of use (*i.e.,* manufacturing, processing, distribution in commerce, industrial and commercial use, or disposal). This unit describes the proposed WCPP, which consists of an ECEL and DDCC requirements, and ancillary provisions necessary for successful implementation such as periodic monitoring, consideration of the hierarchy of controls, an exposure control plan, and respirators and dermal PPE programs (if applicable). Under a WCPP, owners or operators would have some flexibility, within the parameters outlined in this unit, regarding how they prevent exceedances of the identified EPA exposure limit thresholds or prevent direct dermal contact. In the case of CTC, meeting the EPA exposure limits and implementing the DDCC requirements for certain occupational conditions of use would address the unreasonable risk to potentially exposed persons from inhalation and dermal exposure.

EPA uses the term ''potentially exposed person'' in this unit and in the regulatory text to include workers, occupational non-users, employees, independent contractors, employers, and all other persons in the work area where CTC is present and who may be exposed to CTC under the conditions of use for which a WCPP would apply. EPA's intention is to require a comprehensive WCPP that would address the unreasonable risk from CTC to potentially exposed persons directly handling the chemical or in the work area where the chemical is being used. Similarly, the 2020 Risk Evaluation for Carbon Tetrachloride did not distinguish between employers, contractors, or other legal entities or businesses that manufacture, process, distribute in commerce, use, or dispose of CTC. For this reason, EPA uses the term ''owner or operator'' to describe the entity responsible for implementing the WCPP in any workplace where an applicable condition of use described in Units III.B.1.a. through d. and subject to the WCPP is occurring. The term includes any person who owns, leases, operates, controls, or supervises such a workplace.

EPA is proposing a WCPP for manufacturing (including import) of CTC and the following other conditions of use which account for essentially all of the production volume of CTC manufactured annually:

- Processing as a reactant in the production of HCFCs, HFCs, HFOs, and PCE;
- Processing: Incorporation into a formulation, mixture or reaction product in agricultural products manufacturing and other basic organic and inorganic chemical manufacturing;
- Processing: Repackaging for use as a laboratory chemical;
- Processing: Recycling;
- Industrial and commercial use as an industrial processing aid in the manufacture of agricultural products;
- Industrial and commercial use in the elimination of nitrogen trichloride in the production of chlorine and caustic soda; and
- Disposal.

EPA recognizes that CTC may be a minor input in the production of HCFCs, HFCs, and PCE. EPA understands that CTC may still be used to manufacture HCFCs and HFCs, including HFC–245fa, HFC–365mfc, and HFC–236fa; however, more recently industry has expressed particular reliance on CTC for the manufacture of HFOs. In addition, CTC may be a minor input when recycled to make additional PCE. Therefore, EPA is soliciting comments on the expected need for a WCPP with an ECEL and DDCC requirements for these uses, whether prescriptive controls, including respirators and dermal PPE, should be required for these uses (as outlined in Unit IV.B.1. in the primary alternative regulatory action), or whether the Agency should instead consider prohibiting these uses because they will likely phase out, including timing for such expected phaseout.

EPA is proposing to exclude from WCPP requirements for manufacturers those workplaces that manufacture CTC solely as a byproduct. Section 1.4.2.3 of the 2020 Risk Evaluation for Carbon Tetrachloride stated that EPA excluded from the scope of the risk evaluation conditions of use associated with CTC generated as a byproduct (Ref. 1). In addition, EPA is assessing the manufacture of CTC as a byproduct during the manufacture of 1,2-dichloroethane in the risk evaluation for 1,2-dichloroethane (Ref. 21).

b. *Workplace Chemical Protection Program (WCPP) requirements.*

i. *Existing Chemical Exposure Limit (ECEL) and ECEL Action Level.*

To reduce exposures in the workplace and address the unreasonable risk of injury to health resulting from inhalation exposures to CTC identified under the conditions of use in the TSCA Risk Evaluation, EPA is proposing an ECEL of 0.03 parts per million (ppm) (0.2 mg/m^3) for inhalation exposures to CTC as an 8-hour time-weighted average (TWA) and, based on industrial hygiene practices, owners and operators may implement various controls to consider different lengths of exposure at the workplace. This ECEL is based on the POD for liver cancer. The ECEL memo includes linear risk calculations for adrenal gland tumors in the equation for ''Cancer risk for other tumor types (*e.g.,* adrenal glands) at the ECEL,'' showing that the ECEL is protective of all tumor types, including adrenal gland and brain tumors (Ref. 9). EPA has determined, as a matter of risk management policy, that ensuring exposures remain at or below the ECEL would eliminate the contribution to the unreasonable risk of injury to health for CTC resulting from inhalation exposures in an occupational setting. If ambient exposures are kept at or below the 8-hour TWA ECEL of 0.03 ppm, EPA expects that a potentially exposed person in the workplace would also be protected against all non-cancer effects resulting from occupational inhalation exposures, as well as excess risk of cancer (Ref. 9).

EPA is also proposing to establish an ECEL action level of 0.02 ppm as an 8-hour TWA for CTC. Air concentrations at or above the action level would trigger more frequent periodic monitoring of exposures to CTC, as described in this unit. EPA is proposing to adopt the action level approach in implementing the TSCA ECEL, similar to the action level approach utilized by OSHA in most of their standards. As explained by OSHA, due to the variable nature of employee exposures, compliance with an action level (which OSHA generally establishes at half the 8-hour TWA exposure limit) provides employers with greater assurance that their employees will not be exposed to concentrations above the PELs (62 FR 1494, January 10, 1997). EPA agrees with this reasoning and, like OSHA, expects the inclusion of an ECEL action level at a value below the ECEL will stimulate innovation within industry to reduce exposures to levels below the action level. In this case EPA is proposing an action level for CTC of 0.02 ppm which is two-thirds of the ECEL rather than 0.015 ppm (the value that represents half the ECEL). Because EPA's understanding of current industry practices is that it may be more feasible for owners or operators to measure concentrations with values closer to the ECEL, such as within 10% of the ECEL, EPA is soliciting comment regarding an ECEL action level that is two-thirds the ECEL, including considerations for a different ECEL action level value, and any associated or alternative provisions

related to the ECEL action level since the ECEL is significantly lower than the OSHA PEL.

EPA acknowledges that the values of the ECEL and the ECEL action level outlined in this unit may mean that some entities that are currently in compliance with OSHA requirements would have to do more in order to achieve compliance with the requirements being proposed in this action. It may be necessary to implement engineering controls to reduce exposures to the extent feasible, increase the frequency of periodic exposure monitoring (Unit IV.A.1.b.ii.), implement respiratory protection (Unit IV.A.1.e.i.), and provide notification of monitoring results (Unit IV.A.1.g.), and EPA is soliciting comment on these actions and the cost associated with them. Nevertheless, as discussed further in Unit V.A.1.c., based on monitoring data submitted by industry for the 2020 Risk Evaluation for Carbon Tetrachloride indicating industry was already achieving values below the ECEL, EPA has confidence that requirements to meet an ECEL can be implemented in highly standardized and industrialized settings, including those where CTC is manufactured, processed, and used (EPA–HQ–OPPT–2016–0733–0101).

Each owner or operator of a workplace where these conditions of use occur would be responsible for compliance with the ECEL and the associated requirements. EPA's description for how the requirements related to an ECEL would address the unreasonable risk resulting from inhalation exposures and the rationale for this regulatory approach is outlined in Units III.B.3 and V.A. The proposed requirements of the WCPP ECEL are not applicable to owners and operators of workplaces where manufacturing and processing solely for the industrial and commercial conditions of use that EPA is proposing to prohibit occurs, as described Unit IV.A.3.

In summary, EPA is proposing that each owner or operator of a workplace subject to the ECEL must ensure that no person is exposed to airborne concentration of CTC in excess of 0.03 ppm (0.2 mg/m^3) as an 8-hour TWA (ECEL), with an action level identified as 0.02 ppm (0.13 mg/m^3) as an 8-hour TWA (ECEL action level). For conditions of use for which the requirements to meet an ECEL are being proposed, EPA expects that the regulated community can measure CTC at the ECEL and ECEL action level because they are above the level of detection for air sampling analytical methods for CTC, which are as low as 4 micrograms per sample (Ref. 9). Nevertheless, EPA understands that the regulated community may have difficulty measuring at or below the ECEL consistently over an entire work shift (Ref. 22). Therefore, EPA is requesting comment regarding the amount of time, if any, it would take the regulated community to develop a method to measure at or below the ECEL over an entire work shift. EPA is interested in what levels of detection are possible over an entire work shift based on existing monitoring methods, justification for the timeframe of the specific steps needed to develop a more sensitive monitoring method, cost associated with a more sensitive monitoring method, and any additional detailed information related to establishing a monitoring program to reliably measure CTC at or below the ECEL.

EPA expects that many workplaces already have stringent controls in place that reduce exposures to CTC; for some workplaces, EPA understands that these existing controls may already reduce CTC air concentration levels to levels near or below the ECEL. As noted previously in this unit, EPA expects that, if inhalation exposures for affected occupational conditions of use are kept at or below the ECEL, potentially exposed persons reasonably likely to be exposed in the workplace would be protected from unreasonable risk. EPA is also proposing to require owners or operators to comply with additional requirements under the WCPP that would be needed to ensure successful implementation of the ECEL.

ii. *Monitoring Requirements for the ECEL.*

(A) *Overview.*

Monitoring requirements are a key component of implementing EPA's proposed ECEL. Initial exposure monitoring for CTC is critical for establishing a baseline of exposure for potentially exposed persons; similarly, periodic exposure monitoring ensures continued compliance so that potentially exposed persons in the workplace are not exposed to levels that would result in an unreasonable risk of injury. Periodic exposure monitoring frequency could change if certain conditions are met, which are described in this unit. Additionally, in some cases, a change in workplace conditions with the potential to impact exposure levels would warrant additional exposure monitoring, which is also described. This unit also describes the proposed monitoring records required.

(B) *Initial exposure monitoring.*

Under the proposed regulation, each owner or operator of a workplace where any condition of use listed earlier in this unit is occurring would be required to perform initial exposure monitoring for all persons who may be exposed to CTC to establish a baseline of the magnitude of exposure within 180 days after date of publication of the final rule in the **Federal Register** or within 30 days of the introduction of CTC into the workplace, whichever is later. Initial exposure monitoring would notify owner or operators of the magnitude of exposures to their potentially exposed persons with respect to their unique work conditions and environments. The results from the initial exposure monitoring would determine the frequency of future periodic exposure monitoring and whether additional exposure controls are necessary (such as engineering controls, administrative controls, and/or respiratory protection), and whether the owner or operator would need to demarcate a regulated area as described in this unit.

Where CTC is present in the workplace, each owner or operator would be required to determine each potentially exposed person's exposure by either taking a personal breathing zone air sample of each potentially exposed person or taking personal breathing zone air samples that are representative of each potentially exposed person's exposure performing the same or substantially similar operations in each work shift, in each job classification, in each work area (hereinafter identified as an ''exposure group''). Representative 8-hour TWA exposures must be determined based on one or more samples representing full-shift exposures for each shift for each person in each job classification in each work area. Monitoring samples must be taken when and where the operating conditions are best representative of each potentially exposed person's full-shift exposures. EPA expects that owners and operators would attempt to monitor exposures for all of the tasks during the same timeframe; however, EPA understands that certain tasks occur less frequently, and EPA is soliciting comments regarding the timing of the initial exposure monitoring so that it is representative of all tasks involving CTC where exposures may approach the ECEL. If the owner or operator chooses a representative sample, such sampling must include persons that are the closest to the source of CTC, so that the monitoring results are representative of the most highly exposed persons in the workplace. EPA is also soliciting comments regarding use of area source monitoring instead of

personal breathing zone as a representative sample of exposures.

EPA also recognizes that some entities may already have exposure monitoring data. If the owner or operator has monitoring data conducted within five years prior to the effective date of the final rule and the monitoring satisfies all other proposed requirements, including the requirement that the data represents the highest CTC exposures likely to occur under reasonably foreseeable conditions of use, the owner or operator may rely on such earlier monitoring results for the initial baseline monitoring sample.

(C) *Periodic exposure monitoring.*

Based on the results of the initial exposure monitoring, EPA is proposing to require each owner or operator to conduct, for those exposure groups that result in the following airborne concentration levels, the following periodic monitoring:

- If all samples taken during the initial exposure monitoring reveal a concentration below the ECEL action level (0.02 ppm 8-hr TWA), the owner or operator must repeat the periodic exposure monitoring at least once every five years.
- If the most recent exposure monitoring reveals a concentration above the ECEL (0.03 ppm 8-hr TWA), the owner or operator must repeat the periodic exposure monitoring at least every 3 months.
- If the most recent exposure monitoring reveals a concentration at or above the ECEL action level (0.02 ppm 8-hr TWA) but at or below the ECEL (0.03 ppm 8-hr TWA), the owner or operator must repeat the periodic exposure monitoring at least every 6 months.
- If the most recent (non-initial) exposure monitoring indicates that airborne exposure is below the ECEL action level, the owners or operators must repeat such monitoring within 6 months of the most recent monitoring until two consecutive monitoring measurements, taken at least seven days apart, are below the ECEL action level (<0.02 ppm 8-hour TWA), at which time the owner or operator must repeat the periodic exposure monitoring at least once every 5 years.

Additionally, in instances where an owner or operator does not manufacture, process, use, or dispose of CTC for a condition of use for which the restrictions would be in place over the entirety of time since the last required periodic exposure monitoring event, EPA is proposing that the owner or operator may forgo the next periodic exposure monitoring event. However, documentation of cessation of use of CTC must be maintained and periodic exposure monitoring would be required to resume should the condition of use restart.

The proposed periodic exposure monitoring requirements are also outlined in Table 1. EPA requests comment on the timeframes for periodic exposure monitoring outlined in this unit. EPA may finalize significantly shorter, longer or different timeframes based on consideration of public comments.

TABLE 1—PERIODIC MONITORING REQUIREMENTS

Air concentration condition	Periodic exposure monitoring requirement
If all initial exposure monitoring is below the ECEL action level (<0.02 ppm 8-hour TWA).	Periodic exposure monitoring is required at least once every five years.
If the most recent exposure monitoring indicates that airborne exposure is above the ECEL (>0.03 ppm 8-hour TWA).	Periodic exposure monitoring is required within 3 months of the most recent exposure monitoring.
If the most recent exposure monitoring indicates that airborne exposure is at or above the ECEL action level but at or below the ECEL (≥0.02 ppm 8-hour TWA, ≤0.03 ppm 8-hour TWA).	Periodic exposure monitoring is required within 6 months of the most recent exposure monitoring.
If the two most recent (non-initial) exposure monitoring measurements, taken at least seven days apart within a 6-month period, indicate exposure is below the ECEL action level (<0.02 ppm 8-hour TWA).	Periodic exposure monitoring is required within 5 years of the most recent exposure monitoring.
If the owner or operator engages in a condition of use for which WCPP ECEL would be required but does not manufacture, process, use, or dispose of CTC in that condition of use over the entirety of time since the last required monitoring event.	The owner or operator may forgo the next periodic monitoring event. However, documentation of cessation of use of CTC is required; and periodic monitoring would be required when the owner or operator resumes the condition of use.

(D) *Additional exposure monitoring.*

In addition to the initial and periodic exposure monitoring, EPA is proposing that each owner or operator conduct additional exposure monitoring whenever: (i) A change in the production, process, control equipment, personnel, work practices may reasonably be expected to result in new or additional exposures at or above the ECEL action level, or (ii) the owner or operator has any reason to believe that new or additional exposures at or above the ECEL action level have occurred. In the event of start-up, shutdown, malfunctions or other breakdowns that may lead to exposure to any person in the workplace, EPA is proposing that each owner or operator must conduct additional exposure monitoring (using personal breathing zone sampling) after the cleanup, repair or remedial action to ensure that exposures are below the ECEL or the ECEL action level. An additional exposure monitoring event may result in an increased frequency of periodic exposure monitoring. For example, if the initial exposure monitoring results from a workplace are above the ECEL action level, but below the ECEL, periodic exposure monitoring is required every 6 months. If additional exposure monitoring is performed because increased exposures are suspected, and the results are above the ECEL, subsequent periodic exposure monitoring would have to be performed every 3 months. The required additional exposure monitoring should not delay implementation of any necessary cleanup or other remedial action to reduce the exposures to persons in the workplace. The additional exposure monitoring is also included in Table 1. EPA requests comment on the timeframes and frequency for additional exposure monitoring outlined in this unit.

(E) *Other exposure monitoring requirements.*

For each exposure monitoring event, EPA is proposing to require that owners or operators ensure that their analytical methods be accurate, to a confidence level of 95 percent, to within plus or minus 25 percent for airborne concentrations of CTC at an appropriate level of detection for the ECEL and ECEL action level. Also, EPA is proposing to require use of appropriate sampling and analytical methods used to determine CTC exposure, including as relevant: (A) Use of an analytical

method already approved by EPA, OSHA or NIOSH, or another analytical method that has been demonstrated to meet the proposed accuracy requirement at an appropriate level of detection for the ECEL and ECEL action level; (B) Compliance with the Good Laboratory Practice Standards at 40 CFR part 792. Also, EPA is proposing to require owners and operators to re-monitor within 15 working days after receipt of the results of any exposure monitoring when results indicate non-detect or air monitoring equipment malfunction, unless an Environmental Professional as defined at 40 CFR 312.10 or a Certified Industrial Hygienist reviews the exposure monitoring results and determines that re-monitoring is not necessary.

EPA is also proposing to require that each owner or operator maintain exposure monitoring records that include the following information for each exposure monitoring event:

- Dates, duration, and results of each sample taken.
- All measurements that may be necessary to determine the conditions that may affect the exposure monitoring results.
- Name, workplace address, work shift, job classification, and work area of the person monitored; documentation of all other persons whose exposures the monitoring is intended to represent if using a representative sample; and type of respiratory protective device worn by the monitored person, if any.
- Use of appropriate sampling and analytical methods, such as analytical methods already approved by EPA, OSHA or NIOSH, or compliance with an analytical method verification procedure.
- Compliance with the Good Laboratory Practice Standards at 40 CFR part 792.
- Information regarding air monitoring equipment, including: type, maintenance, performance tests, and any malfunctions.

iii. *Direct Dermal Contact Control (DDCC) Requirements.*

DDCC requirements are a process-based set of provisions to address unreasonable risk driven by direct dermal contact in the workplace. DDCC requirements would include controls to prevent direct dermal contact in the workplace by separating, distancing, physically removing, or isolating all person(s) from direct handling of CTC or from contact with surfaces that may be contaminated with CTC (*i.e.,* equipment or materials on which CTC may be present) under routine conditions in the workplace (hereafter referred to as direct dermal contact).

EPA requests comment on available methods to measure the effectiveness of controls in preventing or reducing the potential for direct dermal contact to CTC. EPA is also requesting comment on available monitoring methods, such as charcoal patch testing, as feasible or effective methods to measure potential direct dermal contact with CTC.

As discussed further in Unit V.A.1., EPA expects that many workplaces already have stringent controls in place that reduce dermal exposures to CTC; for some workplaces, EPA understands that these existing controls may already prevent or reduce direct dermal contact with CTC.

c. *Incorporation of the Hierarchy of Controls.*

EPA recommends and encourages the use of pollution prevention as a means of controlling exposures whenever practicable. Pollution prevention, also known as source reduction, is any practice that reduces, eliminates, or prevents pollution at its source (*e.g.,* elimination and substitution). Similarly, the hierarchy of controls includes elimination, substitution, engineering controls, and administrative controls, prior to relying on PPE as a means of controlling exposures (Ref. 8). EPA is proposing to require owners or operators to reduce inhalation exposures below the ECEL and implement DDCC requirements in accordance with the hierarchy of controls. The establishment of an ECEL and DDCC requirements is intended to allow more flexibility to owners and operators to choose their controls when compared with requiring specific prescriptive controls. EPA is soliciting comment regarding the exposure control strategies required under the WCPP and documented in the exposure control plan, including the implementation of additional engineering controls, increase frequency of exposure monitoring, implementation of respiratory and dermal protection and notification of monitoring, and associated costs with the WCPP exposure control strategies implementation.

EPA expects owners or operators to identify and implement feasible exposure controls such as elimination, substitution, engineering controls, and administrative controls. If these controls are not sufficient to reduce exposures to or below the ECEL and/or prevent direct dermal contact with CTC in the workplace, EPA proposes to require each owner or operator to use such controls to reduce CTC air concentrations in the workplace and/or to prevent direct dermal contact to the extent achievable, and supplement these controls using respiratory protection and/or dermal PPE before persons are permitted to enter a regulated area, as described in this unit. If an owner or operator chooses to replace CTC with a substitute, EPA recommends that they carefully review the available hazard and exposure information on the potential substitute to avoid a regrettable substitution. In addition, EPA proposes that a regulated entity would be prohibited from rotating work schedules of potentially exposed persons to comply with these requirements, similar to OSHA's Methylene Chloride Standard (29 CFR 1910.1052). EPA expects that, for conditions of use where EPA is proposing these requirements, compliance at most workplaces would be part of an existing industrial hygiene program. EPA is soliciting comment on whether any of the requirements for the exposure control strategies, including EPA's proposed prohibition of rotating work schedules for potentially exposed persons, should be modified and considered in the final rule.

Examples of engineering controls that may prevent or reduce the potential for direct dermal contact include automation, physical barriers between contaminated and clean work areas, enclosed transfer liquid lines (with purging mechanisms in place (*e.g.,* nitrogen, aqueous) for operations such as product changes or cleaning), and design of tools (*e.g.,* a closed loop container system providing contact-free connection for unloading fresh and collecting spent solvents, pneumatic tools, tongs, funnels, glove bags, etc.). Examples of administrative controls that may reduce inhalation exposures or prevent or reduce the potential for direct dermal contact include adjusting work practices (*i.e.,* implementing policies and procedures) such as providing safe working distances from areas where direct handling of CTC may occur.

The Agency understands that certain engineering controls can reduce exposures to people inside the workplace but may lead to increased ventilation of CTC outside of the workplace, thereby increasing risks to people in fenceline communities of adverse health effects from exposures to CTC in ambient air. Therefore, EPA is proposing to prohibit increased releases of CTC to outdoor air associated with the implementation of the WCPP/ECEL. This proposed requirement is intended to avoid unintended increases in exposures to people from CTC emissions to ambient air. The proposed rule would require owners and operators to attest in their WCPP/ECEL

exposure control plan that engineering controls selected do not increase emissions of CTC to ambient air outside of the workplace and document in their exposure control plan whether additional equipment was installed to capture emissions of CTC to ambient air. EPA requests comment on how this proposed requirement may impact the availability, feasibility, or cost of engineering controls as a means to reduce workplace exposures to or below the proposed ECEL.

d. *Regulated area.*

Based on the exposure monitoring, EPA is proposing to require that owners or operators of workplaces subject to a WCPP demarcate any area where airborne concentrations of CTC exceed or are reasonably expected to exceed the ECEL. Regulated areas would be demarcated using administrative controls, such as warning signs or highly visible signifiers, in multiple languages as appropriate (*e.g.,* based on languages spoken by potentially exposed persons), placed in conspicuous areas, and documented through training and recordkeeping. The owner or operator would be required to restrict access to the regulated area from any potentially exposed person that lacks proper training, is not wearing required PPE as described in this unit or is otherwise unauthorized to enter. EPA is proposing to require owners and operators demarcate a regulated area beginning 9 months after the date of publication of the final rule, or within 3 months after receipt of any exposure monitoring that indicates exposures exceeding the ECEL. EPA is soliciting comment on requiring warning signs to demarcate regulated areas, such as the requirements found in OSHA's General Industry Standard for Beryllium (29 CFR 1910.1024(m)(2)).

e. *Exposure Control Plan.*

EPA proposes to require that owners and operators document their exposure control strategy, implementation and compliance with the WCPP, including ECEL and DDCC requirements, in an exposure control plan. An exposure control plan may include relevant existing documentation of the facility's safety and health program that may already be developed as part of meeting OSHA requirements or other safety and health standards (Ref. 23). EPA proposes to require that the exposure control plan documentation include the following:

(i) Identification and rationale of exposure controls selected including: elimination of CTC, substitution of CTC, engineering controls, and administrative controls selected and used to reduce inhalation exposures in the workplace to either at or below the ECEL or to the lowest level achievable and to prevent or reduce direct dermal contact with CTC in the workplace, and the rationale explaining why each exposure control was selected (*e.g.,* the hierarchy of controls, feasibility, effectiveness, or other relevant considerations);

(ii) For any category of exposure control not selected, document the efforts identifying why these are not feasible, not effective, or otherwise not implemented;

(iii) Actions taken to implement exposure controls selected, including proper installation, maintenance, training or other steps taken;

(iv) Description of any regulated area and how it is demarcated, and identification of authorized persons; and description of when the owner or operator expects exposures may be likely to exceed the ECEL;

(v) Attestation that exposure controls selected do not increase emissions of CTC to ambient air outside of the workplace and whether additional equipment was installed to capture or otherwise prevent increased emissions of CTC to ambient air;

(vi) Regular inspections, evaluations, and updating of the exposure controls no less frequent than every five years to ensure effectiveness and confirm that all persons are implementing them as required;

(vii) Occurrence and duration of any change in the production, process, control equipment, personnel or work practices and explanation of why the owner or operator may expect to result in new or additional exposures above the ECEL or not, and occurrence and duration of any other change that may result in new or additional exposures above the ECEL have occurred;

(viii) Occurrence and duration of any start-up, shutdown, or malfunction of the facility that causes air concentrations above the ECEL and/or direct dermal contact with CTC and subsequent corrective actions taken during start-up, shutdown, or malfunctions to mitigate exposures to CTC; and

(ix) Availability of the exposure control plan and associated records for potentially exposed persons.

EPA may require more, less, or different documentation regarding exposure control strategies in the final rule based on public comment.

f. *Personal Protective Equipment (PPE).*

Where elimination, substitution, engineering controls, and administrative controls are not feasible to reduce the air concentration to or below the ECEL and/or prevent direct dermal contact with CTC for all potentially exposed persons, EPA is proposing to require implementation of a PPE program in alignment with OSHA's General Requirements for Personal Protective Equipment at 29 CFR 1910.132. Consistent with 29 CFR 1910.132, owners and operators would be required to provide PPE, including respiratory protection and dermal protection selected in accordance with the guidelines described in this unit, that is of safe design and construction for the work to be performed. EPA is proposing to require owners and operators ensure each potentially exposed person who is required by this unit to wear PPE to use and maintain PPE in a sanitary, reliable, and undamaged condition. Owners and operators would be required to select and provide PPE that properly fits each potentially exposed person who is required by this unit to use PPE and communicate PPE selections to each affected person.

i. *Required Respiratory Protection.*

EPA is proposing to require a respiratory protection program with worksite-specific procedures and elements for required respirator use. The respiratory protection program proposed by EPA would be implemented when the most recent exposure monitoring concentration measured as an 8-hour TWA is above the ECEL and after exhausting all other feasible controls as described in this unit. The proposed program must be administered by a suitably trained administrator. EPA is proposing to require each owner or operator to select respiratory protection in accordance with the requirements described in this unit and also to comply with OSHA's general PPE training requirements at 29 CFR 1910.132(f) and 29 CFR 1910.134(a) through (1), except (d)(1)(iii), for selection, proper use, maintenance, fit-testing, medical evaluation, and training when using respirators. EPA is proposing that owners and operators would provide PPE training to each potentially exposed person who is required by this unit to wear PPE prior to or at the time of initial assignment to a job involving potential exposure to CTC. Owners and operators would also have to re-train each affected person at least once annually or whenever the owner or operator has reason to believe that a previously trained person does not have the required understanding and skill to properly use PPE, or when changes in the workplace or in the PPE to be used render the previous training obsolete. EPA is not proposing to cross reference 29 CFR 1910.134(d)(1)(iii) because the WCPP contains requirements for identifying CTC respiratory hazards in the workplace.

EPA is proposing to require each owner or operator supply a respirator, selected in accordance with this unit, to each potentially exposed person who enters a regulated area within 3 months after the receipt of any exposure monitoring that indicates exposures exceeding the ECEL or 6 months after publication of the final rule if initial monitoring was completed prior to publication of the rule, and to ensure that all potentially exposed persons within the regulated area are using the provided respirators whenever CTC exposures exceed or can reasonably be expected to exceed the ECEL. EPA recognizes that implementing exposure controls and a respiratory protection program meeting the requirements outlined in this unit may require different compliance timeframes depending on existing health and safety programs at various facilities. EPA is soliciting comment on whether 6 months is a reasonable timeframe to implement a respiratory protection program or if a different timeframe is needed. Additionally, EPA is proposing that the owner or operator must ensure that all filters, cartridges and canisters used in the workplace are labeled and color coded with the NIOSH approval label and that the label is not removed and remains legible. EPA is requesting comment on whether there should be a requirement to replace cartridges or canisters after a certain number of hours, such as the requirements found in OSHA's General Industry Standard for 1,3-Butadiene (29 CFR 1910.1051(h)), or a requirement for a minimum service life of non-powered air-purifying respirators such as the requirements found in OSHA's General Industry Standard for Benzene (29 CFR 1910.1028(g)(3)(D)).

EPA is proposing the following requirements for respiratory protection, based on the exposure monitoring concentrations measured as an eight-hour TWA that exceed the ECEL (0.03 ppm). EPA is proposing to establish minimum respiratory protection requirements, such that any respirator affording a higher degree of protection than the following proposed requirements may be used. While this unit includes respirator selection requirements for respirators of APF of 1,000 or greater, EPA does not anticipate that respirators beyond APF 50 will be widely or regularly used to address unreasonable risk, particularly when other controls are put in place.

- If the measured exposure concentration is at or below 0.03 ppm: no respiratory protection is required.
- If the measured exposure concentration is above 0.03 ppm and less than or equal to 0.3 ppm (10 times ECEL): Any NIOSH-certified air-purifying half mask respirator equipped with NIOSH-approved organic vapor cartridges or canisters; or any negative pressure (demand mode) supplied-air respirator equipped with a half mask (APF 10).
- If the measured exposure concentration is above 0.3 ppm and less than or equal to 0.75 ppm (25 times ECEL): Any NIOSH-certified powered air-purifying respirator with a loose-fitting hood or helmet equipped with NIOSH-approved organic vapor cartridges or canisters; or any NIOSH-certified continuous flow supplied-air respirator equipped with a hood or helmet (APF 25).
- If the measured exposure concentration is above 0.75 ppm and less than or equal to 1.5 ppm (50 times ECEL): Any NIOSH-certified air-purifying full facepiece respirator equipped with NIOSH-approved organic vapor cartridges or canisters; any NIOSH-certified powered air-purifying respirator equipped with a tight-fitting half or full facepiece and NIOSH-approved organic vapor cartridges or canisters; any NIOSH-certified negative pressure (demand mode) supplied-air respirator equipped with a full facepiece; any NIOSH-certified continuous flow supplied-air respirator equipped with a tight-fitting half or full facepiece; or any NIOSH-certified negative pressure (demand mode) self-contained respirator equipped with a full facepiece (APF 50).
- If the measured exposure concentration is above 1.5 ppm and less than or equal to 30 ppm (1,000 times ECEL): Any NIOSH-certified powered air-purifying respirator equipped with a tight-fitting full facepiece and NIOSH-approved organic vapor cartridges or canisters; or any NIOSH-certified supplied air respirator equipped with a full facepiece and operated in a continuous flow mode or pressure demand or other positive pressure mode (APF 1,000).
- If the measured exposure concentration is greater than 30 ppm (1,000 times ECEL) or the concentration is unknown: Any NIOSH-certified self-contained breathing apparatus equipped with a full facepiece and operated in a pressure demand or other positive pressure mode (APF 10,000).

ii. *Required Dermal Personal Protective Equipment (PPE).*

Where elimination, substitution, engineering controls, and administrative controls are not feasible or sufficient to fully prevent direct dermal contact with CTC, EPA is proposing to require a dermal protection program with worksite-specific procedures and elements for required dermal PPE, and administered by a suitably trained administrator. In choosing appropriate dermal PPE, owners and operators would be required to select gloves, clothing, and protective gear (which covers any exposed dermal area of arms, legs, torso, and face) based on specifications from the manufacturer or supplier that demonstrate an impervious barrier to CTC during expected durations of use and normal conditions of exposure within the workplace, accounting for potential chemical permeation or breakthrough times.

For example, owners and operators can select gloves that have been tested in accordance with the American Society for Testing Material (ASTM) F739 ''Standard Test Method for Permeation of Liquids and Gases through Protective Clothing Materials under Conditions of Continuous Contact.'' EPA is proposing that dermal PPE be provided for use for a time period only to the extent and no longer than the time period for which testing has demonstrated that the dermal PPE will be impermeable during expected durations of use and conditions of exposure. EPA is proposing to require that owners and operators also consider other factors when selecting appropriate dermal PPE, including effectiveness of glove type when preventing exposures from CTC alone and in likely combination with other chemical substances used in the work area or when used with glove liners, permeation, degree of dexterity required to perform task, and temperature, as identified in the Hand Protection section of OSHA's Personal Protective Equipment guidance (Ref. 24).

EPA is proposing that owners and operators would be required to establish, either through manufacturer or supplier-provided documentation or individually prepared third party testing, that the selected dermal PPE will be impervious for the expected duration and conditions of exposure, such as using the format specified in ASTM F1194–99 (2010) ''Standard Guide for Documenting the Results of Chemical Permeation Testing of Materials Used in Protective Clothing Materials,'' reporting cumulative permeation rate as a function of time, or equivalent manufacturer or supplier provided testing. Owners and operators would also be required to consider likely combinations of chemical substances to which the clothing may be exposed in the work area when selecting the appropriate PPE such that the PPE will prevent direct dermal contact to

CTC. EPA is proposing that dermal PPE must be immediately provided and replaced if any person is dermally exposed to CTC longer than the breakthrough time period for which testing has demonstrated that the PPE will be impermeable or if there is a chemical permeation or breakage of the PPE.

And compatible with the OSHA Hand Protection PPE Standard (29 CFR 1910.138), owners and operators would be required to select dermal PPE based on an evaluation of the performance characteristics of the PPE relative to the task(s) to be performed, conditions present, and the duration of use. In addition, EPA recommends that owners and operators consider 29 CFR 1910.133(b) for the selection and use of eye and face protection.

EPA proposes to require that owners and operators document in the dermal protection program the following information, as applicable:

(A) The name, workplace address, work shift, job classification, and work area of each person reasonably likely to directly handle CTC or handle equipment or materials on which CTC may present and the type of dermal PPE selected to be worn by each of these persons;

(B) The basis for specific dermal PPE selection (*e.g.,* demonstration based on permeation testing or manufacturer specifications that each item of PPE selected provides an impervious barrier to prevent exposure during expected duration and conditions of exposure, including the likely combinations of chemical substances to which the PPE may be exposed in the work area); and

(C) Appropriately sized PPE and training on proper application, wear, and removal of dermal PPE, and proper care/disposal of dermal PPE.

EPA is soliciting comments on the requirements proposed for appropriate dermal PPE selection, the effectiveness of PPE in preventing direct dermal contact with CTC in the workplace, and general absorption and permeation effects to PPE from direct dermal exposure. In addition, EPA understands that some workplaces rinse and reuse PPE after minimal use and is therefore soliciting comments on the impact on effectiveness of rinsing and reusing certain types of PPE, either gloves or protective clothing and gear. EPA also requests comment on the degree to which additional guidance related to use of dermal PPE might be appropriate.

EPA is proposing to require each owner or operator supply dermal PPE, selected in accordance with this unit, to each potentially exposed person within 6 months after publication of the final rule.

g. *Workplace Information and training.*

To ensure that potentially exposed persons in the workplace are informed of the hazards associated with CTC exposure, EPA is proposing to require that owners or operators of workplaces subject to an ECEL and DDCC requirements institute a training program for all potentially exposed persons. EPA is proposing to require implementation of a training program compatible with the OSHA Hazard Communication Standard (29 CFR 1910.1200) and the OSHA General Industry Standard for Methylene Chloride (29 CFR 1910.1052). To ensure that potentially exposed persons in the workplace are informed of the hazards associated with CTC exposure, EPA is proposing to require that owners or operators of workplaces subject to the WCPP institute a training and information program for potentially exposed persons and ensure their participation in the training and information program.

As part of the training and information program, the owner or operator would be required to provide information and comprehensive training in an understandable manner (*i.e.,* in plain language) and in multiple languages as appropriate (*e.g.,* based on languages spoken by potentially exposed persons) to potentially exposed persons prior to or at the time of initial assignment to a job involving potential exposure or direct dermal contact to CTC. Compatible with the OSHA Hazard Communication Standard, owners and operators would be required to provide information and training to all potentially exposed persons that includes:

(i) The requirements of the CTC WCPP and how to access or obtain a copy of the requirements of the WCPP;

(ii) The quantity, location, manner of use, release, and storage of CTC and the specific operations in the workplace that could result in CTC exposure;

(iii) Principles of safe use and handling of CTC in the workplace, including specific measures the owner or operator has implemented to reduce inhalation exposures to at or below the ECEL or prevent direct dermal contact with CTC, such as work practices and PPE used;

(iv) The methods and observations that may be used to detect the presence or release of CTC in the workplace (such as monitoring conducted by the owner or operator, continuous monitoring devices, visual appearance or odor of CTC when being released, etc.); and

(v) The health hazards associated with exposure with CTC.

In addition to providing training at the time of initial assignment to a job involving potential inhalation exposure or direct dermal contact to CTC, and similar to annual retraining requirements in the OSHA General Industry Standard for Beryllium (29 CFR 1910.1024), owners and operators subject to an ECEL and DDCC requirements would be required to retrain each potentially exposed person at minimum annually to ensure employees understand the principles of safe use and handling of CTC in the workplace. Owners and operators would also need to update the training as necessary whenever there are changes in the workplace, such as new tasks or modifications of tasks; in particular whenever there are changes in the workplace that increase exposure to CTC, where exposure to CTC can reasonably be expected to exceed the ECEL action level, or whenever there are changes in the workplace that may result in direct dermal contact to CTC without appropriate PPE use. To support compliance, EPA is proposing that each owner or operator of a workplace subject to the WCPP would be required to provide to the EPA, upon request, all available materials related to workplace information and training.

h. *Workplace participation.*

EPA encourages owners or operators subject to ECEL and DDCC requirements to consult with potentially exposed persons on the development and implementation of an exposure control plan and respirator and dermal PPE program. EPA is proposing to require owners or operators to provide potentially exposed persons regular access to the exposure control plan, exposure monitoring records, and respirator and dermal PPE program implementation plan (documenting proper application, wear, and removal of PPE). To ensure compliance with the requirement for workplace access to the exposure control plan and PPE program documentation, EPA is proposing that owners or operators document the notice to and ability of any potentially exposed person that may reasonably be affected by inhalation exposure and/or direct dermal contact to CTC to readily access the exposure control plans, facility exposure monitoring records, respiratory protection program documentation, dermal PPE program documentation, or any other information relevant to CTC exposure in the workplace. EPA is requesting comment on how owners and operators can engage with potentially exposed persons on the development and

implementation of an exposure control plan and PPE program.

EPA proposes that the owner or operator must, within 15 work days after receipt of the results of any exposure monitoring, notify each person whose exposure is represented by that monitoring in writing, either individually to each potentially exposed person or by posting the information in an appropriate and accessible location accessible to all persons whose exposure is represented by the monitoring, such as public spaces or common areas, outside the regulated area. This notice must include the exposure monitoring results, identification and explanation of the ECEL and ECEL action level in plain language, any corresponding required respiratory protection, if applicable, the quantity, location, manner of CTC use and identified releases of CTC that could result in exposure to CTC, and whether the airborne concentration of CTC exceeds the ECEL. The notice must also include a description of actions taken by the owner or operator to reduce inhalation exposures to or below the ECEL, if applicable, or refer to a document available to the potentially exposed persons which would state the actions to be taken to reduce exposures and would be posted in multiple languages if necessary.

i. *Recordkeeping.*

To support and demonstrate compliance, EPA is proposing that owners and operators of a workplace subject to an ECEL and DDCC requirements retain compliance records for five years. These proposed requirements are not intended to supersede or otherwise relieve regulated entities from any recordkeeping requirement imposed by other federal laws or regulations. EPA is proposing to require records to include:

(A) The exposure control plan;

(B) PPE program implementation and documentation, including as necessary, respiratory protection and dermal protection used and related PPE training; and

(C) Information and training provided to each person prior to or at the time of initial assignment and any retraining.

In addition, EPA is proposing that owners and operators subject to the WCPP ECEL requirements maintain records to include:

(A) The exposure monitoring records;

(B) Notification of exposure monitoring results; and

(C) If the owner or operator relies on exposure monitoring data generated within the last five years as their initial exposure monitoring, records that demonstrate that it meets all of the requirements of this section.

The owners and operators, upon request by EPA, would be required to make all records maintained by this unit available to EPA for examination and copying. All records required to be maintained by this unit could be kept in the most administratively convenient form (electronic or paper).

j. *Compliance Timeframes.*

EPA is proposing to require owners or operators of workplaces subject to these restrictions to conduct initial exposure monitoring for an ECEL and implement the DDCC requirements as outlined in this unit within 6 months after the date of publication of the final rule in the **Federal Register** or within 30 days of introduction of CTC into the workplace if CTC use commences at least 6 months after the date of publication. EPA is proposing to require that each owner or operator ensure that the airborne concentration of CTC does not exceed the ECEL for all potentially exposed persons within 9 months after the date of publication of the final rule in the **Federal Register**, or beginning 4 months after introduction of CTC into the workplace if CTC use commences at least 6 months after the date of publication. EPA is also proposing to require owners and operators demarcate a regulated area wherever exposures exceed or can reasonably be expected to exceed the ECEL beginning 9 months after the date of publication of the final rule in the **Federal Register**, or beginning 4 months after introduction of CTC into the workplace if CTC use commences at least 6 months after the date of publication. If applicable, EPA is also proposing that each owner or operator must provide respiratory protection sufficient to reduce inhalation exposures to below the ECEL to all potentially exposed persons in the regulated area within 3 months after the receipt of the results of any exposure monitoring that indicates exposures exceeding the ECEL or, if using monitoring data conducted within five years prior to the effective date of this rule that satisfies all other requirements of this section, within 9 months after the date of publication of the final rule in the **Federal Register**. Regulated entities should then proceed accordingly to implement an exposure control plan within 12 months after date of publication of the final rule in the **Federal Register**. EPA is also proposing to require each owner or operator to provide information and training for each person prior to or at the time of initial assignment to a job involving potential exposure to CTC within 6 months after the date of initial exposure monitoring or within 6 months after the date of publication of the final rule in the **Federal Register** if initial exposure monitoring was completed prior to publication of the rule. EPA will consider compliance timeframes that may be substantially longer or shorter than the proposed timeframes for owners or operators to conduct initial exposure monitoring for the ECEL, implement the ECEL and DDCC requirements, and any procedural adjustments needed to comply with the requirements outlined in this unit, and is requesting comment on the feasibility of the proposed compliance timeframes, as well as longer or shorter timeframes.

2. *Prescriptive Workplace Controls: Fume Hood and Dermal PPE.*

a. *Overview.*

In contrast to the proposed non-prescriptive requirements of the ECEL and DDCC where regulated entities would have flexibility to select controls in accordance with the hierarchy of controls to comply with the parameters outlined in this unit, EPA may also find it appropriate in certain circumstances to require specific prescriptive controls for certain conditions of use with occupational exposures. In the 2020 Risk Evaluation for Carbon Tetrachloride, EPA identified certain workplace controls that reduce exposures from the industrial and commercial use of CTC as a laboratory chemical. Therefore, EPA is proposing to require specific prescriptive controls for the industrial and commercial use of CTC as a laboratory chemical, as described in this unit. This unit describes proposed requirements for a fume hood and dermal PPE for the industrial and commercial use of CTC as a laboratory chemical and advanced engineering controls specifically for DoD's industrial and commercial use of CTC as a laboratory chemical in chemical weapons destruction, including additional requirements proposed for recordkeeping. This unit also describes compliance timeframes for these proposed requirements. Each owner or operator of a workplace where the industrial and commercial use as a laboratory chemical occurs would be responsible for compliance with the requirements outlined in this unit.

b. *Workplace Requirements for Laboratory Use.*

To address the unreasonable risk of injury to health resulting from dermal exposures to CTC identified for the industrial and commercial use as a laboratory chemical, including DoD's use of CTC as a laboratory chemical in chemical weapons destruction, EPA is proposing to require dermal PPE, including impermeable gloves and

protective clothing, in combination with comprehensive training for tasks particularly related to the use of CTC in a laboratory setting as specified in this unit for each potentially exposed person to direct dermal contact in the work area to CTC through direct handling of the substance or from contact with surfaces that may be contaminated with CTC. For dermal PPE, EPA is proposing to require that each owner or operator comply with the requirements outlined in Units IV.A.1.e.ii. and IV.A.1.f. for selection of dermal PPE and training for all potentially exposed persons. EPA's description for how the requirements for the industrial and commercial use as a laboratory chemical would address the unreasonable risk resulting from dermal exposures under the conditions of use and the rationale for this regulatory approach is outlined in Unit V.

In addition, EPA is proposing to require the use of fume hoods in workplace laboratory settings for the industrial and commercial use of CTC as a laboratory chemical, except for DoD's use of CTC as a laboratory chemical in chemical weapons destruction, to codify existing good laboratory practices that EPA relied upon as a key basis for its evaluation of risk from this condition of use. EPA is proposing to require each owner or operator of a workplace laboratory setting, except for DoD's use of CTC as a laboratory chemical in chemical weapons destruction, to ensure fume hoods are in use and functioning properly to minimize exposures to persons in the area where CTC is used as a laboratory chemical. EPA suggests owners or operators refer to OSHA's 29 CFR 1910.1450, Appendix A, for National Research Council recommendations concerning laboratory chemical hood ventilation system characteristics and practices to minimize exposures to workers in the area. As noted in these non-mandatory recommendations, which are based on the National Research Council's 2011 edition of ''Prudent Practices in the Laboratory: Handling and Management of Chemical Hazards,'' recommended practices for laboratory chemical hoods include, but are not limited to, regularly inspecting and maintaining the ventilation system, ensuring a negative pressure differential between the amount of air exhausted from the laboratory and the amount supplied to the laboratory to prevent uncontrolled chemical vapors from leaving the laboratory, and preventing laboratory air from recirculating back into the laboratory (29 CFR 1910.1450, Appendix A). EPA requests comment on whether it should incorporate in the rule best practices to ensure proper and adequate performance of laboratory fume hoods, such as those identified in OSHA's 29 CFR 1910.1450, Appendix A National Research Council Recommendations Concerning Chemical Hygiene in Laboratory. EPA recognizes that there are several types of fume hoods used in a laboratory setting with differences in design and specifications to meet performance standards. The Agency is requesting comment on whether it should incorporate in the rule specific requirements for laboratory hoods, such as design characteristics and/or a range of face velocities, or some other type of performance standard.

Rather than fume hoods, EPA understands that DoD uses CTC in small amounts in a confined, laboratory-like setting with advanced engineering controls (Ref. 25). Therefore, for DoD's industrial and commercial use of CTC as a laboratory chemical in chemical weapons destruction, EPA is proposing to require advanced engineering controls that essentially codify existing practices at DoD facilities. EPA is not proposing to require a WCPP, specifically with monitoring requirements, for DoD's industrial and commercial use of CTC as a laboratory chemical in chemical weapons destruction.

To support and demonstrate compliance, EPA is proposing that each owner or operator of a laboratory workplace subject to the requirements of this unit retain compliance records for five years. EPA is proposing to require records of:

(A) PPE program implementation and documentation as outlined in this unit; and

(B) Implementation of a properly functioning fume hood using manufacturer's instructions for installation, use, and maintenance of the fume hood, including inspections, tests, development of maintenance procedures, the establishment of criteria for acceptable test results, and documentation of test and inspection results. Every five years, the owner or operator would be required to re-assess and update these records.

With regards to the compliance timeframe, EPA is proposing to require that each owner or operator of a workplace engaged in the industrial and commercial of CTC as a laboratory chemical ensure fume hoods are in use and functioning properly and that dermal PPE is provided to all potentially exposed persons with direct dermal contact with CTC within 6 months after publication of the final rule. While EPA is proposing requirements within 6 months of publication of the final rule, the Agency will consider compliance timeframes that may be substantially longer or shorter than the proposed timeframe and is soliciting comments on the feasibility of the proposed compliance timeframes, as well as longer or shorter timeframes.

Similarly, EPA is proposing to require that DoD facilities engaged in the industrial and commercial use of CTC as a laboratory chemical in chemical weapons destruction ensure that advanced engineering controls are in use and functioning properly and dermal PPE is provided to all potentially exposed persons with direct dermal contact with CTC within 12 months after publication of the final rule.

3. *Prohibition of manufacturing, processing, distribution in commerce, and use of CTC for certain industrial and commercial uses.*

EPA is proposing to prohibit the manufacturing, processing, distribution in commerce, and use of CTC for the following industrial and commercial uses:

- Industrial and commercial use as a processing aid in the manufacture of petrochemical-derived products;
- Industrial and commercial use in the manufacture of other basic chemicals (including chlorinated compounds used in solvents, adhesives, asphalt, and paints and coatings), except for use in the elimination of nitrogen trichloride in the production of chlorine and caustic soda (for which EPA is proposing a WCPP);
- Industrial and commercial use in metal recovery; and
- Industrial and commercial use as an additive.

EPA is also proposing to explicitly prohibit:

- Processing: Incorporation into formulation, mixture or reaction products in petrochemical-derived manufacturing (the upstream processing condition of use for the industrial and commercial use of CTC as a processing aid in the manufacture of petrochemicals-derived products).

EPA has attempted to identify users of CTC for the conditions of use the Agency is proposing to prohibit; however, the Agency has not found any ongoing users of CTC for these conditions of use. EPA expects that this is a result of the phaseout of CTC manufacturing in the United States for most non-feedstock domestic uses due to the Montreal Protocol and Title VI of the CAA, and EPA believes it is reasonable to assume that industry has found alternatives for these uses.

Therefore, the Agency understands that CTC is no longer needed for these uses and is proposing that the prohibitions described in this unit would take effect 180 days after the publication date of the final rule. EPA has no reasonably available information indicating that the proposed compliance dates are not practicable or that additional time is needed. However, EPA requests comment on whether CTC is still used in any of the conditions of use EPA is proposing to prohibit, and if so, whether additional time is needed to cease use, whether the compliance dates should be staggered by lifecycle, whether the proposed prohibitions would impact the production and availability of any pesticide, drug, or other substance excluded from the definition of ''chemical substance'' under TSCA section 3(2)(B)(ii) through (vi), or any other reason for additional compliance time. EPA is also requesting comment on whether the Agency should require a WCPP (as outlined in the Unit IV.B.2. in the primary alternative regulatory action) or prescriptive controls, including respirators and dermal PPE, for any of the conditions of use EPA is proposing to prohibit.

EPA is also proposing to prohibit the manufacturing, processing, distribution in commerce, and use of CTC for the industrial and commercial use of CTC in specialty uses by the DoD. EPA received monitoring data for the industrial and commercial of CTC in specialty uses by the DoD, which was used in the 2020 Risk Evaluation for Carbon Tetrachloride. The Agency understands that DoD has successfully phased out the use of CTC for this condition of use and is therefore proposing that the prohibition for specialty uses by the DoD would take effect 365 days after the publication date of the final rule. EPA is requesting comments on whether a shorter timeframe for prohibition would be practicable.

After the risk evaluation was published, DoD did further analysis and provided additional information clarifying their ongoing use of CTC and risk management measures implemented. DoD provided information on their use of CTC as a laboratory chemical in chemical weapons destruction, indicating that CTC is used in small amounts in a confined, laboratory-like setting with advanced engineering controls. Therefore, EPA is proposing not to prohibit this use and instead to regulate this use under the condition of use of industrial and commercial use of CTC as a laboratory chemical. Unit IV.A.2. provides details on the proposed prescriptive controls for DoD's use of CTC as a laboratory chemical in chemical weapons destruction.

Additionally, EPA recognizes that there may be instances where an ongoing use of CTC that has implications for national security or critical infrastructure as it relates to other Federal agencies (*e.g.,* DOD, NASA) is identified after the CTC rule is finalized, but the final rule prohibits that use. For instances like that, EPA requests comments on an appropriate, predictable, process that could expedite reconsideration for uses that Federal agencies or their contractors become aware of after the final rule is issued using the tools available under TSCA, aligning with the requirements of TSCA section 6(g). One example of an approach could be the establishment by rulemaking of a Federal agency category of use that would require implementation of the WCPP and periodic reporting to EPA on details of the use as well as progress in discontinuing the use or finding a suitable alternative. To utilize the category of use a Federal agency would petition EPA, supported by documentation describing the specific use (including documentation of the specific need, service life of any relevant equipment, and specific identification of any applicable regulatory requirements or certifications, as well as the location and quantity of the chemical being used); the implications of cessation of this use for national security or critical infrastructure (including how the specific use would prevent injuries/fatalities or otherwise provide life-supporting functions); exposure control plan; and, for Federal agency uses where similar adoption by the commercial sector may be likely, concrete steps taken to identify, test, and qualify substitutes for the uses (including details on the substitutes tested and the specific certifications that would require updating; and estimates of the time required to identify, test, and qualify substitutes with supporting documentation). EPA requests comment on whether these are the appropriate types of information for use in evaluating this type of category of use, and whether there are other considerations that should apply. EPA would make a decision on the petition within 30 days and publish the decision in the **Federal Register** shortly after. Additionally, during the year following the petition, EPA would take public comment on the approved petition and no later than 180 days after submitting the petition to EPA, the requesting agency would submit monitoring data indicating compliance with the WCPP at each relevant location as well as documentation of efforts to identify or qualify substitutes. In the absence of that confirmatory data, the utilization of the generic Federal agency category of use would expire within one year of the date of receipt by EPA of the petition. EPA could undertake a TSCA section 6(g) rulemaking for those instances where the Federal agency could not demonstrate compliance with the WCPP. This is just one example of a potential process. EPA requests comments on a transparent process that could expedite reconsideration for uses that Federal agencies or their contractors become aware of after the final rule is issued.

4. *Other requirements.*

a. *Recordkeeping.*

EPA is proposing that manufacturers, processors, distributors, and industrial and commercial users of CTC maintain ordinary business records, such as invoices and bills-of-lading, that demonstrate compliance with the prohibitions, restrictions, and other provisions of this proposed regulation; and maintain such records for a period of 5 years from the date the record is generated. EPA is proposing that this requirement begin at the effective date of the final rule, which is expected to be set as the date 60 days after date of publication of the final rule in the **Federal Register**. Recordkeeping requirements would ensure that owners or operators can demonstrate compliance with the regulations if necessary.

b. *Downstream Notification.*

For conditions of use that are not otherwise prohibited under this proposed regulation, EPA is proposing that manufacturers (including importers), processors, and distributors of CTC provide downstream notification of the prohibitions through Safety Data Sheets (SDSs) by adding to sections 1(c) and 15 of the SDS the following language:

After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], this chemical is and may only be distributed in commerce or processed for the following purposes: Processing as a reactant/intermediate; Repackaging for use as a laboratory chemical; Recycling; Incorporation into formulation, mixture or reaction products in agricultural products manufacturing and other basic organic and inorganic chemical manufacturing; Industrial and commercial use as an industrial processing aid in the manufacture of agricultural products; Industrial and commercial use in the elimination of nitrogen trichloride in the production of chlorine and caustic soda; Industrial and commercial use as a laboratory

chemical; Industrial and commercial specialty uses by the U.S. Department of Defense until [DATE 365 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**]; and Disposal.

The intention of downstream notification is to spread awareness throughout the supply chain of the restrictions on use of CTC under TSCA as well as provide information to end users about allowable TSCA uses of CTC.

In order to provide adequate time to undertake the changes to the SDS and ensure that all users in the supply chain receive the revised SDS, EPA is proposing a 6-month period for manufacturers, processors, and distributors to implement the proposed SDS changes following publication of the final rule.

EPA requests comments on the timeframes for recordkeeping and downstream notification requirements described in this unit.

B. Primary Alternative Regulatory Action

As indicated by TSCA section 6(c)(2)(A)(iv)(II) and (III), EPA must consider and publish a statement based on reasonably available information with respect to the reasonably ascertainable economic consequences of the rule, including consideration of the costs and benefits and the cost effectiveness of the proposed regulatory action and one or more primary alternative regulatory actions considered by the Agency.

The primary alternative regulatory action described in this unit and considered by EPA combines requirements for a WCPP and prescriptive workplace controls to address the unreasonable risk from CTC driven by the various conditions of use. The primary alternative regulatory action would allow a WCPP, including requirements to meet an ECEL and DDCC, for those conditions of use that would be prohibited under the proposed regulatory action, and prescriptive controls for those conditions of use where an ECEL and DDCC are the proposed regulatory action and where PPE may address the unreasonable risk. EPA requests comment on this primary alternative regulatory action and whether any elements of the primary alternative regulatory action described in this unit should be considered in combination with elements of the proposed regulatory action as EPA develops the final regulatory action. Examples of possible combinations in approaches may include, but are not limited to: adoption of the primary alternative regulatory action for certain conditions of use and the proposed regulatory action for other conditions of use; allowing regulated entities to opt out of requirements described in the proposed regulatory action by complying with requirements described in the primary alternative regulatory action; or allowing regulated entities to opt out of requirements described in the primary alternative regulatory action by complying with requirements described in the proposed regulatory action.

1. *Prescriptive workplace controls.*

The primary alternative regulatory action would require prescriptive workplace controls, specifically respirators and dermal PPE, for manufacturing (including import) of CTC and for the following other conditions of use, which account for essentially all of the production volume of CTC manufactured annually, where the proposed regulatory action is a WCPP:

- Processing as a reactant in the production of HCFCs, HFCs, HFOs, and PCE;
- Processing: Incorporation into formulation, mixtures, or reaction products for agricultural products manufacturing and other basic organic and inorganic chemical manufacturing;
- Processing: Repackaging for use as a laboratory chemical;
- Processing: Recycling;
- Industrial and commercial use as an industrial processing aid in the manufacture of agricultural products;
- Industrial and commercial use in the elimination of nitrogen trichloride in the production of chlorine and caustic soda; and
- Disposal.

In the risk evaluation, EPA identified respirators and gloves that would reduce inhalation and dermal exposures to CTC. Under the primary alternative regulatory action, EPA considered requiring dermal PPE as described in Unit IV.A.1.f.ii. This approach differs from the proposed regulatory action because it would not require the use of elimination, substitution, engineering controls, and administrative controls, in accordance with the hierarchy of controls, to the extent feasible as a means of controlling dermal exposures to comply with DDCC requirements. Rather, this approach would require dermal PPE in combination with comprehensive training for tasks where dermal exposure may occur from direct handling of CTC or from contact with surfaces that may be contaminated with CTC (*i.e.,* equipment or materials on which CTC may be present). EPA recognizes that resorting to the use of dermal PPE does not consider other, more protective controls in the hierarchy, as a WCPP does. By using other controls in the hierarchy, owners and operators may be more easily able to prevent direct dermal contact.

For inhalation exposures in the risk evaluation, EPA identified assigned protection factors (APF) for respirators for each condition of use that would mitigate the unreasonable risk. EPA expects that workplaces engaged in the conditions of use described in Unit III.B.1. may be able to implement prescriptive controls as part of an industrial hygiene program. Under the primary alternative regulatory action, EPA considered requiring that owners or operators implement all aspects of a respiratory protection program (*e.g.,* training, fitting, medical surveillance, etc.). This approach differs from the proposed regulatory action because it does not require the use of elimination, substitution, engineering controls, and administrative controls, in accordance with the hierarchy of controls, to the extent feasible as a means of controlling inhalation exposures to comply with an ECEL, or require monitoring to determine the airborne concentration in the workplace. As discussed in Unit V.A.1., EPA understands that there are several uncertainties regarding the applicability of respirators, such as the inability to use respirators by some workers due to respiratory concerns, issues with fit-testing, and interference with work efficiency. In addition, the APFs for the respirators are based on monitoring data that included 12-hour and 8-hour shifts as well as monitoring data from the DoD provided during the risk evaluation (Ref. 1). EPA recognizes that workers and ONUs are not typically exposed to CTC for their entire work shifts; rather, exposures to CTC tend to occur intermittently and the level of respiratory APF needed may vary throughout each work shift (Ref. 26). In addition, EPA understands that workplaces have unique processes and equipment in place and that varying levels of respiratory APFs may be needed for different workplaces. Due to these uncertainties, EPA is proposing prescriptive workplace controls as the primary alternative regulatory action. However, the Agency also understands that requiring specific respirators may be more cost-effective and easier to implement for regulated entities since it would not require monitoring for an ECEL. Based on the 2020 Risk Evaluation for Carbon Tetrachloride, EPA determined that the use of respirators with an APF of 50 could control CTC air concentration to levels that eliminate the unreasonable risk

from inhalation exposures based on high-end exposures during a 12-hour work shift driven by the following conditions of use: domestic manufacture; processing as a reactant in the production of HCFCs, HFCs, HFOs, and PCE; incorporation into formulation, mixture, or reaction products for agricultural products manufacturing and other basic organic and inorganic chemical manufacturing; and industrial and commercial use in the elimination of nitrogen trichloride in the production of chlorine and caustic soda. EPA also determined that the use of respirators with an APF of 25 could control CTC air concentration to levels that eliminate the unreasonable risk from inhalation exposures based on high-end exposures during an 8-hour work shift driven by the following conditions of use: import; repackaging of CTC for use as a laboratory chemical; recycling; industrial and commercial use of CTC as an industrial processing aid in the manufacture of agricultural products; and disposal. The alternative regulatory action would require that owners or operators require the use of respirators with an APF 25 or 50, as described in this paragraph, as well as dermal PPE, for any person reasonably likely to be exposed to CTC from the conditions of use described in this unit (Unit IV.B.1.). EPA recognizes that the length of work shifts and the inhalation exposures to CTC throughout a specific work shift may vary across facilities and that monitoring may be helpful to identify the respirators required to eliminate unreasonable risk driven by inhalation exposures. Therefore, the Agency is soliciting comments on information to support the consideration of other APFs that are also protective of the highest possible lengths of exposures and on whether or how monitoring should be considered for the alternative regulatory action.

EPA understands that many workplaces already have engineering controls or administrative controls in place that reduce exposures to CTC, in particular highly standardized and industrialized workplaces or where CTC is used in a closed system. However, EPA does not have reasonably available information on engineering controls and administrative controls that would mitigate unreasonable risk across a wide variety of workplaces for most conditions of use. EPA is requesting comment on specific controls that mitigate the unreasonable risk from CTC and that could be included as part of a prescriptive workplace controls requirement, which could be considered as EPA develops the final regulatory action. Specifically, EPA is soliciting comment on engineering controls and administrative controls that reduce inhalation exposures to at or below the ECEL of 0.03 ppm as an 8-hr TWA or prevent dermal exposure from direct handling of CTC or from contact with surfaces that may be contaminated with CTC and any associated cost related to these controls. Examples of potential controls and workplace practices include a closed system transfer, purging liquid lines with nitrogen, and limiting frequency and duration of exposure to CTC. EPA is also soliciting comment on combinations of engineering controls, administrative controls, and PPE that would reduce inhalation exposures to at or below the ECEL of 0.03 ppm as an 8-hr TWA or prevent direct dermal contact for all regulated entities and any associated cost related to these controls.

2. *Workplace Chemical Protection Program (WCPP).*

As discussed in Unit IV.A.3., EPA understands that the conditions of use the Agency is proposing to prohibit have been phased out. However, if EPA receives information indicating the continued use of CTC for these conditions of use, the Agency may consider regulating these uses rather than prohibiting them. Therefore, the primary alternative regulatory action considered by EPA would require the implementation of a WCPP, including an ECEL and DDCC requirements, for the following processing, industrial, and commercial uses of CTC:

- Processing: Incorporation into formulation, mixtures, or reaction products in petrochemicals-derived manufacturing;
- Industrial and commercial use as an industrial processing aid in the manufacture of petrochemicals-derived products;
- Industrial and commercial use in the manufacture of other basic chemicals (including manufacturing of chlorinated compounds used in solvents, adhesives, asphalt, and paints and coatings), except for use in the elimination of nitrogen trichloride in the production of chlorine and caustic soda;
- Industrial and commercial use in metal recovery;
- Industrial and commercial use as an additive; and
- Industrial and commercial use in specialty uses by the DoD.

EPA understands that, if these uses are ongoing, they would occur in highly industrialized settings and controlled and closed processes, suggesting a WCPP could be implemented. Unit IV.A.1. provides details on the WCPP that EPA would require to be implemented for these uses. For the industrial and commercial use of CTC as a laboratory chemical, the primary alternative regulatory action considered by EPA would require the implementation of only the DDCC requirements of the WCPP in combination with the use of fume hoods in workplace laboratory settings (requiring fume hoods would make mandatory the current existing good laboratory practices) and advanced engineering controls specifically for DoD's use of CTC as a laboratory chemical in chemical weapons destruction (requiring advanced engineering controls would make mandatory the existing practices at DoD facilities). EPA is soliciting comment on non-prescriptive DDCC requirements as compared to the prescriptive workplace controls of dermal PPE EPA is proposing in Unit IV.A.2.

3. *Other requirements.*

The primary alternative regulatory action will also require recordkeeping and downstream notification similar to the proposed regulatory action as described in Unit IV.A.4.

4. *Compliance timeframes.*

The timeframes for the controls outlined as part of the primary alternative regulatory action, including ECEL, DDCC, and prescriptive controls, would remain the same as the timeframes outlined in the proposed regulatory action in Unit IV.A. In addition, the timeframes for recordkeeping and downstream notification requirements described in this unit also do not differ from the timeframes for the recordkeeping and downstream notification requirements in the proposed regulatory action described in Unit IV.A.

V. Rationale for the Proposed Regulatory and Primary Alternative Regulatory Actions

This unit describes how the considerations described in Unit III.B.4 were applied when selecting among the TSCA section 6(a) requirements to arrive at the proposed and primary alternative regulatory actions described in Unit IV.A and IV.B.

A. Consideration of Risk Management Requirements Available Under TSCA Section 6(a)

1. *Workplace Chemical Protection Program.*

One option EPA considered for occupational conditions of use was establishing a WCPP, which would include a combination of restrictions to address unreasonable risk driven by inhalation and dermal exposures in the

workplace. A WCPP for CTC would encompass restrictions on certain occupational conditions of use and could include provisions for an ECEL, DDCC, and ancillary requirements to support implementation of these restrictions.

A WCPP was considered for certain conditions of use for which there are compelling reasons not to prohibit the activity and for which EPA has found that a regulatory action would address the unreasonable risk. For example, CTC is a major feedstock in the generation of lower GWP HFOs, which is important to the Agency's efforts to address climate-damaging HFCs. Another example is the use of CTC as an industrial processing aid in the manufacture of agricultural products, where industry has described its efforts to explore alternatives, but lack of success in finding a suitable replacement for CTC (Ref. 5). Similarly, for the use of CTC in the elimination of nitrogen trichloride in the production of chlorine and caustic soda, where industry has indicated that alternatives are not as efficient and/or have not been demonstrated to be effective in decomposing nitrogen trichloride (Ref. 27). Therefore, for these uses, EPA considered regulatory requirements other than prohibition, such as a WCPP, that would reduce exposures in occupational settings so that the unreasonable risk is no longer present.

a. *Existing Chemical Exposure Limit.*

One option considered by EPA was establishing an ECEL and related required implementation measures, such as monitoring, as a component of a WCPP. The EPA ECEL requirement for CTC would be non-prescriptive, in the sense that regulated entities would not be required to use specific equipment or engineering controls, or any other type of control, to achieve the exposure concentration limit. Rather, it would be a performance-based exposure limit that would enable owner or operators to determine how to most effectively meet the exposure limits based on conditions at their workplace following the hierarchy of controls.

Exposures remaining at or below the ECEL would eliminate any unreasonable risk of injury to health driven by inhalation exposures for occupational conditions of use.

In the case of CTC, EPA has calculated the ECEL for CTC to be 0.03 ppm (0.2 mg/m^3) for inhalation exposures as an 8-hour TWA in workplace settings, based on the cancer human equivalent concentration for liver toxicity from chronic inhalation exposures. This is the concentration at which an adult human, including a member of a susceptible subpopulation, would be unlikely to suffer adverse effects if exposed for a working lifetime (Ref. 9). The differences between the ECEL and the OSHA PEL are discussed in more detail in Unit II.C.1.b. EPA chose the cancer liver toxicity endpoint as the basis for this exposure limit, and this exposure limit will be protective of both acute and chronic non-cancer inhalation endpoints over the course of a working day and lifetime.

In deciding whether setting an ECEL would appropriately address unreasonable risk, EPA considered factors including the prevalence of use of the chemical substance, prevalence or lack of alternatives, efficacy, and factors related to work activities that may make it difficult to comply with an ECEL, particularly at the low levels EPA has identified. Examples include work activities in conditions of use that require a high range of motion or for some other reason create challenges for the implementation of respiratory PPE, and the type of PPE that may be needed to meet the ECEL in the absence of, or in addition to, other feasible exposure controls, based on analysis in the risk evaluation describing expected exposures with and without use of PPE.

EPA also considered the feasibility of exposure reduction sufficient to address the unreasonable risk even in facilities currently complying with OSHA PELs. EPA acknowledges the regulated community's expected familiarity with OSHA PELs generally, as well as facilities' past and ongoing actions to implement the CTC PEL and corresponding methods of compliance outlined in OSHA standards. Since the level of EPA's exposure limits is two orders of magnitude lower than the OSHA PEL (the differences between the ECEL and the OSHA PEL are discussed in more detail in Unit II.C.4; more information on other OELs is in Unit II.C.5.), the ECEL requirement creates some uncertainty as to the ability of facilities engaging in most conditions of use to meet the ECEL and associated action level without relying on the use of PPE, and, therefore, whether exposures could be reduced in a manner aligned with the hierarchy of controls.

EPA understands that this uncertainty extends to the applicability of respirators as well. Although respirators could reduce exposures to levels that are protective of cancer and non-cancer risks, not all workers may be able to wear respirators. Individuals with impaired lung function due to asthma, emphysema, or chronic obstructive pulmonary disease, for example, may be physically unable to wear a respirator. OSHA requires that a determination regarding the ability to use a respirator be made by a physician or other licensed health-care professional, and annual fit testing is required for tight-fitting, full-face piece respirators to provide the required protection. Individuals with facial hair, such as beards or sideburns that interfere with a proper face-to-respirator seal, cannot wear tight fitting respirators. In addition, respirators may also present communication problems, vision problems, worker fatigue, and reduced work efficiency (63 FR 1152, January 8, 1998). According to OSHA, ''improperly selected respirators may afford no protection at all (for example, use of a dust mask against airborne vapors), may be so uncomfortable as to be intolerable to the wearer, or may hinder vision, communication, hearing, or movement and thus pose a risk to the wearer's safety or health.'' (63 FR 1189 through 1190, January 8, 1998).

b. *Direct Dermal Contact Control (DDCC) Requirements.*

Another restriction considered by EPA to include in a WCPP for CTC to address unreasonable risk driven by dermal exposures was requiring direct dermal contact controls (DDCC). DDCC requirements under WCPP would be a process-based set of provisions to address unreasonable risk driven by dermal exposure by preventing direct dermal contact in the workplace by separating, distancing, physically removing, or isolating potentially exposed persons from direct handling of CTC or from contact with equipment or materials on which CTC may exist under routine conditions (exceptions may be needed in the event of incidental exposure or equipment malfunction). Similar to the ECEL, DDCC is non-prescriptive, in the sense that it does not require a specific control to prevent direct dermal contact; rather, it would enable regulated entities to determine how to most effectively prevent direct dermal contact based on what works best for their workplace, in accordance with the hierarchy of controls.

In deciding whether DDCC requirements under a WCPP would appropriately address the unreasonable risk driven by dermal exposures, EPA considered factors including the prevalence of use of the chemical substance; availability of technically and economically feasible alternatives; efficacy; and factors related to work activities that may make it difficult to prevent direct dermal contact. Examples include work activities that require a high dexterity or precise use of hands and fingers or for some other reason create challenges for the

implementation of dermal PPE, and the type of PPE that would be needed to prevent direct dermal contact, based on analysis in the risk evaluation describing expected exposures with and without use of PPE. EPA also considered whether exposures could be reduced in a manner aligned with the hierarchy of controls.

c. *CTC Workplace Chemical Protection Program.*

Taking into account these considerations, EPA is proposing that certain conditions of use would be allowed to continue if regulated entities could ensure exposures remain at or below the ECEL, direct dermal contact is prevented, and other requirements are met in the CTC WCPP. In contrast to considerations that would weigh against the likelihood of a facility within a condition of use to successfully implement WCPP, there are certain considerations that indicate a condition of use is a good fit for effective risk management via WCPP. Based on reasonably available information, including monitoring data, and information related to considerations described previously in this unit, EPA's confidence that requirements to meet an ECEL can be implemented is highest in the highly standardized and industrialized settings, such as where CTC is used in a closed system (Ref. 10). Additionally, the 2020 Risk Evaluation for Carbon Tetrachloride supports EPA's conclusion that only small reductions in exposure are needed for WCPP ECEL compliance for the conditions of use. Also, for dermal exposures, reasonably available information indicates that controls may already be in place at some workplaces to prevent or reduce direct dermal contact with CTC, including enclosed transfer liquid lines with a nitrogen purging mechanism, closed loop samplers, and impervious glove liners in addition to chemically resistant gloves (Refs. 26 and 28).

For example, one condition of use where a WCPP may be implemented is the processing of CTC as a reactant in the production of HFOs, which are in lower global warming potential products, including refrigerants, aerosol propellants, and foam-blowing agents, potentially replacing many of the higher global warming potential products containing HFCs, which are subject to a phasedown in production and consumption of HFCs under the AIM Act and the Kigali Amendment to the Montreal Protocol. Among other things, the AIM Act authorizes EPA to address listed HFCs in three main ways: phasing down HFC production and consumption through an allowance allocation program, facilitating sector-based transitions to next-generation technologies, and issuing certain regulations for purposes of maximizing reclamation and minimizing releases of HFCs from equipment and ensuring the safety of technicians and consumers. EPA anticipates that many entities currently using HFCs with higher global warming potential will transition to alternatives with lower GWP as requirements under the AIM Act take effect. By allowing for the continued, controlled use of CTC in the production of lower-GWP HFOs, efforts to shift to chemicals with lower GWP would not be impeded by this rulemaking. In addition, CTC may be used in closed reactors to make feedstocks, including refrigerants, aerosol propellants, and foam-blowing agents (*e.g.,* HCFCs and HFCs), used to produce HFOs (Ref. 29).

Additionally, the 2020 Risk Evaluation for Carbon Tetrachloride indicates that readily achievable reductions in exposure are needed for WCPP compliance for all the conditions of use driving the unreasonable risk from inhalation exposures. Based on analysis in the 2020 Risk Evaluation for Carbon Tetrachloride describing expected exposures with and without use of PPE, EPA identified an air-supplied respirator of APF 10, 25, and 50, depending on the condition of use, as the minimum respiratory PPE that is sufficient to mitigate the unreasonable risk. This suggests that, for the conditions of use that would be subject to a WCPP, the reductions in exposure required to achieve a level that would not present unreasonable risk may be achievable, which, together with other considerations previously described, including monitoring data submitted via public comment by the Halogenated Solvents Industry Alliance (HSIA) during the 2020 Risk Evaluation for Carbon Tetrachloride indicating exposures near or below the ECEL, adds to EPA's confidence that facilities engaging in the use of CTC could meet the WCPP requirements (EPA–HQ–OPPT–2016–0733–0101).

Pursuant to TSCA section 6(c)(2)(A)(i), EPA is considering reasonably available information regarding the adverse effects of CTC on human health and the magnitude of exposure of human beings to CTC. EPA recognizes that people at workplaces that manufacture, process, use, or dispose of CTC may also live in the fenceline communities surrounding these facilities and consequently may be potentially exposed to CTC through ambient air outside of working hours. In addition, the Agency understands that certain engineering controls can reduce exposures to people inside the workplace but may lead to increased ventilation of CTC outside of the workplace, thereby increasing risks to people in fenceline communities of adverse health effects from exposures to CTC in ambient air. Therefore, pursuant to TSCA section 6(c)(2)(B), EPA is considering the potential adverse effects on health of people in fenceline communities posed by emissions of CTC to ambient air described in Unit VI as a factor when proposing to prohibit increased releases of CTC to outdoor air associated with the implementation of the WCPP/ECEL. This proposed requirement is intended to avoid unintended increases in exposures to people from CTC emissions to ambient air. The proposed rule would require owners and operators to attest in their WCPP/ECEL exposure control plan that engineering controls selected do not increase emissions of CTC to ambient air outside of the workplace and document in their exposure control plan whether additional equipment was installed to capture emissions of CTC to ambient air.

2. *Prescriptive controls.*

Another option EPA considered was requiring specific, prescribed controls—such as engineering controls, administrative controls, and PPE—to reduce exposures to CTC in occupational settings. Prescriptive controls could include respirators and dermal PPE. The Agency identified that PPE could reduce exposures in support of risk management efforts for CTC. However, for most conditions of use, except for the use of CTC in a laboratory setting, resorting to the use of PPE does not consider other, more protective controls in the hierarchy, including elimination, substitution, engineering, and administrative controls. EPA also understands that workplaces have unique processes and equipment in place and that varying levels of respiratory APFs may be needed for different workplaces. Therefore, there is uncertainty in prescribing specific respiratory APFs and selecting an APF based on the monitoring required as part of an ECEL is likely more protective because there is more certainty in the level of exposure protection required as a result of regular monitoring requirements. In addition, the Agency recognizes that many of the largely industrialized and standardized facilities that use CTC monitor workers to determine the APFs needed to protect workers, and that the APFs identified to address the unreasonable risk in the primary alternative regulatory action may differ from the APFs needed at many of these facilities due to the variation in processes and equipment in

place. As a result of monitoring, many workplaces may also identify that respirators are not needed for large portions of the day, particularly when CTC is not in use. EPA recognizes that requiring specific APFs to be used over the entire work shifts, rather than tasks throughout the workday, is not the norm for most facilities, given how respirators could interfere with physiological and phycological aspects of task performance and might reduce productivity or necessitate offering higher wages to workers who must wear respirators for long periods of time.

Nevertheless, based on the 2020 Risk Evaluation for Carbon Tetrachloride, EPA considered the industrial and commercial use in laboratory chemicals as a strong candidate for prescriptive controls. Inhalation exposures from the industrial and commercial use of CTC as a laboratory chemical did not drive the unreasonable risk determination for CTC due to risk estimates that were predicated on expected safety practices of using CTC in small amounts under a fume hood, which reduces the potential for inhalation exposures. To codify assumptions made in the 2020 Risk Evaluation for Carbon Tetrachloride regarding the use of fume hoods in laboratory settings, EPA is proposing to require fume hoods in laboratory settings that use CTC. This proposed requirement would protect workers in laboratory settings by ensuring that good laboratory practices that reduce the potential for inhalation exposures are consistently applied and enforceable. Additionally, the 2020 Risk Evaluation for Carbon Tetrachloride determined that dermal exposures from the industrial and commercial use of CTC as a laboratory chemical drive the unreasonable risk determination for CTC. The 2020 Risk Evaluation for Carbon Tetrachloride identifies several uncertainties regarding the use of chemically resistant gloves and the dermal model. For example, the risk evaluation does not consider actual frequency, type and effectiveness of glove use in specific workplaces. In addition, the risk evaluation does not describe the ''specific activity training'' associated with the dermal protection factor model, beyond that it covers procedure for glove removal and disposal. EPA understands that impermeable gloves in combination with comprehensive training for particular tasks specific to CTC use can reduce the potential for dermal exposures in occupational settings. EPA is requesting comment on whether preventing dermal contact with CTC through dermal PPE and comprehensive training would adequately address the unreasonable risk from dermal exposures for the industrial and commercial use in laboratory chemicals.

3. *Prohibition.*

EPA considered a prohibition as a regulatory option and is proposing it for certain conditions of use where information indicates uses have been phased out (Unit IV.A.3). The lack of information indicating ongoing use for some CTC uses has led EPA to propose prohibitions, rather than a WCPP, for those conditions of use.

4. *Primary alternative regulatory action.*

EPA acknowledges that for the conditions of use that it is proposing to prohibit, the types of facilities that would use CTC if these uses were ongoing would likely be able to implement a WCPP, as these conditions of use occur in highly controlled and industrial settings. Therefore, for EPA's primary alternative regulatory action, described in Unit IV.B., EPA is requesting comment on whether any of the uses the Agency is proposing to prohibit are ongoing and is considering a WCPP—including requirements to ensure exposures remain below an ECEL and DDCC requirements—as an alternative regulatory action for some conditions of use of CTC.

As discussed in this unit, in the Risk Evaluation, EPA identified that PPE could reduce exposures in support of risk management efforts for CTC and is therefore proposing to consider prescriptive controls, specifically respirators and dermal PPE, as part of the alternative regulatory option for those conditions of use where the proposed regulatory option is a WCPP. Resorting to the use of PPE, however, does not provide assurance that the owner or operator considered other, more protective controls in the hierarchy, including elimination, substitution, engineering, and administrative controls. In addition, this option does not take into account distinctions in processes and equipment in all facilities, which may result in varying levels and types of respiratory and dermal PPE needed.

While the use of dermal PPE is typical for the use of CTC as a laboratory chemical, EPA recognizes the potential for there to be other forms of controls to prevent direct dermal contact in a laboratory setting. Therefore, as part of the alternative regulatory action, EPA considered DDCC requirements for the industrial and commercial use of CTC as a laboratory chemical.

5. *Risk management requirements considered but not proposed.*

An option that EPA considered but is not feasible for CTC is setting a concentration limit. Because the vast majority of CTC is processed as a reactant, a concentration limit is not practicable. Limiting product container size is also an ineffective option for reducing unreasonable risk from CTC, as it is mostly transported in large tank and rail cars (Ref. 26).

6. *Additional considerations.*

After considering the different regulatory options under TSCA section 6(a), lack of alternatives (described in Unit V.B.), compliance dates, and other requirements under TSCA section 6(c), EPA developed the proposed regulatory action described in Unit IV.A. to address the unreasonable risk from CTC. To ensure successful implementation of this proposed regulatory action, EPA considered other requirements to support compliance with the proposed regulations, such as requiring monitoring and recordkeeping to demonstrate compliance with the WCPP, or downstream notification regarding the prohibition on manufacturing, processing, and distribution in commerce of CTC. These proposed requirements are described in Unit IV.A.4.

Under TSCA section 6(g)(1), EPA may grant an exemption from a requirement of a TSCA section 6(a) rule for a specific condition of use of a chemical substance or mixture if the Administrator finds that certain criteria are met (for example, if compliance with the requirement would significantly disrupt the national economy, national security, or critical infrastructure). Based on reasonably available information, EPA has found that a TSCA section 6(g) exemption is not warranted at this time. Therefore, EPA is not proposing to grant exemptions from the rule requirements under TSCA section 6(g). As discussed in Unit III.A. the Agency is requesting comment on whether to grant a TSCA section 6(g) exemption for CTC.

As required under TSCA section 6(d), any rule under TSCA section 6(a) must specify mandatory compliance dates, which shall be as soon as practicable with a reasonable transition period, but no later than five years after the date of promulgation of the rule (except in the case of a use exempted under TSCA section 6(g) or for full implementation of ban or phaseout requirements). These compliance dates are detailed in Units IV.A. and IV.B. As discussed in Units IV.A. and IV.B., the Agency is requesting comment on whether shorter or longer compliance timeframes should be considered.

B. Consideration of Alternatives in Deciding Whether To Prohibit or Substantially Restrict CTC

Under TSCA section 6(c)(2)(C), in deciding whether to prohibit or restrict in a manner that substantially prevents a specific condition of use of a chemical substance or mixture, and in setting an appropriate transition period for such action, EPA must consider, to the extent practicable, whether technically and economically feasible alternatives that benefit human health or the environment will be reasonably available as a substitute when the proposed prohibition or other restriction takes effect.

EPA is proposing to prohibit those conditions of use where information indicates uses of CTC are phasing out or have already been phased out: the industrial and commercial use of CTC as a processing aid in the manufacture of petrochemicals-derived products; industrial and commercial use of CTC in the manufacture of other basic chemicals (including chlorinated compounds used in solvents, adhesives, asphalt, and paints and coatings) except for use in the elimination of nitrogen trichloride in the production of chlorine and caustic soda (for which EPA is proposing a WCPP); industrial and commercial use of CTC as an additive; industrial and commercial use of CTC in metal recovery; and industrial and commercial use of CTC in specialty uses by the DoD. Since these uses seem to have been phased out, it is reasonable to assume industry has found alternatives. The transition to these alternatives has taken place since CTC was restricted under the CAA in 1990 and therefore, while EPA has not identified specific alternatives, the Agency has concluded that technically and economically feasible alternatives are reasonably available for CTC; however, the Agency was unable to examine the health and environmental effects of other potential alternatives or substitute methods.

For other conditions of use of CTC for which EPA is proposing restrictions rather than prohibition, EPA held several outreach meetings with current users of CTC and carried out thorough research to determine if technically and economically feasible alternatives and substitute methods are available. For the processing of CTC as a reactant in the production of HFOs, the Agency understands that there are routes of production with feedstocks that do not use CTC. However, industry has explained that these routes are not as cost-effective or efficient as CTC and would require replacement or significant modification of existing production technology (Ref. 30). In addition, current processes that use CTC to manufacture HCFCs and HFCs, including HFC–245fa, HFC–365mfc, and HFC–236fa, do not seem to have substitutes readily available, particularly because these facilities have CTC-specific infrastructure in place and replacing the infrastructure at these facilities to use an alternative feedstock would require large investments (Ref. 30). In terms of PCE production, CTC does not appear to be a major feedstock in the production of PCE; rather, CTC may be a minor input when recycled to make additional PCE (Ref. 31). The recycling of CTC for production of PCE prevents additional disposal and wasting of CTC. With regard to the use of CTC as an industrial processing aid in the manufacture of agricultural products, EPA was informed that, despite past research and development efforts, a suitable replacement for CTC that would not react with the process gases in the manufacture of agricultural products has not been identified (Ref. 5). For the use of CTC in the elimination of nitrogen trichloride (NTC) in the production of chlorine and caustic soda, industry has indicated that the alternatives are not as efficient because they require more of an alternative chemical, require more energy usage, and/or have not been demonstrated to be effective in decomposing NTC (Ref. 27). For example, one alternative is refluxing cold liquid chlorine; more liquid chlorine than CTC would be required per pound of NTC absorbed, and NTC removal with CTC allows for storage capacity of the purge stream, while chlorine does not (Ref. 27). EPA has also not identified technically and economically feasible alternatives for the specific uses of CTC in a laboratory setting.

The Agency is requesting comment on the availability of technically and economically feasible alternatives that are beneficial to health or the environment compared to CTC.

VI. TSCA Section 6(c)(2) Considerations

A. Health Effects of Carbon Tetrachloride and the Magnitude of Human Exposure to Carbon Tetrachloride

The human health hazards to CTC include carcinogenicity, liver toxicity, neurotoxicity, kidney toxicity, reproductive and developmental toxicity, irritation and sensitization, and genetic toxicity. Acute inhalation exposures to CTC at relatively high concentrations induce immediate and temporary depression of the central nervous-system, with effects consisting of escape-impairing symptoms such as dizziness. For chronic non-cancer inhalation exposure scenarios to CTC, liver toxicity is identified as the most sensitive effect due to fatty changes to the liver indicative of cellular damage. Under EPA's Guidelines for Carcinogen Risk Assessment, CTC is classified as ''Likely to be Carcinogenic in Humans.'' CTC has been shown to cause pheochromocytomas (tumors of the adrenal glands) in male and female mice by oral and inhalation exposures, and a strong association between neuroblastoma and CTC in a single well-conducted epidemiological study in the same organ raises concern for potential carcinogenic effects in human. In addition, a general correlation has been observed in animal studies with CTC between hepatocellylar cytotocity and regenerative hyperplasia and the induction of liver tumors (Ref. 1).

Populations exposed to CTC include workers ages 17 and older of either gender, including pregnant women and individuals who do not use CTC but may be indirectly exposed due to their proximity to the user who is directly handling CTC (ONUs). EPA estimates that, annually, there are approximately between 852 and 9,554 workers and between 500 and 4,144 ONUs at between 30 and 71 facilities either manufacturing, processing, or using CTC for industrial and commercial conditions of use (Ref. 4).

In addition to these estimates of workers and occupational non-users directly exposed to CTC, EPA recognizes there is exposure to the general population from air and water pathways for CTC. As mentioned in Unit II.D., EPA has separately conducted a screening approach to assess whether there may be potential risks to the general population from these exposure pathways. The screening approach was developed in order to allow EPA to determine—with confidence—situations which present no unreasonable risk to fenceline communities or where further investigation would be needed to develop a more-refined estimate of risk. The fenceline technical support memos for the ambient air pathway and the water pathway provide the Agency with a quantitative assessment of exposure. For CTC, the results from applying this screening approach did not allow EPA to rule out unreasonable risk to fenceline communities. After doing an initial screen (the single year ambient air screening analysis) that did not rule out unreasonable risk, EPA conducted additional analysis (the multi-year ambient air analysis) from which it

derived risk estimates that are mostly within the cancer benchmarks used by EPA and other regulatory agencies of 1 in 10,000 to 1 in 1,000,000. The single year ambient air screening analysis and the multi-year ambient air analysis allow EPA to mathematically calculate a cancer risk in fenceline communities. While EPA feels confident about there being no significant risk where calculated risks do not exceed 1×10^{-6} (as is the case for two conditions of use) there are still limitations and uncertainties where the calculated risk exceeds the 1 in 1,000,000 cancer risk benchmark value as is the case for five conditions of use, which are described further in this unit. This unit summarizes the results of the fenceline analysis of the water pathway and also for the ambient air pathway for CTC, which expands the original single year ambient air screening approach to include a multi-year assessment in light of peer review comments on the initial methodology.

As described in Unit II.D., EPA's fenceline analysis methodology was presented to the SACC peer review panel in March 2022, and EPA considered SACC feedback (including the SACC recommendation to EPA to consider multiple years of release data to estimate exposures and associated risks) when applying the fenceline analysis to CTC. EPA also plans to consider SACC feedback and make decisions regarding how to build upon the screening approach so that EPA can more accurately assess and quantify general population exposures in upcoming risk evaluations, such as for the 1,4-dioxane supplement and for the forthcoming 20 High Priority Substances. For CTC, EPA recognizes that a key input into the fenceline assessment of the ambient air pathway was data on releases from a single year of Toxics Release Inventory (TRI) release data (2019 TRI reporting year) and that the use of more than one year of data could result in different conclusions. Accordingly, in this unit, EPA presents the results of its analysis based on CTC releases reported to TRI over a single reporting year as well as over multiple years (Ref. 32).

EPA's fenceline analysis for the air pathway for CTC indicates that EPA cannot rule out unreasonable risk to fenceline communities with confidence, described further in this unit. Estimates of cancer risk to fenceline communities were calculated and compared to $1 \times 10^{\text{minus;6}}$ as a benchmark value for cancer risk in fenceline communities. Cancer benchmark values used by EPA and other regulatory agencies in interpreting the significance of cancer risk range from 1 in 1,000,000 to 1 in 10,000 (*i.e.,* 1×10^{-6} to 1×10^{-4}) depending on the subpopulation exposed (Ref. 3). Benchmark values help inform decisions regarding the significance of risk and the Agency considers a number of other factors when determining whether risks are significant, such as the endpoint under consideration, the reversibility of effect, and exposure-related considerations (*e.g.,* duration, magnitude, or frequency of exposure, or population exposed).

The ambient air fenceline analysis organizes facilities and associated risks by occupational exposure scenario (OES) and generally crosswalks each OES with the associated condition of use of CTC (Ref. 32). Due to limited information on activities and use of CTC reported under TRI, there is uncertainty if the facilities associated with a specific OES were correctly cross-walked to the appropriate condition of use, or whether some OESs indicating increased cancer risk from ambient air exposures to CTC in the air fenceline analysis should be associated with more than one condition of use of CTC.

The ambient air fenceline analysis was divided into four steps: (a) a single-year ambient air analysis, (b) a single-year land use analysis, (c) a multi-year ambient air analysis, and (d) a multi-year land use analysis. EPA conducted an ambient air analysis for a single year and multiple years to determine whether EPA-generated risk estimates exceeded benchmarks for cancer risk for real and generic facilities at multiple distances. The Agency then conducted a land use analysis as part of both the single-year and multi-year analyses to determine if EPA can reasonably expect an exposure to fenceline communities to occur within the modeled distances for facilities where there was an indication of risk above one in a million. This review consisted of a visual analysis using aerial imagery and interpreting land/use zoning practices around the facility to identify where residential, industrial/commercial businesses, or other public spaces are present within those radial distances indicating risk (as opposed to uninhabited areas), as well as whether the radial distances lie outside the boundaries of the facility.

1. CTC Fenceline Analysis of the Ambient Air Pathway

a. *Single year ambient air full-screening results for CTC.*

EPA's single-year (using 2019 TRI data) fenceline analysis for the ambient air pathway was based on methods presented to the SACC to identify expected exposure and estimate associated cancer risk to people who live in fenceline communities within select distances evaluated from 5 to 10,000 meters from the respective releasing facility. Where there was an indication of risk above one in a million in the single year fenceline analysis from a facility, EPA conducted a land use analysis to determine if the Agency can reasonably expect an exposure to fenceline communities to occur within the modeled distances from the respective releasing facility. The land use analysis for the single-year ambient air analysis is described in Unit VI.A.b. Risk estimates exceeded one in a million for cancer risk for 31 of the 47 real or generic, or modeled, facilities evaluated, at multiple distances (between 5 and 2,500 meters from a releasing facility), representing five OES. One OES had one generic facility evaluated which showed risk above one in a million, but no land use analysis could be performed. The remaining four OES included real facilities for which a land use analysis was conducted.

b. *Single-year land use analysis for CTC.*

The land use analysis for the single-year analysis identified 21 real facilities where cancer risk estimates exceeded one in a million and there is an expected exposure to fenceline communities.

c. *Multi-year ambient air analysis.*

Following SACC feedback, EPA evaluated 6 years of facility specific CTC release data as reported to TRI (2015 through 2020 TRI data as well as the arithmetic average of that data). The multi-year analysis evaluated 60 real facilities. Cancer risk estimates exceeded one in a million for cancer for 25 of those 60 facilities at 100 meters from the releasing facility. Out of these 25 facilities, 6 facilities solely producing CTC as a byproduct were excluded (because, as described earlier, the 2020 Risk Evaluation for Carbon Tetrachloride did not include the production of CTC as a byproduct as a condition of use), resulting in 19 facilities. Based on the multi-year analysis, 4 of the 25 facilities either have cancer risk estimates above one in a million at distances farther out when compared to the single-year analysis or are facilities that were not captured in the single-year analysis (*e.g.,* did not report in 2019 TRI). When excluding facilities producing CTC as a byproduct, the multi-year analysis found 3 of 19 facilities have cancer risk estimates above one in a million at distances farther out when compared to the single-year analysis or are facilities that were not captured in the single-year analysis. Although the multi-year analysis did identify several additional

facilities with cancer risk estimates above one in a million for cancer that were not captured by the single-year fenceline analysis data set, the multi-year analysis did not change the number of conditions of use with cancer risk estimates above one in a million at the distances evaluated.

Overall, the ambient air analysis for the multi-year fenceline analysis identified 19 facilities with risk estimates above one in a million, with only one facility with risk estimates above one in ten thousand, at 100 meters representing 5 conditions of use. The potential risks identified for those conditions of use without consideration of the land use analysis to determine whether there is exposure to fenceline communities are:

- Manufacturing (8 out of 8 facilities evaluated, with the highest risk estimate of 4×10^{-5});
- Processing as a reactant in the production of HCFCs, HFCs, HFOs, and PCE (5 of 5 facilities evaluated, with the highest risk estimate of 7×10^{-5});
- Processing: Incorporation into formulation, mixtures, or reaction products (petrochemicals-derived manufacturing; agricultural products manufacturing; other basic organic and inorganic chemical manufacturing) (1 of 1 facility evaluated, with the highest risk estimate of 8×10^{-5});
- Industrial and commercial use as an industrial processing aid in the manufacture of petrochemicals-derived products and agricultural products (4 of 8 facilities evaluated, with the highest risk estimate of 2×10^{-4}); and
- Disposal (1 of 15 facilities evaluated, with the highest risk estimate of 3×10^{-6}).

d. *Multi-year land use analysis.*

The land use analysis for the multi-year analysis was limited to 4 additional facilities identified in the multi-year ambient air analysis which had cancer risk estimates that exceeded one in a million at distances farther out than the single-year analysis or were new facilities not captured by the single-year analysis. Therefore, the multi-year land use analysis was conducted for these 4 additional facilities and found only 1 facility had cancer risk estimates that exceeded one in a million and an expected exposure to fenceline communities, although that one facility was identified as a facility producing CTC as a byproduct.

e. *Fenceline analysis of the ambient air pathway conclusions.*

Under the proposed regulatory action described in Unit IV.A., all of the conditions of use with an indication of potential risk to fenceline communities would be required to establish a WCPP. [However, it is important to note that EPA understands that two uses evaluated in the risk evaluation, along with the manufacturing and processing for these uses, have ceased and these uses are therefore not expected to be contributing sources to the ambient air releases in the fenceline analysis. These two uses are the industrial and commercial use as a processing aid in the manufacture of petrochemical-derived products and the industrial and commercial use in the manufacture of most other basic chemicals, including chlorinated compounds used in solvents, adhesives, asphalt, and paints and coatings (except for use in the elimination of nitrogen trichloride in the production of chlorine and caustic soda) and are proposed for prohibition]. Under the proposed WCPP requirements, facilities would need to monitor CTC air concentrations by taking personal breathing zone air samples of potentially exposed persons, which would allow facilities to better understand and manage the total releases of CTC within the facility and potentially stack and fugitive emissions. Furthermore, EPA is proposing to prohibit increased emissions associated with WCPP requirements, and in the WCPP exposure control plan facilities would need to evaluate controls to determine how to reduce releases and exposures to potentially exposed persons in the workplace and attest that engineering controls selected do not increase emissions of CTC to ambient air outside of the workplace and whether additional equipment was installed to capture emissions of CTC to ambient air. EPA anticipates that this analysis would help facilities to determine the most effective ways to reduce releases, including possible engineering controls or elimination/substitution of CTC, and therefore may also reduce the overall risk to fenceline communities.

Although both the single year fenceline analysis, based on methods presented to the SACC, and the multi-year fenceline analysis conducted for CTC, which expands upon the fenceline analysis in response to SACC feedback, indicated potential exposure and associated risks to select receptors within the general population at particular facilities, there are some uncertainties associated with the fenceline analysis. The TRI dataset used for the single- and the multi-year fenceline analysis and land use analysis does not include actual release point locations, which can affect the estimated concentrations of the chemical at varying distances modeled. To identify the release location for each facility, EPA used a local-coordinate system based on latitude/longitude coordinates reported in TRI. The latitude/longitude coordinates may represent the mailing address location of the office building associated with a very large facility or some other area of the facility rather than the actual release location (*e.g.,* a specific process stack). This discrepancy between the coordinates reported in TRI and the actual release point could result in an exposure concentration that does not represent the actual distance where fenceline communities may be exposed.

For the multi-year analysis, there were a few additional uncertainties. The multi-year analysis evaluated a conservative exposure scenario that consists of a facility that operates year-round (365 days per year, 24 hours per day, 7 days per week) in a South Coastal meteorologic region and a rural topography setting (Ref. 32). Therefore, the modeled exposures to receptors may be overestimated if there are fewer exposure days per year or hours per day. Another uncertainty for the multi-year analysis is the distribution and volume of releases to stack and fugitive emissions. Further, there were certain assumptions and uncertainties related to the model used for the multi-year analysis, for example, the multi-year analysis used high-end and central tendency meteorological data contained within the model, which may differ from the meteorological data utilized in the single year fenceline analysis. Another uncertainty is that the emission scenario assumed may or may not represent actual operating conditions of a given facility. Finally, there is uncertainty in the stack parameters used and whether they represent actual stack parameters or conditions of the modeled facilities, including stack height, diameter, temperature, and other factors.

EPA also recognizes, as was described in the 2020 Risk Evaluation for Carbon Tetrachloride, that CTC is highly persistent in the atmosphere with an estimated tropospheric half-life exceeding 330 years. Thus, CTC has notable global background concentrations due to its long half-life, despite having limited air releases in the US, as noted in both the EPA's Air Toxic Screening Assessment modeling technical support document and in a recent EPA publication comparing the national air toxics modeling to regional monitoring data (Refs. 33 and 34). The risk estimates from the fenceline analysis do not account for the background concentrations from

historical emissions, which are persistent in the atmosphere.

EPA believes that the exposures from which these risk estimates were derived come from five conditions of use. For these five conditions of use identified in the multi-year ambient air analysis, the proposed rule would require strict workplace exposure controls via implementation of a WCPP as described in Unit IV.A.1. In the instances where efforts to reduce exposures in the workplace to levels below the ECEL could lead to adoption of engineering controls that ventilate more CTC outside, EPA believes this potential additional exposure would be limited as a result of the existing National Emission Standards for Hazardous Air Pollutants (NESHAPs) for CTC for these conditions of use under the CAA. Applicable NESHAPs include: 40 CFR part 63, subpart VVVVVV, Chemical Manufacturing Area Sources, and 40 CFR part 63, subparts F, G, H, and I, Organic HAP from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks. In addition, as part of the proposed controls outlined in Unit IV, EPA is proposing to prohibit increased releases of CTC to outdoor air associated with the implementation of the WCPP/ECEL to avoid unintended increases in exposures to people from CTC emissions to ambient air by requiring owners and operators to attest in their WCPP/ECEL exposure control plan that engineering controls selected do not increase emissions of CTC to ambient air outside of the workplace and document in their exposure control plan whether additional equipment was installed to capture or otherwise prevent increased emissions of CTC to ambient air. EPA is requesting comment on the types and costs of technologies firms would adopt to comply with the prohibition on increased releases of CTC to outdoor air associated with engineering controls used in the implementation of the WCPP/ECEL. In addition, EPA requests comment on whether and to what extent these technologies would reduce CTC emissions at facilities that adopt them below emissions levels that existed prior to implementation of the WCPP/ECEL.

Because EPA believes that the proposed controls outlined in Unit IV on the five conditions of use will reduce the exposure values used in the calculation of these fenceline risk estimates, EPA does not intend at this time to revisit the air pathway for CTC as part of a supplemental risk evaluation. EPA is seeking comment on its conclusions, and the expectation that this proposed action in combination with the emissions standards resulting from existing NESHAP requirements would reduce risk sufficiently to the general population and fenceline communities, and whether, consistent with TSCA section 9(b), any other statutory authorities administered by EPA should be used to take additional regulatory action identified as necessary to protect against such risk. EPA is also soliciting comment on whether EPA should require ambient air monitoring at fenceline locations or facility emissions source monitoring to demonstrate compliance with the proposed requirement that engineering controls implemented as part of a WCPP/ECEL under this rule would not result in the ventilation of more CTC outside. The Agency recognizes that owners and operators may have difficulty distinguishing between emission increases due to implementation of the WCPP/ECEL and emissions increases resulting from other factors such as increased manufacturing, processing, or use of CTC, although monitoring at both upwind and downwind locations could help them do so. In addition, EPA understands the difficulty in distinguishing between background levels of CTC and emissions from facilities. Therefore, EPA is soliciting comment on the need for and associated costs of ambient air monitoring at fenceline locations or facility emissions source monitoring, as well as information on the frequency and nature of air monitoring EPA should consider including as requirements in the final rule (such as a detection limit for CTC). EPA is also soliciting comment on whether, if EPA does not finalize the proposed prohibition on increased releases of CTC to ambient air outside of the workplace associated with implementation of the WCPP/ECEL, EPA should require monitoring to alert EPA to any increased emissions to ambient air associated with WCPP/ECEL implementation so that the Agency may take appropriate action.

2. *CTC Fenceline Analysis of the Water Pathway*

EPA's fenceline analysis for the water pathway for CTC, based on methods presented to the SACC, assesses exposure via drinking water, incidental oral ingestion of ambient water, and incidental dermal exposure to ambient water for communities in proximity to waterbodies receiving direct or indirect releases of CTC from facilities that use CTC (''fenceline communities'') (Ref. 35). EPA's screening level analysis did not find potential risk to fenceline communities from the water pathway. Further, EPA has a Safe Drinking Water Act National Primary Drinking Water Regulation for CTC that applies to public water systems to protect public health on a national level.

B. Environmental Effects of Carbon Tetrachloride and the Magnitude of Exposure of the Environment to Carbon Tetrachloride

EPA did not identify risks of injury to the environment that drive the unreasonable risk determination for CTC (Refs. 1 and 3). In the 2020 Risk Evaluation for Carbon Tetrachloride, EPA identified and evaluated CTC environmental hazard data for fish, aquatic invertebrates, amphibians, and algae across acute and chronic exposure durations.

Exposures to terrestrial organisms from the suspended soils and biosolids pathway was qualitatively evaluated. Due to its physical-chemical properties, EPA expects that CTC does not bioaccumulate in fish or sediments; and CTC could be mobile in soil and migrate to water or volatilize to air (Ref. 1).

EPA concluded in the 2020 Risk Evaluation for Carbon Tetrachloride that CTC poses a hazard to environmental aquatic receptors. Amphibians were the most sensitive taxa for acute and chronic exposures. Acute exposures of CTC to fish, freshwater aquatic invertebrates, and sediment invertebrates resulted in hazard values as low as 10.4 mg/L, 11.1 mg/L, and 2 mg/L, respectively. For chronic exposures, CTC has a hazard value for amphibians of 0.03 mg/L based on teratogenesis and lethality in frog embryos and larvae. Furthermore, chronic exposures of CTC to fish, freshwater aquatic invertebrates, and sediment invertebrates resulted in hazard values as low as 1.97 mg/L, 1.1 mg/L, and 0.2 mg/L, respectively. In algal studies, CTC has hazard values ranging from 0.07 to 23.59 mg/L (Ref. 1).

In addition to the environmental effects assessed in the 2020 Risk Evaluation for Carbon Tetrachloride, EPA recognizes that CTC is an ozone-depleting substance with a 100-year GWP of 1730 (Ref. 36). As a result of its ozone-depleting effects, the Montreal Protocol and Title VI of the CAA led to a phase-out of CTC manufacturing in the United States for most non-feedstock domestic uses. EPA did not evaluate the effect of this rule on ozone depletion. In addition, while the Agency understands that the use of CTC is expected to increase to produce low GWP HFOs, replacing many of the HFCs with higher GWP, EPA did not evaluate whether emissions of CTC would increase because of this rule and the overall

impact on the GWP emissions. In other words, EPA did not evaluate if the possible increase of CTC emissions with a GWP of 1730 would offset emissions of the HFCs replaced by the lower GWP HFOs manufactured with CTC.

C. Benefits of Carbon Tetrachloride for Various Uses

CTC is primarily used as a feedstock in the production of HCFCs, HFCs, and HFOs. Other conditions of use include regulated use as a process agent in the manufacture of petrochemicals-derived and agricultural products and other chlorinated compounds such as chlorinated paraffins, chlorinated rubber and others that may be used downstream in the formulation of solvents for adhesives, asphalt, paints and coatings. Requirements under the Montreal Protocol and Title VI of the CAA led to a phaseout of CTC production in the United States for most non-feedstock domestic uses in 1996 and the CPSC banned the use of CTC in consumer products (excluding unavoidable residues not exceeding 10 ppm atmospheric concentration) in 1970.

According to data collected in EPA's 2020 CDR, between 100 and 250 million pounds of CTC were produced or imported in the U.S. in CDR Reporting Year 2019. Eight sites were reported as domestic manufacturers of CTC in 2020 CDR. According to private databases, between 2017 and 2021 there were up to forty possible import/repackaging sites dealing with small volumes of CTC (Ref. 4). Most HFCs do not require CTC for their manufacture. However, CTC is used as a feedstock to produce HFC–245fa and HFC–365mfc. As stated in the 2020 Risk Evaluation for Carbon Tetrachloride, the production of HFC–245fa and HFC–365mfc accounted for 71% and 23%, respectively, of total CTC consumption in 2016 (Ref. 37). More recently, industry has expressed particular reliance on CTC for HFOs, such as HFO–1234yf, which are replacing some of the HFCs currently being used (Ref. 38).

CTC is a major feedstock for generation of lower-GWP alternative fluorocarbon products in the United States (Ref. 26). EPA anticipates that many entities currently using HFCs with higher global warming potential will transition to alternatives with lower global warming potential as requirements under the AIM Act take effect. The manufacturing of CTC is predicted to increase as a result of the transition from HFCs to lower-GWP HFOs that use CTC as a feedstock, such as HFO–1234yf used in motor vehicle AC and HFO–1234ze used in some types of aerosols and foam-blowing agents.

D. Reasonably Ascertainable Economic Consequences of the Proposed Rule

1. *Likely effect of the rule on the national economy, small business, technological innovation, the environment, and public health.*

With respect to the anticipated effects of this rule on the national economy, the economic impact of a regulation on the national economy generally only becomes measurable if the economic impact of the regulation reaches 0.25 percent to 0.5 percent of Gross Domestic Product (GDP) (Ref. 39). Given the current GDP of $23.17 trillion, this is equivalent to a cost of $58 billion to $116 billion which is considerably higher than the estimated cost of this rule. EPA considered the number of businesses, facilities, and workers that would be affected and the costs and benefits to those businesses and workers and society at large and did not find that there would be a measurable effect on the national economy. In addition, EPA considered the employment impacts of this proposal. For businesses subject to the WCPP, including the ECEL and DDCC requirements, and prescriptive workplace control requirements, EPA estimates the marginal cost of labor will increase. This may lead to small negative employment effects. Costs of prohibition are not quantified, and there may be employment effects proportionate to the extent to which CTC is still being used in the prohibited conditions of use.

EPA has determined that the rule will not have a significant impact on a substantial number of small entities. EPA estimates that the rule would affect at least four small entities, and that the cost would only exceed 1% of annual revenues for one of these small entities.

EPA expects that the proposed rule will not hinder technological innovation. Innovative applications of CTC in recent years have occurred in the production of HFOs. The regulatory options with requirements for certain conditions of use, including processing as a reactant in the production of refrigerants (such as HFOs), are not expected to inhibit innovation since they permit the continued use of CTC with appropriate controls. With respect to those conditions of use where prohibition is the requirement in the proposed regulatory action, EPA did not find evidence of ongoing use of CTC and thus there are no expected effects on innovation.

The effects of this rule on public health are estimated to be positive, due to the avoided incidence of adverse health effects attributable to CTC exposure, including adrenal and liver cancer.

2. *Costs and benefits of the proposed regulatory action and of the 1 or more primary alternative regulatory actions considered by the Administrator.*

EPA is proposing to prohibit the manufacturing, processing, distribution in commerce, and use of CTC for the following industrial and commercial uses: industrial and commercial use of CTC as a processing aid in the manufacture of petrochemicals-derived products; industrial and commercial use of CTC in manufacture of other basic chemicals (including chlorinated compounds used in solvents, adhesives, asphalt, and paints and coatings) except for use in the elimination of nitrogen trichloride in the production of chlorine and caustic soda; industrial and commercial use of CTC in metal recovery; industrial and commercial use of CTC as an additive; and industrial and commercial use of CTC in specialty uses by the DoD. EPA is also proposing to explicitly prohibit processing into formulation, mixture or reaction products in petrochemical-derived manufacturing, which is the upstream processing condition of use for one of the prohibited industrial and commercial uses. EPA did not estimate the costs of prohibiting CTC in certain conditions of use because reasonably available information indicates that those conditions of use have been phased out. There will therefore be unquantified costs only to the extent to which CTC is still being used in the prohibited conditions of use.

EPA is also proposing a WCPP, including an ECEL of 0.03 ppm in combination with DDCC requirements for: domestic manufacture; import; processing as a reactant in the production of HCFCs, HFCs, HFOs, and PCE; repackaging of CTC for use as a laboratory chemical; recycling; incorporation into a formulation, mixture or reaction product in agricultural products manufacturing and other basic organic and inorganic chemical manufacturing; industrial and commercial use of CTC as an industrial processing aid in the manufacture of agricultural products; industrial and commercial use in the elimination of NTC in the production of chlorine and caustic soda; and disposal. Industry would bear monitoring, PPE, and notification and recordkeeping burdens and costs associated with the ECEL. While companies may comply with the rule using engineering controls, when estimating costs and benefits the Economic Analysis assumes firms will provide PPE to employees when

monitoring thresholds are exceeded. EPA estimated monitoring results based on a log normal distribution estimated from the median and 95th percentile 8-hour time-weighted average exposure outcomes presented in the 2020 Risk Evaluation for Carbon Tetrachloride. PPE, recordkeeping, and monitoring costs after initial monitoring vary by industry and by projected initial monitoring result. Industry is expected to incur planning, recordkeeping and PPE costs associated with DDCC requirements. Industry would incur costs associated with developing an exposure control plan, performing inspections, documenting efforts to reduce exposure and occurrences of exposure, respiratory protection and dermal PPE, and training on the use of respiratory protection and dermal PPE.

EPA is also proposing to require dermal PPE in combination with comprehensive training for tasks pertaining to the use of CTC in a laboratory setting for each person potentially exposed to direct dermal contact with CTC in the work area through direct handling of the substance or from contact with surfaces that may be contaminated with CTC. In addition, EPA is proposing to require the use of fume hoods in workplace laboratory settings to codify existing good laboratory practices. EPA assumes that industry would not incur equipment costs associated with the fume hood requirement for laboratory settings because fume hoods are already considered to be good laboratory practices. Industry is expected to incur costs associated with the dermal PPE requirement.

Assuming the high-end estimates for number of affected entities and workers and compared to the baseline trend, the total cost of the proposed regulatory action is $18.8 million dollars annualized over 20-years at a 3% discount rate and $18.5 million dollars at a 7% discount rate. However, to improve these estimates, EPA is requesting comment on the types and costs of administrative and engineering controls that facilities could use to control exposures in the workplace. EPA is also requesting comment on the baseline use of each identified control. In addition, EPA is requesting comment regarding the effectiveness of any existing administrative and engineering in controlling and/or reducing exposures. Also, EPA requests comment on whether these administrative and engineering controls would increase or reduce annual costs as compared to the annualized costs per facility estimated in the proposed regulatory action. For example, Executive Summary table ES–4 of the Economic Analysis includes an average annual estimated cost per facility of the proposed regulatory action in the ''manufacturing'' condition of use of approximately $605,000 based on an estimate of 300 workers per site. The average annual estimated cost per facility for the ''processing as a reactant'' condition of use is approximately $232,000 based on an estimate of 113 workers per site. These estimated costs, which are annualized over a 20-year period at a 3% discount rate, are composed of facility- and employee-based expenditures based largely on monitoring requirements and use of PPE. It is possible these ongoing costs could be affected by upfront expenditures on engineering and administrative controls, and EPA seeks comment on this topic.

Under the primary alternative option, EPA would require prescriptive controls of a Supplied Air Respirator (SAR) at either APF 25 or APF 50. A respirator with an APF of 50 would be required for the following conditions of use: domestic manufacture; processing as a reactant in the production of HCFCs, HFCs, HFOs, and PCE; incorporation into formulation, mixture, or reaction products for agricultural products manufacturing and other basic organic and inorganic chemical manufacturing; and industrial and commercial use in the elimination of nitrogen trichloride in the production of chlorine and caustic soda. A respirator with an APF of 25 would be required for the following conditions of use: import; repackaging of CTC for use as a laboratory chemical; recycling; industrial and commercial use of CTC as an industrial processing aid in the manufacture of agricultural products; and disposal.

A WCPP, including an ECEL and DDCC requirements, would be required for the following conditions of use in the primary alternative regulatory action: processing of CTC for incorporation into formulation, mixture or reaction products in petrochemical-derived manufacturing; industrial and commercial use of CTC as an industrial processing aid in the manufacture of petrochemicals-derived products; industrial and commercial use of CTC in the manufacture of other basic chemicals (including manufacturing of chlorinated compounds used in solvents, adhesives, asphalt, and paints and coatings) except for use in the elimination of nitrogen trichloride in the production of chlorine and caustic soda); industrial and commercial use of CTC in metal recovery; industrial and commercial use of CTC as an additive; and in industrial and commercial use of CTC in specialty uses by the DoD.

For the industrial and commercial use of CTC as a laboratory chemical, the primary alternative regulatory action considered by EPA would require the implementation of DDCC requirements in workplace laboratory settings and require the use of fume hoods in workplace laboratory settings to codify existing good laboratory practices.

Assuming the high-end estimates for number of affected entities and workers, the total cost of the primary alternative regulatory action is $2.3 million dollars annualized over 20-years at both a 3% and 7% discount rate. Costs are higher for the proposed action compared to the primary alternative action. Under the WCPP, facilities will bear monitoring and recordkeeping costs in addition to respirators and dermal PPE. However, facilities only need to provide a respirator to employees with a sufficiently high projected monitoring outcome. In the primary alternative action, facilities will not incur monitoring or WCPP recordkeeping costs, but will need to provide a respirator to all employees.

EPA's Economic Analysis for the rule quantified the benefits from avoided cases of adrenal and liver cancers. Cancer benefits are calculated based on inhalation exposure estimates from the Final Risk Evaluation. Therefore, benefits are only calculated for the ECEL, which could require respiratory protection, and prescriptive workplace control options. The estimated monetized benefit of the proposed regulatory action ranges from approximately $0.09 to $0.1 million per year annualized over 20-years at a 3% discount rate and from $0.04 to $0.07 million per year at a 7% discount rate. The estimated monetized benefit of the primary alternative regulatory action is $.09 to $.1 million per year annualized over 20-years at a 3% discount rate and $.04 to $.07 million per year at a 7% discount rate. There are also unquantified benefits due to other avoided adverse health effects associated with CTC exposure, including liver, reproductive, renal, developmental, and CNS toxicity end points.

Net benefits were calculated by subtracting the costs from the quantified benefits. Based on the high-end estimates for number of affected entities and workers, the net benefit of the proposed regulatory action is −$18.7 million dollars annualized over 20-years at a 3% discount rate and ranges from −$18.5 to −$18.4 million dollars at a 7% discount rate. Based on the high-end estimates for number of affected entities

and workers, the net benefit of the primary alternative option ranges from −$2.3 to −$2.2 million dollars annualized over 20-years at a 3% discount rate and is −$2.3 million dollars at a 7% discount rate. The range in the net benefits estimate at each discount rate reflects uncertainty in cancer risk reductions given the shorter exposure durations being considered and the life stage at which the changes in exposure occur.

A sensitivity analysis was conducted based on the low estimates of the number of affected entities in the 2020 Risk Evaluation for Carbon Tetrachloride. Based on these estimates, the total cost of the proposed regulatory action is $2 million dollars annualized over 20-years at both a 3% and a 7% discount rate. The total cost of the primary alternative option is $0.3 million dollars annualized over 20-years at both a 3% and 7% discount rate. The total benefit of the proposed regulatory action is estimated to range from $.01 million dollars to $.02 million dollars annualized over 20-years at a 3% period discount rate, and ranges from $.005 million dollars to $.009 million dollars annualized over 20-years at a 7 percent discount rate. The total benefit of the primary alternative regulatory action is estimated to range from $.01 million dollars to $.02 million dollars annualized over 20-years at a 3% period discount rate and from $.005 million dollars to $.009 million dollars annualized over 20-years at a 7 percent discount rate. The net benefit of the proposed regulatory action under this sensitivity analysis is −$2 million dollars annualized over 20-years at both a 3% and a 7% discount rate. The net benefit of the primary alternative option is −$0.3 million dollars annualized over 20-years at both a 3% and 7% discount rate.

3. *Cost effectiveness of the proposed regulatory action and of the 1 or more primary alternative regulatory actions considered by the Administrator.*

For the COUs that EPA determined drive the unreasonable risk of injury to health from CTC, both the proposed regulatory action and the primary alternative action reduce unreasonable risk to the extent necessary such that unreasonable risk is no longer presented. In achieving this result, however, the estimated costs of the proposed regulatory action and the primary alternative regulatory action differ as described in Units I.E and VI.D.2. The costs of achieving the desired outcome via the proposed regulatory action or the primary alternative regulatory action can be compared to evaluate cost-effectiveness. The measure of cost-effectiveness considered is the annualized cost of each regulatory option per microrisk reduction in cancer cases estimated to occur as a result of each regulatory option, where a microrisk refers to a one in one million reduction in the risk of a cancer case. The cost-effectiveness of the proposed regulatory action ranges from $698 to $1,024 dollars per microrisk reduction at a 3% discount rate, and from $687 to $1,008 dollars per microrisk reduction at a 7% discount rate. The cost-effectiveness of the primary alternative regulatory action ranges from $83 to $122 dollars per microrisk reduction at both a 3% and 7% discount rate. Since the regulated universe in both the proposed and primary alternative regulatory actions is identical, the cost-effectiveness of the regulatory actions varies based on the individual requirements comprising each proposed regulatory action. Section 3.9 of the Economic Analysis provides a summary of the unquantified costs and uncertainties in the cost estimates that may impact the respective cost-effectiveness of each proposed regulatory action.

4. *Request for comments regarding the reasonably ascertainable economic consequences of the proposed rule.*

EPA requests comment on its analyses of the number of affected firms, facilities, and occupational users and non-users. EPA requests comment on whether CTC is still being used in any of the conditions of use EPA is proposing to prohibit. Finally, EPA requests comment on the costs firms would incur as a result of the proposed rule, as well as information that the Agency could use to improve these estimates.

VII. TSCA Section 9 Analysis and Section 26 Considerations

A. TSCA Section 9(a) Analysis

TSCA section 9(a) provides that, if the Administrator determines, in the Administrator's discretion, that an unreasonable risk may be prevented or reduced to a sufficient extent by an action taken under a Federal law not administered by EPA, the Administrator must submit a report to the agency administering that other law that describes the risk and the activities that present such risk. TSCA section 9(a) describes additional procedures and requirements to be followed by EPA and the other Federal agency following submission of any such report. As discussed in this unit, for this proposed rule, the Administrator proposes to exercise the Administrator's discretion not to determine that unreasonable risk from CTC under the conditions of use may be prevented or reduced to a sufficient extent by an action taken under a Federal law not administered by EPA.

In addition, TSCA section 9(d) instructs the Administrator to consult and coordinate TSCA activities with other Federal agencies for the purpose of achieving the maximum enforcement of TSCA while imposing the least burden of duplicative requirements. EPA routinely consults with other relevant Federal agencies, and for this proposed rule, EPA has and continues to coordinate with appropriate Federal executive departments and agencies, including OSHA and NIOSH, to, among other things, identify their respective authorities, jurisdictions, and existing laws with regard to risk evaluation and risk management of CTC, which are summarized in this unit, and described in Units II.B. and C. The following information relating to TSCA section 9(a) analysis reflects consultation and coordination efforts with OSHA and NIOSH.

OSHA requires that employers provide safe and healthful working conditions by setting and enforcing standards and by providing training, outreach, education, and assistance. Gaps exist between OSHA's authority to set workplace standards under the OSH Act and EPA's obligations under TSCA section 6 to eliminate unreasonable risk presented by chemical substances under the conditions of use. Health standards issued under section 6(b)(5) of the OSH Act must reduce significant risk only ''to the extent feasible.'' 29 U.S.C. 655(b)(5). As noted previously, to set PELs for chemical exposure, OSHA must first establish that the new standards are economically and technologically feasible (79 FR 61384, Oct. 10, 2014). OSHA also does not have direct authority over State and local employees, and it has no authority over the working conditions of State and local employees in States that have no OSHA-approved State Plan under 29 U.S.C. 667.

The 2016 amendments to TSCA altered both the manner of identifying unreasonable risk and EPA's authority to address unreasonable risk, such that risk management is increasingly distinct from provisions of the OSH Act. EPA risk evaluations under TSCA section 6(b) must determine, without consideration of costs or other nonrisk factors, whether an unreasonable risk of injury to health or the environment is presented, including an unreasonable risk to a relevant potentially exposed or susceptible subpopulation. In a TSCA section 6 risk management rule,

following such an unreasonable risk determination, EPA must apply risk management requirements to the extent necessary so that the chemical no longer presents unreasonable risk and only consider costs and benefits of the regulatory action to the extent practicable, 15 U.S.C. 2605(a), (c)(2). EPA's substantive burden under TSCA section 6(a) is to apply requirements to the extent necessary so that the chemical substance no longer presents the unreasonable risk that was determined in accordance with TSCA section 6(b)(4)(A) without consideration of cost or other nonrisk factors.

EPA therefore concludes that TSCA is the most appropriate regulatory authority able to prevent or reduce unreasonable risk of CTC to a sufficient extent across the conditions of use, exposures, and populations of concern. This unreasonable risk can be addressed in a more coordinated, efficient, and effective manner under TSCA than under different laws implemented by different agencies. Moreover, the timeframe and any exposure reduction as a result of updating OSHA regulations cannot be estimated, while TSCA imposes a much more accelerated statutory timeframe for proposing and finalizing requirements to address unreasonable risk. Further, as discussed in detail in Unit II.C., there are key differences between the finding requirements of TSCA and those of the OSH Act. For these reasons, in the Administrator's discretion, the Administrator has analyzed this issue and does not determine that unreasonable risk presented by CTC may be prevented or reduced to a sufficient extent by an action taken under a Federal law not administered by EPA.

B. TSCA Section 9(b) Analysis

If EPA determines that actions under other Federal laws administered in whole or in part by EPA could eliminate or sufficiently reduce a risk to health or the environment, TSCA section 9(b) instructs EPA to use these other authorities to protect against that risk unless the Administrator determines, in the Administrator's discretion, that it is in the public interest to protect against such risk under TSCA. In making such a public interest finding, TSCA section 9(b)(2) states: ''the Administrator shall consider, based on information reasonably available to the Administrator, all relevant aspects of the risk . . . and a comparison of the estimated costs and efficiencies of the action to be taken under this title and an action to be taken under such other law to protect against such risk.''

Although several EPA statutes have been used to limit CTC exposure (Ref. 6), regulations under those EPA statutes largely regulate releases to the environment, rather than the occupational exposures that drive EPA's unreasonable risk determination for CTC in its 2020 risk evaluation under TSCA. While these limits on releases to the environment may be protective in the context of their respective statutory authorities, regulation under TSCA is also appropriate for occupational exposures and in some cases can provide upstream protections that would prevent the need for release restrictions required by other EPA statutes (*e.g.,* RCRA, CAA, CWA).

The primary exposures and unreasonable risk to workers and occupational non-users would be addressed by EPA's proposed prohibitions and restrictions under TSCA section 6(a). In contrast, the timeframe and any exposure reduction as a result of updating regulations for CTC under RCRA, CAA, or CWA, for example, cannot be estimated, nor would they address the direct human exposure to workers and occupational non-users from the conditions of use evaluated in the 2020 Risk Evaluation for Carbon Tetrachloride. The Agency recognizes that the CAA Amendments of 1990 have reduced emissions from CTC production and use. However, of the laws administered by EPA, only TSCA provides EPA the authority to regulate the manufacture (including import), processing, distribution in commerce, commercial use, and disposal of CTC as necessary to address the unreasonable risk identified under TSCA from CTC under its conditions of use.

For these reasons, the Administrator does not determine that unreasonable risk from CTC under its conditions of use, as evaluated in the 2020 Risk Evaluation for Carbon Tetrachloride, could be eliminated or reduced to a sufficient extent by actions taken under other Federal laws administered in whole or in part by EPA.

C. TSCA Section 14 Requirements

EPA is also providing notice to manufacturers, processors, and other interested parties about potential impacts to confidential business information that may occur if this rule is finalized as proposed. Under TSCA section 14(b)(4), if EPA promulgates a rule pursuant to TSCA section 6(a) that establishes a ban or phase-out of a chemical substance, the protection from disclosure of any confidential business information regarding that chemical substance and submitted pursuant to TSCA will be ''presumed to no longer apply,'' subject to the limitations identified in TSCA section 14(b)(4)(B)(i) through (iii). If this rule is finalized as proposed, then pursuant to TSCA section 14(b)(4)(B)(iii), the presumption against protection from disclosure would apply only to information about the specific conditions of use that this rule would prohibit. Manufacturers or processors seeking to protect such information would be able to submit a request for nondisclosure as provided by TSCA sections 14(b)(4)(C) and 14(g)(1)(E). Any request for nondisclosure would need to be submitted within 30 days after receipt of notice from EPA under TSCA section 14(g)(2)(A). EPA anticipates providing such notice via the Central Data Exchange (CDX).

D. TSCA Section 26 Considerations

In accordance with TSCA section 26(h), EPA has used scientific information, technical procedures, measures, methods, protocols, methodologies, and models consistent with the best available science. As in the case of the unreasonable risk determination, risk management decisions for this proposed rule, as discussed in Units III.B.3. and V., were based on a risk evaluation that was subject to public comment and independent, expert peer review, and was developed in a manner consistent with the best available science and based on the weight of the scientific evidence as required by TSCA sections 26(h) and (i) and 40 CFR 702.43 and 702.45. In particular, the ECEL value incorporated into the WCPP is derived from the analysis in the 2020 Risk Evaluation for Carbon Tetrachloride; it likewise represents decisions based on the best available science and the weight of the scientific evidence (Ref. 9). The ECEL value of 0.03 ppm as an 8-hour TWA is based on the point of departure for liver cancer identified in the 2020 Risk Evaluation for Carbon Tetrachloride, which is the concentration at which an adult human would be unlikely to suffer adverse effects if exposed for a working lifetime, including susceptible subpopulations.

The extent to which the various information, procedures, measures, methods, protocols, methodologies, or models, as applicable, used in EPA's decisions have been subject to independent verification or peer review is adequate to justify their use, collectively, in the record for this rule. Additional information on the peer review and public comment process, such as the peer review plan, the peer review report, and the Agency's

response to public comments, can be found at EPA's risk evaluation docket (Docket ID No. EPA–HQ–OPPT–2019–0499).

VIII. Requests for Comment

While EPA is requesting public comment on all aspects of this proposal, the Agency is soliciting feedback from the public on specific issues throughout this proposed rule. This unit summarizes those specific requests for comments.

1. EPA is requesting public comment on the proposed regulatory action and alternative regulatory action.

2. EPA is requesting public comment regarding the need for exemptions from the rule (and under what specific circumstances) pursuant to the provisions of TSCA section 6(g).

3. EPA is requesting comment on, in lieu of proposing a 6(g) exemption in a separate regulatory action, whether any elements of the primary alternative regulatory action should be considered in combination with elements of the proposed regulatory action as EPA develops the final regulatory action.

4. EPA requests public comments regarding the number of small businesses subject to the rule, including conditions of use for which EPA did not identify any affected small businesses and the potential impacts of the rule on these small businesses.

5. EPA is requesting comment on the proposed rule's rationale.

6. EPA is soliciting comment regarding an ECEL action level that is two-thirds the ECEL and any associated provisions related to the ECEL action level when the ECEL is significantly lower than the OSHA PEL.

7. EPA is requesting comment regarding the amount of time, if any, it would take the regulated community to develop a method to measure at or below the ECEL over an entire work shift. EPA is interested in what levels of detection are possible over an entire work shift based on existing monitoring methods, justification for the timeframe of the specific steps needed to develop a more sensitive monitoring method, cost associated with a more sensitive monitoring method, and any additional detailed information related to establishing a monitoring program to reliably measure CTC at or below the ECEL.

8. EPA requests comment on whether EPA should promulgate definitions for the conditions of use covered by the 2020 Risk Evaluation for Carbon Tetrachloride, and, if so, whether the descriptions in Unit III.B.1. are consistent with the conditions of use evaluated in the 2020 Risk Evaluation for Carbon Tetrachloride and whether they provide a sufficient level of detail such that they would improve the clarity and readability of the regulation if promulgated.

9. EPA is requesting comment on whether a shorter timeframe for prohibition of the industrial and commercial use of CTC in DoD specialty uses should be considered.

10. As a result of the AIM Act/Kigali Amendment and to improve the economic analysis, EPA is requesting comment on how much CTC production and use will increase as a result of the move to HFOs; how quickly the decline in HFCs will lead to increased production of CTC (for HFOs); how much industry currently relies on CTC for HFOs; and whether alternatives to CTC for HFOs could be developed. EPA is also requesting comment on how possible increases in CTC use for larger HFO production would affect operations. Would facilities hire more workers, shift current workers to different tasks, build more sites, or run existing at higher capacity? Also, EPA is requesting comment on whether the Agency should prohibit the use of CTC in the production of HCFCs, HFCs, and PCE instead of requiring an WCPP with an ECEL and DDCC requirements or whether the Agency should require prescriptive controls, including respirators and dermal PPE, for these uses.

11. EPA is requesting comment on whether CTC is still being used in any of the conditions of use EPA is proposing to prohibit, if additional time is needed, for example, if CTC is still being used and additional time is needed to cease use, and on whether the effective dates should be staggered by lifecycle.

12. EPA is requesting comment on whether the Agency should require a WCPP or prescriptive controls, including respirators and dermal PPE, for any of the conditions of use EPA is proposing to prohibit.

13. EPA is requesting comment on the proposed implementation timeframe for the WCPP requirements; EPA proposes that they would take effect 180 days after publication of the final rule, at which point entities would be required to conduct initial exposure monitoring and develop an exposure control plan.

14. EPA is soliciting comments regarding when and how owners and operators could conduct initial exposure monitoring to ensure that it is representative of all tasks likely to be conducted by potentially exposed persons.

15. EPA is soliciting comments regarding the proposed requirement for recurring 5-year initial exposure monitoring, which differs from OSHA's existing monitoring requirements under 29 CFR 1910.1052.

16. EPA requests comment on the timeframes for periodic and additional exposure monitoring outlined in Unit IV.A.1.b.ii.

17. EPA is requesting public comments on the proposed conditions for discontinuation of periodic exposure monitoring for the CTC ECEL as part of implementation of the WCPP.

18. EPA requests comment on the use of area source monitoring instead of personal breathing zone as a representative sample of exposures when monitoring for the ECEL.

19. EPA requests comment on available methods to measure the effectiveness of controls in preventing or reducing the potential for direct dermal contact to CTC.

20. EPA is requesting comment on available monitoring methods, such as charcoal patch testing, as feasible or effective methods to measure potential direct dermal contact with CTC.

21. EPA requests comment on how the proposed prohibition of increased releases of CTC to outdoor air associated with the implementation of the WCPP/ECEL may impact the availability, feasibility, or cost of engineering controls as a means to reduce workplace exposures to or below the proposed ECEL.

22. EPA is soliciting comment on requiring warning signs to demarcate regulated areas, such as the requirements found in OSHA's General Industry Standard for Beryllium.

23. EPA is soliciting comment on whether any of the requirements for the exposure control strategies, including EPA's proposed prohibition of rotating work schedules for potentially exposed persons, should be modified and considered in the final rule.

24. EPA requests comment on the requirements proposed for appropriate PPE selection, the effectiveness of PPE in preventing direct dermal contact with CTC in the workplace, and general absorption and permeation effects to PPE from direct dermal exposure.

25. EPA requests comment on the impact on effectiveness of rinsing and reusing certain types of PPE, either gloves or protective clothing and gear.

26. EPA is requesting comment on whether there should be a requirement to replace cartridges or canisters of respirators after a certain number of hours, such as the requirements found in OSHA's General Industry Standard for 1,3-Butadiene (29 CFR 1910.1051(h)), or a requirement for a minimum service life of non-powered

air-purifying respirators such as the requirements found in OSHA's General Industry Standard for Benzene (29 CFR 1910.1028(g)(3)(D)).

27. EPA is soliciting comment on whether 9 months is a reasonable timeframe to implement a respiratory protection program or if additional time is needed.

28. EPA requests comment on the degree to which additional guidance related to use of dermal PPE might be appropriate.

29. EPA is requesting comment on how owners and operators can engage with potentially exposed persons on the development and implementation of an exposure control plan and PPE program.

30. EPA requests comment on the 15-day timeframe for notification of potentially exposed persons of monitoring results and the possibility for a shorter timeframe, such as 5 days.

31. EPA will consider compliance timeframes that may be substantially longer or shorter than the proposed timeframes for owners or operators to conduct initial exposure monitoring for the ECEL, implement the DDCC requirements, and any procedural adjustments needed to comply with the requirements outlined as part of the WCPP, and is requesting comment on the feasibility of the proposed compliance timeframes, as well as longer or shorter timeframes.

32. EPA is soliciting comment regarding the exposure control strategies required under the WCPP and documented in the exposure control plan, including the implementation of additional engineering controls, increase frequency of exposure monitoring, implementation of respiratory and dermal protection and notification of monitoring, and associated costs with the WCPP exposure control strategies implementation.

33. EPA is requesting comment on the types and costs of administrative and engineering controls that potentially regulated facilities use or could potentially use to control exposures in the workplace. EPA is also requesting comment on the baseline use of each identified control. In addition, EPA is requesting comment regarding the effectiveness of any existing administrative and engineering in controlling and/or reducing exposures. EPA requests comment on whether any engineering and administrative controls known by potentially affected sites would have higher or lower per-facility costs than the annualized per-facility costs in the proposed regulatory action. For example, Executive Summary table ES–4 of the Economic Analysis shows that, annualized over 20 years at a 3% discount rate, the per-facility cost of the proposed regulatory action in the Manufacturing condition of use would be $604,787 (this condition of use has an average of 300 workers per site), and the per-facility cost for the Processing as a reactant condition of use would be $231,954 (this condition of use has an average of 113 workers per site).

34. EPA is soliciting comment on non-prescriptive DDCC requirements as compared to the prescriptive workplace controls of dermal PPE EPA is proposing in Unit IV.A.2.

35. EPA requests comment on whether it should incorporate in the rule best practices to ensure proper and adequate performance of laboratory fume hoods, such as those identified in OSHA's 29 CFR 1910.1450, Appendix A National Research Council Recommendations Concerning Chemical Hygiene in Laboratory.

36. EPA is requesting comment on whether it should incorporate in the rule specific requirements for laboratory hoods, such as design characteristics and/or a range of face velocities, or some other type of performance standard.

37. EPA is proposing to require that each owner or operator of a workplace engaged in the industrial and commercial of CTC as a laboratory chemical ensure fume hoods are in use and functioning properly and that dermal PPE is provided to all potentially exposed persons with direct dermal contact with CTC within 6 months after publication of the final rule. While EPA is proposing requirements within 6 months of publication of the final rule, the Agency will consider compliance timeframes that may be substantially longer or shorter than the proposed timeframe and is soliciting comments on the feasibility of the proposed compliance timeframes, as well as longer or shorter timeframes.

38. EPA is proposing that the prohibition of certain industrial and commercial uses described in Unit IV.A.3 would occur 180 days after the publication date of the final rule for manufacturers, processors, distributors, and industrial and commercial uses. EPA requests comment on whether CTC is still used in any of these conditions of use and whether additional time is needed or if prohibitions should be staggered by lifecycle, for example, for products affected by proposed restrictions to clear the channels of trade.

39. EPA requests comments on the appropriateness of identified compliance timeframes for recordkeeping and downstream notification requirements described in Unit IV.A.4.

40. Primary alternative regulatory action: EPA requests comment on the primary alternative regulatory action and whether any elements of the primary alternative regulatory action should be considered in combination with elements of the proposed regulatory action as EPA develops the final regulatory action. Examples of possible combinations in approaches may include, but are not limited to: adoption of the primary alternative regulatory action for certain conditions of use and the proposed regulatory action for other conditions of use; allowing regulated entities to opt out of requirements described in the proposed regulatory action by complying with requirements described in the primary alternative regulatory action; or allowing regulated entities to opt out of requirements described in the primary alternative regulatory action by complying with requirements described in the proposed regulatory action.

41. Primary alternative regulatory action: EPA requests comment on engineering controls, administrative controls, PPE, and any combinations of these controls that reduce inhalation exposures to at or below the ECEL or prevent dermal exposure from direct handling of CTC or from contact with surfaces that may be contaminated with CTC and any associated cost related to these controls.

42. Primary alternative regulatory action: EPA is soliciting comments on information to support the consideration of other APFs that are also protective of the highest possible lengths of exposures and on whether or how monitoring should be considered for the alternative regulatory action.

43. Primary alternative regulatory action: EPA is requesting comment on whether any of the uses the Agency is proposing to prohibit are ongoing and if EPA should consider a WCPP for those conditions of use of CTC.

44. Primary alternative regulatory action: EPA is requesting comment on non-prescriptive DDCC requirements as compared to the prescriptive workplace controls of dermal PPE EPA is proposing in Unit IV.A.2.

45. The Agency is requesting comment on the availability of technically and economically feasible alternatives that are comparably beneficial to health or the environment for CTC.

46. EPA is requesting comment on the types and costs of technologies firms would adopt to comply with the prohibition on increased releases of CTC

to outdoor air associated with engineering controls used in the implementation of the WCPP/ECEL.

47. EPA requests comment on whether and to what extent these technologies would reduce CTC emissions at facilities that adopt them to or below emissions levels that existed prior to implementation of the WCPP/ECEL.

48. EPA is seeking comment on its conclusions that its proposed action in combination with the emissions standards resulting from existing NESHAP requirements would reduce risk sufficiently to the general population and fenceline communities, and whether, consistent with TSCA section 9(b), any other statutory authorities administered by EPA should be used to take additional regulatory action identified as necessary to protect against such risk.

49. EPA is soliciting comment on whether EPA should require ambient air monitoring at fenceline locations or facility emissions source monitoring to demonstrate compliance with the proposed requirement that engineering controls that are implemented as part of a WCPP/ECEL under this rule would not result in the ventilation of more CTC outside.

50. EPA is soliciting comment on the need for and associated costs of ambient air monitoring at fenceline locations or facility emissions source monitoring, as well as information on the frequency and nature of air monitoring EPA should consider including as requirements in the final rule (such as a detection limit for CTC).

51. EPA is soliciting comment on whether, if EPA does not finalize the proposed prohibition on increased releases of CTC to ambient air outside of the workplace associated with implementation of the WCPP/ECEL, EPA should require monitoring to alert EPA to any increased emissions to ambient air associated with WCPP/ECEL implementation so that the Agency may take appropriate action.

IX. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Risk Evaluation for Carbon Tetrachloride. November 2020. (EPA–HQ–OPPT–2019–0499–0047).
2. EPA. Correction of Dermal Acute Hazard and Risk Values in the Final Risk Evaluation for Carbon Tetrachloride. August 4, 2022. (EPA–HQ–OPPT–2019–0499). *https://www.regulations.gov/document/EPA-HQ-OPPT-2019-0499-0064.*
3. EPA. Carbon Tetrachloride; Revision to Toxic Substances Control Act (TSCA) Risk Determination. December 2022. (EPA–HQ–OPPPT–2016–0733–0120).
4. EPA. Economic Analysis of the Proposed Regulation of Carbon Tetrachloride. June 2023.
5. EPA. Email correspondence with Syngenta on Carbon Tetrachloride Alternatives. October 2021.
6. EPA. Regulatory Actions Pertaining to Carbon Tetrachloride. 2022.
7. Department of Labor, Occupational Safety and Health Administration. Permissible Exposure Limits—Annotated Tables. *https://www.osha.gov/annotated-pels* (accessed March 2023).
8. National Institute for Occupational Safety and Health. Hierarchy of Controls. *https://www.cdc.gov/niosh/topics/hierarchy/default.html* (accessed March 2023).
9. EPA. Existing Chemical Exposure Limit (ECEL) for Occupational Use of Carbon Tetrachloride. February 2021. (EPA–HQ–OPPT–2020–0592–0007). *https://www.regulations.gov/document/EPA-HQ-OPPT-2020-0592-0007.*
10. Halogenated Solvents Industry Alliance, Inc. (HSIA). Comments submitted to EPA on the Draft Risk Assessment for Carbon Tetrachloride. January 24, 2020.
11. American Conference of Governmental Industrial Hygienists (ACGIH). Carbon Tetrachloride. 2001.
12. National Institute for Occupational Safety and Health (NIOSH). Criteria for a Recommended Standard: Occupational Exposure to Carbon Tetrachloride. *1975.*
13. EPA. EPA Announces Path Forward for TSCA Chemical Risk Evaluations. June 30, 2021. *https://www.epa.gov/newsreleases/epa-announces-path-forward-tsca-chemical-risk-evaluations.*
14. EPA. Science Advisory Committee on Chemicals Meeting Minutes and Final Report ''Draft TSCA Screening Level Approach for Assessing Ambient Air and Water Exposures to Fenceline Communities Version 1.0.'' No. 2022–01. May 2022. (EPA–HQ–OPPT–2021–0415–0095). *https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0415-0095.*
15. EPA. Federalism Consultation on Forthcoming Proposed Rulemaking for Carbon Tetrachloride under TSCA Section 6(a). February 17, 2021.
16. EPA. Tribal Consultations on Forthcoming Proposed Rulemaking for Carbon Tetrachloride. January 6, 2021 and January 12, 2021.
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X. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is a ''significant regulatory'' action as defined in Executive Order 12866 (58 FR 51735, October 4, 1993), as amended by Executive Order 14094 (88 FR 21879, April 11, 2023). Accordingly, EPA submitted this action to the OMB for Executive Order 12866 review. Documentation of any changes made in response to the Executive Order 12866 review is available in the docket.

EPA prepared an economic analysis of the potential costs and benefits associated with this action, which is also available in the docket and summarized in Units I.E. and VI.D. (Ref. 4).

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted to OMB for review and comment under the PRA, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document that EPA prepared has been assigned EPA ICR No. 2744.01 (Ref. 40). You can find a copy of the ICR in the docket, and it is briefly summarized here.

The information collection requirements contained in the proposed rule include:

- The preparation and retention of an exposure control plan in accordance with proposed 40 CFR 751.707(d);
- The preparation and delivery of exposure monitoring result notifications to exposed persons in accordance with proposed 40 CFR 751.707(b)(3)(v);
- Third-party downstream notifications in accordance with proposed 40 CFR 751.711 from companies that ship CTC to companies downstream in the supply chain through the SDS to communicate the proposed prohibitions; and
- The preparation and retention of related records in accordance with proposed 40 CFR 751.713, including ordinary business records, such as invoices and bills-of-lading related to the continued distribution of CTC in commerce, as well as records documenting compliance with the proposed workplace chemical protection program requirements and proposed restrictions on the laboratory use of CTC.

Respondents/affected entities: Manufacturers (including importers), processors, distributors, and industrial and commercial users of carbon tetrachloride. See Unit I.A. and the ICR for more details.

Respondent's obligation to respond: Mandatory (15 U.S.C. 2605).

Estimated number of respondents: 71.

Frequency of response: On occasion.

Total estimated burden: 85,676 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $13,172,979 (per year), includes $8,516,686 annualized capital or operation and maintenance costs.

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. After display in the **Federal Register** when approved, the OMB control numbers for EPA regulations in 40 CFR are listed in 40 CFR part 9 and displayed on the form and instructions or collection portal, as applicable.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this proposed rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at *https://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. OMB must receive comments no later than August 28, 2023. EPA will respond to any ICR-related comments in the final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601, *et seq.* The small entities subject to the requirements of this action are small businesses that manufacture/import, process, or distribute the chemicals subject to this proposed rule. The Agency identified four small firms in the small entity analysis that are potentially subject to the proposed rule. It is estimated that three of the four small companies would incur a rule cost-to-company revenue impact ratio of less than one percent, and one company would experience an impact of 2.3 percent. The company estimated to experience a 2.3 percent rule cost-to-revenue impact would potentially be subject to the proposed rule under the disposal condition of use, which would require a WCPP under the proposed regulatory action or prescriptive controls (PPE) under the primary alternative regulatory action. Of the other three companies, one falls under the disposal COU, one under the manufacturing/import COU, and one could not be determined based on available information. To avoid understating impacts to small entities, EPA used the highest per-facility cost presented in the EA ($604,787). Per-facility costs were estimated by dividing the total costs by the number of affected facilities for each use. Details of this analysis are in the Economic Analysis (Ref. 4), which is in the docket for this action. Based on the low number of affected small entities and the low impact, EPA does not expect this action

to have a significant impact on a substantial number of small entities. EPA requests public comments regarding on the number of small businesses subject to the rule, including use categories for which EPA did not identify any affected small businesses, and on the potential impacts of the rule on these small businesses.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and would not significantly or uniquely affect small governments. The action would affect entities that use CTC; it is not expected to affect State, local or Tribal governments because the use of carbon tetrachloride by government entities is minimal. The total quantified annualized social cost for the proposed rule under the proposed option is $18,804,794 (at 3% discount rate) and $18,503,723 (at 7% discount rate), which does not exceed the unfunded mandate threshold of $100 million.

E. Executive Order 13132: Federalism

EPA has concluded that this action has federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because regulation under TSCA section 6(a) may preempt State law. As set forth in TSCA section 18(a)(1)(B), the issuance of rules under TSCA section 6(a) to address the unreasonable risk presented by a chemical substance has the potential to trigger preemption of laws, criminal penalties, or administrative action by a State or political subdivison of a State that are: (1) Applicable to the same chemical substance as the rule under TSCA section 6(a); and (2) designed to prohibit or otherwise restrict the manufacture, processing, or distribution in commerce or use of that same chemical. TSCA section 18(c)(3) applies that preemption only to the ''hazards, exposures, risks, and uses or conditions of use'' of such chemical included in the final TSCA section 6(a) rule.

EPA provides the following preliminary federalism summary impact statement. The Agency consulted with State and local officials early in the process of developing the proposed action to permit them to have meaningful and timely input into its development. This included a consultation meeting on December 17, 2020. EPA invited the following national organizations representing State and local elected officials to this meeting: National Governors Association; National Conference of State Legislatures, Council of State Governments, National League of Cities, U.S. Conference of Mayors, National Association of Counties, International City/County Management Association, National Association of Towns and Townships, County Executives of America, and Environmental Council of States. A summary of the meeting with these organizations, including the views that they expressed, is available in the docket (Ref. 18). EPA provided an opportunity for these organizations to provide follow-up comments in writing but did not receive any such comments.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rulemaking would not have substantial direct effects on Tribal governments because CTC is not manufactured, processed, or distributed in commerce by Tribes and would not impose substantial direct compliance costs on Tribal governments. Thus, Executive Order 13175 does not apply to this action. EPA nevertheless consulted with Tribal officials during the development of this action, consistent with the EPA Policy on Consultation and Coordination with Indian Tribes. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, EPA consulted with Tribal officials during the development of this action. The Agency held a Tribal consultation from December 7, 2020, through March 12, 2021, with meetings held on January 6 and 12, 2021. Tribal officials were given the opportunity to meaningfully interact with EPA risk managers concerning the current status of risk management. During the consultation, EPA discussed risk management under TSCA section 6(a), findings from the 2020 Risk Evaluation for Carbon Tetrachloride, types of information to inform risk management, principles for transparency during risk management, and types of information EPA is seeking from Tribes (Ref. 16). EPA briefed Tribal officials on the Agency's risk management considerations and Tribal officials raised no related issues or concerns to EPA during or in follow-up to those meetings (Ref. 16). Tribal members were encouraged to provide additional comments after the teleconferences.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) directs Federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in Federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is not subject to Executive Order 13045 because it is not a significant regulatory action under section 3(f)(1) of Executive Order 12866, and because EPA does not believe that the environmental health or safety risk addressed by this action will have a disproportionate effect on children. This action's health and risk assessments and impacts on both children and adults from occupational use from inhalation and dermal exposures are described in Units III.A.3, III.B.3, VI.A., and the 2020 Risk Evaluation for Carbon Tetrachloride (Ref. 1). While the Agency found risks to children and adults from occupational use, the Agency determined that risks to children were not disproportionate. However, EPA's *Policy on Children's Health* applies to this action. Information on how the Policy was applied is available under Unit III.A.3.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not a ''significant energy action'' under Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy and has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

I. National Technology Transfer and Advancement Act (NTTAA)

Pursuant to the NTTAA section 12(d), 15 U.S.C. 272, the Agency has determined that this rulemaking involves environmental monitoring or measurement, specifically for occupational inhalation exposures to CTC. Consistent with the Agency's Performance Based Measurement System (PBMS), the Agency proposes not to require the use of specific, prescribed analytic methods. Rather, the Agency plans to allow the use of any method that meets the prescribed performance criteria. The PBMS approach is intended to be more flexible and cost-effective for the regulated

community; it is also intended to encourage innovation in analytical technology and improved data quality. EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified.

For this rulemaking, the key consideration for the PBMS approach is the ability to accurately detect and measure airborne concentrations of carbon tetrachloride at the ECEL and the ECEL action level. Some examples of methods which meet the criteria are included in the appendix of the ECEL memo (Ref. 9). EPA recognizes that there may be voluntary consensus standards that meet the proposed criteria (Ref. 41). EPA requests comments on whether it should incorporate such voluntary consensus standards in the rule and seeks information in support of such comments regarding the availability and applicability of voluntary consensus standards that may achieve the sampling and analytical requirements of the rule in lieu of the PBMS approach.

J. Executive Orders 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or indigenous peoples) and low-income populations.

EPA believes that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate and adverse human health or environmental effects on people of color, low-income populations and/or indigenous peoples. EPA analyzed the baseline conditions facing communities near CTC and HFO manufacturing facilities as well as those of workers in the same industry and county as CTC facilities and HFO manufacturing facilities. The environmental justice analysis of local demographics found that, across the entire population within 1- and 3-miles of CTC facilities, there are higher percentages of people who identify as Black and living below the poverty line and a similar percentage of people who identify as Hispanic compared to the national averages. CTC facilities are concentrated in Texas and Louisiana, especially near Houston and Baton Rouge. In cases where environmental justice communities are also fenceline communities, EPA expects that the proposed prohibition of increased emissions associated with WCPP requirements would prevent new health and environmental impacts due to this proposed action.

The worker analysis was performed at the county and industry level. In eight of the 12 counties with CTC facilities that reported Basic Chemical Manufacturing, workers who identify as Black were over-represented compared to their percentage of the national demographics for that industry; at the national level, 11% of workers in the Basic Chemical Manufacturing industry identify as Black. In addition, there were eight counties with CTC facilities that reported Waste Treatment and Disposal; workers in that industry in those counties were more likely to earn less than the national average for that industry across several demographic groups, as outlined in the Economic Analysis.

EPA believes that it is not practicable to assess whether this action is likely to result in disproportionate and adverse effects on people of color, low-income populations, and/or indigenous peoples. EPA was unable to quantify the distributional effects of the regulatory action under consideration and compare them to baseline conditions. Current uncertainties and lack of data regarding exposure reductions proposed in this action limit EPA's ability to assess risk reductions compared to baseline conditions. One limitation to assessing whether the action is likely to result in disproportionate and adverse effects on people of color, low-income populations, and/or indigenous peoples is a lack of data on the sociodemographic characteristics of workers in CTC facilities. Another key limitation that prevents evaluation of the distributional effects of the rule is a lack of knowledge of the actions regulated entities will take in response to the rule.

EPA additionally identified and addressed environmental justice concerns by conducting outreach to advocates of communities that might be subject to disproportionate exposure to CTC, such as minority populations, low-income populations, and indigenous peoples. On February 2 and 18, 2021, EPA held public meetings as part of this consultation. These meetings were held pursuant to and in compliance with Executive Order 12898 and Executive Order 14008, entitled ''Tackling the Climate Crisis at Home and Abroad'' (86 FR 7619, February 1, 2021). EPA received one written comment following these public meetings, in addition to oral comments provided during the meetings (Ref. 17). Commenters supported strong regulation of CTC to protect lower-income communities and workers. In addition, commenters recommended EPA conduct analysis of additional exposure pathways, including air and water.

The information supporting the review under Executive Order 12898 is contained in Units I.E., II.D., III.A.1., VI.A., and in the Economic Analysis (Ref. 4). EPA's presentations and fact sheets for the environmental justice consultations related to this rulemaking, are available at *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/materials-june-and-july-2021-environmental-justice.* These materials and a summary of the consultation are also available in the public docket for this rulemaking (Ref. 17).

List of Subjects in 40 CFR Part 751

Environmental protection, Chemicals, Export notification, Hazardous substances, Import certification, Reporting and recordkeeping.

Michael S. Regan,
Administrator.

Therefore, for the reasons stated in the preamble, EPA proposes to amend 40 CFR Chapter I as follows:

PART 751—REGULATION OF CERTAIN CHEMICAL SUBSTANCES AND MIXTURES UNDER SECTION 6 OF THE TOXIC SUBSTANCES CONTROL ACT

■ 1. The authority citation for part 751 continues to read as follows:

Authority: 15 U.S.C. 2605, 15 U.S.C 2625(l)(4).

■ 2. Amend § 751.5 by adding in alphabetical order definitions for ''Authorized person,'' ''Direct dermal contact'', ''ECEL'', ''Exposure group'', ''Owner or operator'', ''Potentially exposed person'', and ''Regulated area'' to read as follows:

§ 751.5 Definitions.

* * * * *

Authorized person means any person specifically authorized by the owner or operator to enter, and whose duties require the person to enter, a regulated area.

* * * * *

Direct dermal contact means direct handling of a chemical substance or mixture or skin contact with surfaces that may be contaminated with a chemical substance or mixture.

ECEL is an Existing Chemical Exposure Limit and means an airborne concentration generally calculated as an eight (8)-hour time-weighted average (TWA).

* * * * *

Exposure group means a group consisting of every person performing the same or substantially similar operations in each work shift, in each job classification, in each work area where inhalation exposure to chemical substances or mixtures is reasonably likely to occur and be similar.

Owner or operator means any person who owns, leases, operates, controls, or supervises a workplace covered by this subpart.

* * * * *

Potentially exposed person means any person who may be occupationally exposed to a chemical substance or mixture in a workplace as a result of a condition of use of that chemical substance or mixture.

Regulated area means an area established by the regulated entity to demarcate areas where airborne concentrations of a specific chemical substance exceed, or there is a reasonable possibility they may exceed, the ECEL or the EPA Short-Term Exposure Limit (STEL).

■ 3. Add new subpart H to read as follows:

Subpart H—Carbon Tetrachloride

Sec.

751.701 General.
751.703 Definitions.
751.705 Prohibition of Certain Industrial and Commercial Uses and Manufacturing, Processing, and Distribution in Commerce of Carbon Tetrachloride for those Uses.
751.707 Workplace Chemical Protection Program (WCCP).
751.709 Workplace Restrictions for the Industrial and Commercial Use as a Laboratory Chemical, including the use of carbon tetrachloride as a laboratory chemical by the U.S. Department of Defense.
751.711 Downstream Notification.
751.713 Recordkeeping Requirements.

§ 751.701 General.

This subpart sets certain restrictions on the manufacture (including import), processing, distribution in commerce, use, or disposal of carbon tetrachloride (CASRN 56–23–5) to prevent unreasonable risk of injury to health.

§ 751.703 Definitions.

The definitions in subpart A of part 751 apply to this subpart unless otherwise specified in this section. In addition, the following definitions apply to this subpart:

ECEL action level means a concentration of airborne carbon tetrachloride of 0.02 parts per million (ppm) calculated as an eight (8)-hour time-weighted average (TWA).

§ 751.705 Prohibition of Certain Industrial and Commercial Uses and Manufacturing, Processing, and Distribution in Commerce of Carbon Tetrachloride for those Uses.

(a) *Prohibitions.* (1) After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], all persons are prohibited from manufacturing, processing, distributing in commerce (including making available) and using carbon tetrachloride for the following conditions of use:

(i) Processing condition of use: Incorporation into formulation, mixture or reaction products in petrochemical-derived manufacturing.

(ii) Industrial and commercial conditions of use:

(A) Industrial and commercial use as an industrial processing aid in the manufacture of petrochemicals-derived products.

(B) Industrial and commercial use in the manufacture of other basic chemicals (including manufacturing of chlorinated compounds used in solvents, adhesives, asphalt, and paints and coatings), except for use in the elimination of nitrogen trichloride in the production of chlorine and caustic soda.

(C) Industrial and commercial use in metal recovery.

(D) Industrial and commercial use as an additive.

(b) *Other prohibitions.* After [DATE 365 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], all persons are prohibited from manufacturing, processing, distributing in commerce (including making available) and using carbon tetrachloride for industrial and commercial specialty uses by the U.S. Department of Defense except as provided in § 751.709.

§ 751.707 Workplace Chemical Protection Program (WCPP).

(a) *Applicability.* The provisions of this section apply to workplaces engaged in the following conditions of use of carbon tetrachloride, except to the extent the conditions of use are prohibited by § 751.705:

(1) Domestic manufacture, except where carbon tetrachloride is manufactured solely as a byproduct.

(2) Import.

(3) Processing as a reactant in the production of hydrochlorofluorocarbons, hydrofluorocarbons, hydrofluoroolefins and perchloroethylene.

(4) Processing: Incorporation into formulation, mixture, or reaction products for agricultural products manufacturing and other basic organic and inorganic chemical manufacturing.

(5) Processing: Repackaging for use as a laboratory chemical.

(6) Processing: Recycling.

(7) Industrial and commercial use as an industrial processing aid in the manufacture of agricultural products.

(8) Industrial and commercial use in the elimination of nitrogen trichloride in the production of chlorine and caustic soda.

(9) Disposal.

(b) *Existing chemical exposure limit.* (1) Eight-hour time-weighted average (TWA) ECEL. Beginning [9 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], or beginning 4 months after introduction of carbon tetrachloride into the workplace if carbon tetrachloride commences after [DATE 6 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], the owner or operator must ensure that no person is exposed to an airborne concentration of carbon tetrachloride in excess of 0.03 parts of carbon tetrachloride per million parts of air (0.03 ppm) as an eight (8)-hour TWA, in accordance with the requirements of paragraph (d)(1)(i) of this section and, as applicable, paragraph (f) of this section.

(2) *ECEL action level.* The owner or operator must establish an ECEL action level of 0.02 parts of carbon tetrachloride per million parts of air (0.02 ppm) as an eight (8)-hour TWA for purposes of monitoring the ECEL.

(3) *Exposure monitoring.*

(i) *General.*

(A) Owners or operators must determine each potentially exposed person's exposure by either:

(*1*) Taking a personal breathing zone air sample of each potentially exposed person's exposure; or

(*2*) Taking personal breathing zone air samples that are representative of the 8-hour TWA of each potentially exposed person or of each potentially exposed person's exposure performing the same or substantially similar operations in each work shift, in each job classification, in each work area.

(B) Representative 8-hour TWA exposures must be determined on the basis of one or more samples representing full-shift exposure of at least one person that represents, and does not underestimate, the potential exposure of every person in each exposure group and that represents the most highly exposed person under

reasonably foreseeable conditions of use.

(C) Exposure samples must be analyzed using an appropriate analytical method by a laboratory that complies with the Good Laboratory Practice Standards in 40 CFR part 792.

(D) Owners or operators must ensure that methods used to perform exposure monitoring produce results that are accurate, to a confidence level of 95 percent, to within plus or minus 25 percent for airborne concentrations of carbon tetrachloride at an appropriate level of detection for the ECEL and ECEL action level.

(E) Owners and operators must re-monitor within 15 working days after receipt of any exposure monitoring when results indicate non-detect or air monitoring equipment malfunction, unless an Environmental Professional as defined at 40 CFR 312.10 or a Certified Industrial Hygienist reviews the exposure monitoring results and determines re-monitoring is not necessary.

(ii) *Initial exposure monitoring.*

(A) Each owner or operator who has a workplace or work operation covered by this section, except as provided for in paragraph (b)(3)(ii)(B) of this section, must perform initial exposure monitoring of potentially exposed persons regularly working in areas where carbon tetrachloride is present.

(B) The initial exposure monitoring required in paragraph (b)(3)(ii)(A) of this section must be completed for workplaces manufacturing, processing, or using carbon tetrachloride as of [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] by [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] or, for workplaces that begin using carbon tetrachloride after [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], within 30 days of introduction of carbon tetrachloride into the workplace, whichever is later. Where the owner or operator used carbon tetrachloride and has monitoring within five years prior to [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] and the monitoring satisfies all other requirements of this section, the owner or operator may rely on such earlier monitoring results to satisfy the requirements of paragraph (b)(3)(ii)(A) of this section.

(iii) *Periodic exposure monitoring.* The owner or operator must establish an exposure monitoring program for periodic monitoring of exposure to carbon tetrachloride in accordance with table 1 to this paragraph (b)(3)(iii).

TABLE 1 TO § 751.707(b)(3)(iii)—PERIODIC MONITORING REQUIREMENTS

Air concentration condition	Periodic exposure monitoring requirement
If all initial exposure monitoring is below the ECEL action level (<0.02 ppm 8-hour TWA).	Periodic exposure monitoring is required at least once every five years.
If the most recent exposure monitoring indicates that airborne exposure is above the ECEL (>0.03 ppm 8-hour TWA).	Periodic exposure monitoring is required within 3 months of the most recent exposure monitoring.
If the most recent exposure monitoring indicates that airborne exposure is at or above the ECEL action level but at or below the ECEL (≥0.02 ppm 8-hour TWA, ≤0.03 ppm 8-hour TWA).	Periodic exposure monitoring is required within 6 months of the most recent exposure monitoring.
If the two most recent (non-initial) exposure monitoring measurements, taken at least seven days apart within a 6-month period, indicate exposure is below the ECEL action level (<0.02 ppm 8-hour TWA).	Periodic exposure monitoring is required within 5 years of the most recent exposure monitoring.
If the owner or operator engages in a condition of use for which WCPP ECEL would be required but does not manufacture, process, use, or dispose of carbon tetrachloride in that condition of use over the entirety of time since the last required monitoring event.	The owner or operator may forgo the next periodic exposure monitoring event. However, documentation of cessation of use of carbon tetrachloride is required; and periodic monitoring would be required when the owner or operator resumes the condition of use.

(iv) *Additional exposure monitoring.*

(A) The owner or operator must conduct additional exposure monitoring whenever there has been a change in the production, process, control equipment, personnel or work practices that may reasonably be expected to result in new or additional exposures above the ECEL action level or when the owner or operator has any reason to believe that new or additional exposures above the ECEL action level have occurred.

(B) Whenever start-up, shutdown, malfunctions or other breakdowns occur that may lead to exposure to potentially exposed persons, the owner or operator must conduct additional exposure monitoring (using personal breathing zone sampling) after the cleanup, repair or remedial action.

(v) *Notification of exposure monitoring results.*

(A) The owner or operator must inform persons whose exposures are represented by the monitoring of the monitoring results within 15 working days.

(B) This notification must include the following:

(*1*) Exposure monitoring results;

(*2*) Identification and explanation of the ECEL and ECEL action level in plain language;

(*3*) Explanation of corresponding required respiratory protection as described in paragraph (f) of this section;

(*4*) Descriptions of actions taken by the owner or operator to reduce exposure to or below the ECEL;

(*5*) Quantity of carbon tetrachloride in use;

(*6*) Location of carbon tetrachloride use;

(*7*) Manner of carbon tetrachloride use;

(*8*) Identified releases of carbon tetrachloride; and

(*9*) Whether the airborne concentration of carbon tetrachloride exceeds the ECEL.

(C) Notice must be provided in plain language writing, in a language that the person understands, to each potentially exposed person or posted in an appropriate and accessible location outside the regulated area with an English-language version and a non-English language version representing the language of the largest group of workers who do not read English.

(4) *Regulated areas.*

(i) Beginning [DATE 9 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], or beginning 4 months after introduction of carbon tetrachloride into the workplace in carbon tetrachloride use commences after [DATE 6 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], the owner or operator must establish and maintain a regulated area wherever any person's exposure to airborne concentrations of carbon tetrachloride exceeds or can reasonably be expected to exceed the ECEL.

(ii) The owner or operator must limit access to regulated areas to authorized persons.

(iii) The owner or operator must demarcate regulated areas from the rest of the workplace in a manner that adequately establishes and alerts persons to the boundaries of the area and minimizes the number of authorized persons exposed to carbon tetrachloride within the regulated area.

(iv) The owner or operator must supply a respirator that complies with the requirements of paragraph (f) of this section and must ensure that all persons within the regulated area are using the provided respirators whenever carbon tetrachloride exposures may exceed the ECEL.

(v) An owner or operator who has implemented all feasible engineering, work practice and administrative controls as required in paragraph (d)(1)(i) of this section, and who has established a regulated area as required by paragraph (b)(4)(i) of this section where carbon tetrachloride exposure can be reliably predicted to exceed the ECEL only on certain days (for example, because of work or process schedule) must have persons use respirators in that regulated area on those days.

(vi) The owner or operator must ensure that, within a regulated area, persons do not engage in non-work activities which may increase carbon tetrachloride exposure.

(vii) The owner or operator must ensure that while persons are wearing respirators in the regulated area, they do not engage in activities which interfere with respirator seal or performance.

(c) *Direct dermal contact controls (DDCC).* Beginning [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] or within 30 days of introduction of carbon tetrachloride into the workplace, owners or operators must ensure that all persons are separated, distanced, physically removed, or isolated to prevent direct dermal contact with carbon tetrachloride or from contact with equipment or materials on which carbon tetrachloride may exist in accordance with the requirements of paragraph (d)(1)(ii) of this section and, as applicable, paragraph (f) of this section.

(d) Exposure control procedures and plan. (1) Methods of compliance. (i) *ECEL.*

(A) The owner or operator must institute elimination, substitution, engineering controls or administrative controls to reduce exposure to or below the ECEL except to the extent that the owner or operator can demonstrate that such controls are not feasible.

(B) Wherever the feasible exposure controls, including elimination, substitution, engineering controls, and administrative controls, which can be instituted are not sufficient to reduce exposure to or below the ECEL, the owner or operator must use them to reduce exposure to the lowest levels achievable by these controls and must supplement them by the use of respiratory protection that complies with the requirements of paragraph (f) of this section. Where an owner or operator cannot demonstrate exposure below the ECEL, including through the use of engineering controls or work practices, and has not demonstrated that it has supplemented feasible exposure controls with respiratory protection that complies with the requirements of paragraph (f) of this section, this will constitute a failure to comply with the ECEL.

(C) The owner or operator must maintain the effectiveness of engineering controls and administrative controls instituted under paragraph (d)(1)(i)(A) of this section.

(D) The owner or operator must ensure that any engineering controls instituted under paragraph (d)(1)(i)(A) of this section do not increase emissions of carbon tetrachloride to ambient air outside the workplace.

(E) The owner or operator must not implement a schedule of personnel rotation as a means of compliance with the ECEL.

(F) The owner or operator must document their exposure control strategy and implementation in an exposure control plan in accordance with this paragraph (d).

(ii) *Direct dermal contact controls (DDCC).*

(A) The owner or operator must institute elimination, substitution, engineering controls, or administrative controls to prevent direct dermal contact with carbon tetrachloride except to the extent that the employer owner or operator can demonstrate that such controls are not feasible.

(B) Wherever the feasible exposure controls, including elimination, substitution, engineering controls, and administrative controls, which can be instituted are not sufficient to prevent direct dermal contact with carbon tetrachloride, the owner or operator must use them to reduce direct dermal contact to the extent achievable by these controls and must supplement them by the use of dermal protection that complies with the requirements of paragraph (f) of this section. Where an owner or operator cannot demonstrate that direct dermal contact is prevented, including through the use of engineering controls or work practices, and has not demonstrated that it has supplemented feasible exposure controls with dermal protective equipment that complies with the requirements of paragraph (f) of this section, this will constitute a failure to comply with the DDCC requirements.

(C) The owner or operator must maintain the effectiveness of engineering controls and administrative controls instituted under paragraph (d)(1)(ii)(A) of this section.

(2) *Exposure control plan requirements.* Beginning [DATE 12 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] owners and operators must include and document in an exposure control plan the following:

(i) Identification and rationale of exposure controls selected: elimination of carbon tetrachloride, substitution of carbon tetrachloride, engineering controls, and administrative controls to reduce inhalation exposures in the workplace to either at or below the ECEL or to the lowest level achievable and to prevent or reduce direct dermal contact with carbon tetrachloride in the workplace, and the rationale explaining why each exposure control was selected (*e.g.,* the hierarchy of controls, feasibility, effectiveness, or other relevant considerations);

(ii) If elimination of carbon tetrachloride, substitution of carbon tetrachloride, engineering controls or administrative controls were not selected, document the efforts identifying why these are not feasible, not effective, or otherwise not implemented;

(iii) Actions taken to implement exposure controls selected, including proper installation, maintenance, training or other steps taken;

(iv) Description of any regulated area and how it is demarcated, and identification of authorized persons; and description of when the owner or operator expects exposures may be likely to exceed the ECEL;

(v) Attestation that exposure controls selected do not increase emissions of carbon tetrachloride to ambient air outside of the workplace and whether additional equipment was installed to capture or otherwise prevent increased emissions of carbon tetrachloride to ambient air;

(vi) Regular inspections, evaluations, and updating of the exposure controls no less frequent than every five years to ensure effectiveness and confirmation that all persons are implementing them accordingly; and

(vii) Occurrence and duration of any change in the production, process, control equipment, personnel or work practices and explanation of why the owner or operator may expect such change to result in new or additional exposures above the ECEL or not and occurrence and duration of any other change that may result in new or additional exposures above the ECEL have occurred;

(viii) Occurrence and duration of any start-up, shutdown, or malfunction of the facility that causes air concentrations to be above the ECEL or any direct dermal contact with carbon tetrachloride to occur during use of the substance and subsequent corrective actions taken during start-up, shutdown, or malfunctions to mitigate exposures to carbon tetrachloride; and

(ix) Availability of the exposure control plan, exposure monitoring records, respiratory protection program documentation, dermal PPE program documentation, and any other associated records relevant to carbon tetrachloride exposure in the workplace for potentially exposed persons.

(e) *Workplace information and training.* (1) Within six months after the date of initial monitoring or by [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] if initial monitoring was completed prior to publication of the rule, the owner or operator must provide information and training for each person prior to or at the time of initial assignment to a job involving potential exposure to carbon tetrachloride.

(2) The owner or operator must ensure that information and training is presented in a manner that is understandable to each person required to be trained and in multiple languages as appropriate, such as, based on languages spoken by potentially exposed persons in the workplace.

(3) The following information and training must be provided to all persons assigned to a job involving potential exposure to carbon tetrachloride:

(i) The requirements of this section, as well as how to access or obtain a copy of these requirements in the workplace; and

(ii) The quantity, location, manner of use, release, and storage of carbon tetrachloride and the specific operations in the workplace that could result in exposure to carbon tetrachloride, particularly noting where exposures may be above the ECEL or where there is potential for direct dermal contact with carbon tetrachloride;

(iii) The principles of safe use and handling of carbon tetrachloride in the workplace, including specific measures the owner or operator has implemented to reduce inhalation exposures to at or below the ECEL or prevent direct dermal contact with CTC, such as work practices and PPE used;

(iv) The health hazards associated with exposure to carbon tetrachloride in the workplace;

(v) Methods and observations that may be used to detect the presence or release of carbon tetrachloride in the workplace (such as monitoring conducted by the owner or operator, continuous monitoring devices, visual appearance or odor of carbon tetrachloride when being released, etc.).

(4) The owner or operator must retrain each potentially exposed person as necessary, but at minimum annually, to ensure that each such person maintains the requisite understanding of the principles of safe use and handling of carbon tetrachloride in the workplace.

(5) Whenever there are workplace changes, such as modifications of tasks or procedures or the institution of new tasks or procedures, which increase exposure, and where those exposures exceed the ECEL action level or increase the potential for direct dermal contact with carbon tetrachloride, based on monitoring results or the analysis documented in the exposure control plan, the owner or operator must update the training as necessary to ensure that each potentially exposed person has the requisite proficiency.

(f) *Personal protective equipment (PPE).* (1) Applicability. The provisions of this paragraph (f) apply to any owner or operator that is required to provide respiratory protection pursuant to paragraph (d)(1)(i)(B) of this section or dermal PPE pursuant to paragraphs (c) and (d)(1)(ii)(B) of this section.

(2) *Use and maintenance.* Personal protective equipment that is of safe design and construction for the work to be performed must be provided, used, and maintained in a sanitary, reliable, and undamaged condition. Owners and operators must select PPE that properly fits each affected person and communicate PPE selections to each affected person.

(3) *Training.* Owners and operators must provide training in accordance with 29 CFR 1910.132(f) to all persons required to use PPE prior to or at the time of initial assignment to a job involving potential exposure to carbon tetrachloride. For the purposes of this paragraph (f)(3), provisions in 29 CFR 1910.132(f) applying to an ''employee'' also apply equally to potentially exposed persons, and provisions applying to an ''employer'' also apply equally to owners or operators.

(4) *Refresher training.* Owners and operators must retrain each potentially exposed person required to use PPE annually or whenever the owner or operator has reason to believe that a previously trained person does not have the required understanding and skill to properly use PPE, or when changes in the workplace or in PPE to be used render the previous training obsolete.

(5) *Respiratory protection.*

(i) Beginning [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], or within 3 months after receipt of any exposure monitoring that indicates exposures exceeding the ECEL, or for those instances when the initial exposure monitoring is based on exposure monitoring data conducted within five years prior to publication of the rule and satisfies all other requirements of this section [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], the owner or operator must supply a respirator where it is selected for use, selected in accordance with this paragraph (f), to each person who enters a regulated area and must ensure that all persons within the regulated area are using the provided respirators whenever carbon tetrachloride exposures exceed or can reasonably be expected to exceed the ECEL.

(ii) Owners or operators must provide respiratory protection in accordance with 29 CFR 1910.134(a) through (l) except (d)(1)(iii) and as specified in this paragraph for persons exposed or who may be exposed to carbon tetrachloride in concentrations above the ECEL. For the purpose of this paragraph (f), the maximum use concentration (MUC) as used in 29 CFR 1910.134 must be calculated by multiplying the assigned protection factor (APF) specified for a respirator by the ECEL. For the purposes of this paragraph (f), provisions in 29 CFR 1910.134(a) through (l) (except (d)(1)(iii)) applying to an ''employee'' also apply equally to potentially exposed persons, and provisions applying to an ''employer'' also apply equally to owners or operators.

(iii) Owners or operators must select and provide to persons appropriate respirators as indicated by the most recent monitoring results as follows:

(A) If the measured exposure concentration is at or below the 0.03 ppm: no respiratory protection is required.

(B) If the measured exposure concentration is above 0.03 ppm and less than or equal to 0.3 ppm (10 times ECEL): Any NIOSH-certified air-purifying half mask or full facepiece respirator equipped with NIOSH-

approved organic vapor cartridges or canisters.

(C) If the measured exposure concentration is above 0.3 ppm and less than or equal to 0.75 ppm (25 times ECEL): Any NIOSH-certified air-purifying full facepiece respirator equipped with NIOSH-approved organic vapor cartridges or canisters; any NIOSH-certified powered air-purifying respirator equipped with NIOSH-approved organic vapor cartridges; or any NIOSH-certified continuous flow supplied air respirator equipped with a hood or helmet.

(D) If the measured exposure concentration is above 0.75 ppm and less than or equal to 1.5 ppm (50 times ECEL): Any NIOSH-certified air-purifying full facepiece respirator equipped with NIOSH-approved organic vapor cartridges or canisters; or any NIOSH-certified powered air-purifying respirator equipped with a tight-fitting facepiece and a NIOSH-approved organic vapor cartridge.

(E) If the measured exposure concentration is above 1.5 ppm and less than or equal to 30 ppm (1,000 times ECEL): Any NIOSH-certified supplied air respirator equipped with a half mask or full facepiece and operated in a pressure demand or other positive pressure mode.

(F) If the measured exposure concentration is greater than 30 ppm (1,000 times ECEL) or the concentration is unknown: Any NIOSH-certified self-contained breathing apparatus equipped with a full facepiece and operated in a pressure demand or other positive pressure mode; or any NIOSH-certified supplied air respirator equipped with a full facepiece and operated in a pressure demand or other positive pressure mode in combination with an auxiliary self-contained breathing apparatus operated in a pressure demand or other positive pressure mode.

(iv) The respiratory protection requirements in this paragraph represent the minimum respiratory protection requirements, such that any respirator affording a higher degree of protection than the required respirator may be used.

(v) When a person whose job requires the use of a respirator cannot use a negative-pressure respirator, the owner or operator must provide that person with a respirator that has less breathing resistance than the negative-pressure respirator, such as a powered air-purifying respirator or supplied-air respirator, when the person is able to use it and if it provides the person with adequate protection.

(6) *Dermal protection.*

(i) Beginning [DATE 180 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] or within 30 days of introduction of carbon tetrachloride into the workplace, the owner or operator must supply and require the donning of dermal PPE that separates and provides a barrier to prevent direct dermal contact with carbon tetrachloride in the workplace where it is selected for use, selected in accordance with this paragraph and provided in accordance with 29 CFR 1910.132(h), to each person who is reasonably likely to be dermally exposed in the work area through direct dermal contact with carbon tetrachloride. For the purposes of this paragraph (f)(6)(i), provisions in 29 CFR 1910.132(h) applying to an ''employer'' also applies equally to owners or operators.

(ii) Owners or operators must select and provide dermal PPE in accordance with 29 CFR 1910.133(b) and additionally as specified in this paragraph to each person who is reasonably likely to be dermally exposed in the work area through direct dermal contact with carbon tetrachloride. For the purposes of this paragraph (f)(6)(ii), provisions in 29 CFR 1910.133(b) applying to an ''employer'' also apply equally to owners or operators.

(iii) Owners or operators must select and provide to persons appropriate dermal PPE based on an evaluation of the performance characteristics of the PPE relative to the task(s) to be performed, conditions present, and the duration of use. Dermal PPE must include, but is not limited to, the following items:

(A) Impervious gloves selected based on specifications from the manufacturer or supplier.

(B) Impervious clothing (*e.g.,* long pants, long sleeved shirt) and protective gear covering the exposed areas of the body (*e.g.,* arms, legs, torso and face).

(iv) Owners or operators must demonstrate that each item of gloves and other clothing selected provides an impervious barrier to prevent direct dermal contact with carbon tetrachloride during normal and expected duration and conditions of exposure within the work area by evaluating the specifications from the manufacturer or supplier of the clothing, or of the material used in construction of the clothing, or individually prepared third party testing, to establish that the clothing will be impervious to carbon tetrachloride alone and in combination with other chemical substances likely to be present in the work area.

§ 751.709 Workplace Restrictions for the Industrial and Commercial Use as a Laboratory Chemical, including the use of carbon tetrachloride as a laboratory chemical by the U.S. Department of Defense.

(a) *Applicability.* The provisions of this section apply to workplaces engaged in the industrial or commercial use of carbon tetrachloride as a laboratory chemical, including the U.S. Department of Defense's industrial and commercial use of carbon tetrachloride as a laboratory chemical in chemical weapons destruction.

(b) *Laboratory chemical requirements.* (1) After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], owners or operators must ensure fume hoods are in use and functioning properly and that specific measures are taken to ensure proper and adequate performance of such equipment to minimize exposures to persons in the work area during the industrial/commercial use of carbon tetrachloride as a laboratory chemical, except for the U.S. Department of Defense's use of carbon tetrachloride as a laboratory chemical in chemical weapons destruction.

(2) After [DATE 365 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], the U.S. Department of Defense must ensure that advanced engineering controls are in use and functioning properly and that specific measures are taken to ensure proper and adequate performance of such equipment to minimize exposures to persons in the area during the industrial/commercial use of carbon tetrachloride as a laboratory chemical in chemical weapons destruction.

(3) After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], owners or operators must ensure that all persons reasonably likely to be dermally exposed to carbon tetrachloride in a laboratory setting, except for the U.S. Department of Defense's industrial and commercial use of carbon tetrachloride as a laboratory chemical in chemical weapons destruction, are provided with dermal PPE as outlined in § 751.707(f)(2) and (6) and training on proper use of dermal PPE as outlined in § 751.707(f)(3) and (4).

(4) After [DATE 365 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], U.S. Department of Defense must ensure that all persons reasonably likely to be dermally exposed to carbon tetrachloride through the industrial and commercial use of carbon tetrachloride

as a laboratory chemical in chemical weapons destruction are provided with dermal PPE as outlined in § 751.707(f)(2) and (6) and training on proper use of dermal PPE as outlined in § 751.707(f)(3) and (4).

§ 751.711 Downstream Notification.

(a) Beginning on [DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**]. Each person who manufactures (including imports) carbon tetrachloride for any use must, prior to or concurrent with the shipment, notify persons to whom carbon tetrachloride is shipped, in writing, of the restrictions described in this subpart in accordance with paragraph (c) of this section.

(b) Beginning on [DATE 6 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], each person who processes or distributes in commerce carbon tetrachloride for any use must, prior to or concurrent with the shipment, notify companies to whom carbon tetrachloride is shipped, in writing, of the restrictions described in this subpart in accordance with paragraph (c) of this section.

(c) The notification required under paragraphs (a) and (b) of this section must occur by inserting the following text in Sections 1(c) and 15 of the Safety Data Sheet (SDS) provided with the carbon tetrachloride:

After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], this chemical is and may only be distributed in commerce or processed for the following purposes: Processing as a reactant/intermediate; Repackaging for use as a laboratory chemical; Recycling; Incorporation into formulation, mixture or reaction products in agricultural products manufacturing and other basic organic and inorganic chemical manufacturing; Industrial and commercial use as an industrial processing aid in the manufacture of agricultural products; Industrial and commercial use in the elimination of nitrogen trichloride in the production of chlorine and caustic soda; Industrial and commercial use as a laboratory chemical; Industrial and commercial specialty uses by the U.S. Department of Defense until [DATE 365 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**]; and Disposal.

§ 751.713 Recordkeeping Requirements.

(a) *General records.* After [DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], all persons who manufacture, process, or distribute in commerce or engage in industrial or commercial use of carbon tetrachloride must maintain ordinary business records, such as downstream notifications, invoices and bills-of-lading related to compliance with the prohibitions, restrictions, and other provisions of this subpart.

(b) Workplace Chemical Protection Program Compliance.

(1) *ECEL exposure monitoring.* For each monitoring event, owners or operators subject to the ECEL described in § 751.707(a) must document the following:

(i) Dates, duration, and results of each sample taken;

(ii) All measurements that may be necessary to determine the conditions that may affect the monitoring results;

(iii) Name, workplace address, work shift, job classification, and work area of the person monitored; or identification of all persons represented by the representative sampling monitoring, indicating which persons were actually monitored; and any type of respiratory protective device worn by the monitored person, if any;

(iv) Use of appropriate sampling and analytical methods, such as analytical methods already approved by EPA, OSHA or NIOSH, or compliance with an analytical method verification procedure;

(v) Compliance with the Good Laboratory Practice Standards in 40 CFR part 792; and

(vi) Information regarding air monitoring equipment, including: type, maintenance, calibrations, performance tests, limits of detection, and any malfunctions.

(2) *ECEL compliance.* Owners or operators subject to the ECEL described in § 751.707(b)(1) must retain records of:

(i) Exposure control plan as described in paragraph § 751.707(d);

(ii) Facility exposure monitoring records;

(iii) Respiratory protection used and program implementation;

(iv) Notifications of exposure monitoring results; and

(v) Information and training provided by the owner or operator to each person prior to or at the time of initial assignment to a job involving potential exposure to carbon tetrachloride.

(3) *DDCC compliance.* Owners or operators subject to DDCC described in § 751.707(c) must retain records of:

(i) Exposure control plan as described in paragraph § 751.707(d);

(ii) Dermal personal protective equipment (PPE) used and program implementation as described in § 751.707(e), including:

(A) The name, workplace address, work shift, job classification, and work area of each person reasonably likely to directly handle carbon tetrachloride or handle equipment or materials on which carbon tetrachloride may present and the type of PPE selected to be worn by each of these persons;

(B) The basis for specific PPE selection (*e.g.,* demonstration based on permeation testing or manufacturer specifications that each item of PPE selected provides an impervious barrier to prevent exposure during expected duration and conditions of exposure, including the likely combinations of chemical substances to which the PPE may be exposed in the work area); and

(C) Appropriately sized PPE and training on proper application, wear, and removal of PPE, and proper care/disposal of PPE;

(D) Training in accordance with § 751.707(e); and

(iii) Information and training provided by the regulated entity to each person prior to or at the time of initial assignment to a job involving potential direct dermal contact with carbon tetrachloride.

(c) *Laboratory chemical compliance.* The applicable owners and operators subject to the laboratory chemical requirements described in § 751.709 must retain records of:

(i) Personal protective equipment (PPE) used and program implementation; and

(ii) Documentation identifying: implementation of a properly functioning fume hood using manufacturer's instructions for installation, use, and maintenance of the fume hood, including inspections, tests, development of maintenance procedures, the establishment of criteria for acceptable test results, and documentation of test and inspection results, except for the U.S. Department of Defense's use of carbon tetrachloride as a laboratory chemical in chemical weapons destruction.

(iii) For the U.S. Department of Defense's use of carbon tetrachloride as a laboratory chemical in chemical weapons destruction, documentation identifying: implementation of advanced engineering controls that are in use and functioning properly and specific measures taken to ensure proper and adequate performance.

(d) Retention.

Owners or operators must retain the compliance records required under this section for a period of 5 years from the date that such records were generated.

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Part V

Department of Labor

Office of Labor-Management Standards

29 CFR Part 405

Revision of the Form LM–10 Employer Report; Final Rule

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 405

RIN 1245–AA13

Revision of the Form LM–10 Employer Report

AGENCY: Office of Labor-Management Standards, Department of Labor.

ACTION: Form revision.

SUMMARY: The Office of Labor-Management Standards (OLMS) of the Department of Labor (Department) is revising the Form LM–10 Employer Report upon review of the comments received in response to its September 13, 2022 notice of proposed form revision. Under section 203 of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA or the Act), employers must file a Form LM–10 Employer Report with the Department to disclose certain payments, expenditures, agreements, and arrangements. Under the revision, the Department adds a checkbox to the Form LM–10 report requiring certain reporting entities to indicate whether such entities were Federal contractors or subcontractors in their prior fiscal year, and two lines for entry of filers' Unique Entity Identifier and Federal contracting agency or agencies, if applicable.

DATES:

Effective date: This rule is effective August 28, 2023.

Applicability date: The changes made to the Form LM–10 reporting requirements will be applicable to Form LM–10 reports filed on or after such date.

FOR FURTHER INFORMATION CONTACT: Karen Torre, Chief of the Division of Interpretations and Regulations, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5609, Washington, DC 20210, (202) 693–0123 (this is not a toll-free number), (800) 877–8339 (TTY/TDD), *OLMS-Public@dol.gov.*

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I. Statutory Authority

The legal authority for this Final Rule is set forth in sections 203 and 208 of the LMRDA, 29 U.S.C. 433, 438. Section 208 of the LMRDA provides that the Secretary of Labor shall have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under Title II of the Act and such other reasonable rules and regulations as the Secretary may find necessary to prevent the circumvention or evasion of the reporting requirements. 29 U.S.C. 438. The Secretary has delegated this authority under the LMRDA to the Director of OLMS and permits re-delegation of such authority. *See* Secretary's Order 03–2012—Delegation of Authorities and Assignment of Responsibilities to the Director, Office of Labor-Management Standards, 77 FR 69375 (November 16, 2012). The Director moved to exercise this authority through a proposed form revision. 87 FR 55952 (September 13, 2022).

II. Statutory and Regulatory Background

A. History of the LMRDA's Reporting Requirements

The Secretary of Labor administers and enforces the LMRDA, as amended, Public Law 86–257, 73 Stat. 519–546, codified at 29 U.S.C. 401–531. The LMRDA, in part, establishes labor-management transparency through reporting and disclosure requirements for labor organizations and their officials, employers and their labor relations consultants, and surety companies. *See* 29 U.S.C. 431–441.

In enacting the LMRDA in 1959, a bipartisan Congress expressed the conclusion that in the labor and management fields ''there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of . . . employers, labor relations consultants, and their officers and representatives.'' 29 U.S.C. 401(b).

The LMRDA is the direct outgrowth of an investigation conducted by the Senate Select Committee on Improper Activities in the Labor or Management Field, commonly known as the McClellan Committee, which convened in 1958. Enacted in 1959 in response to the report of the McClellan Committee, the LMRDA addresses various ills identified by the Committee through a set of integrated provisions aimed, among other things, at shedding light on labor-management relations, governance, and management. *See* 29 U.S.C. 401. These provisions include financial reporting and disclosure requirements for employers and labor relations consultants. *See* 29 U.S.C. 431–441.

Among the abuses that prompted Congress to enact the LMRDA was questionable conduct by some employers and their labor relations consultants that interfered with the right of employees to organize labor unions and to bargain collectively under the National Labor Relations Act (NLRA),

29 U.S.C. 151 *et seq. See, e.g.,* S. Rep. NO. 86–187 (''S. Rep. 187'') at 6, 10–12 (1959), reprinted in 1 NLRB, Legislative History of the Labor-Management Reporting and Disclosure Act of 1959 (''LMRDA Leg. Hist.''), at 397, 402, 406–408. Congress was concerned that labor consultants, acting on behalf of management, worked directly or indirectly to discourage legitimate employee organizing drives and to engage in ''union-busting'' activities. S. Rep. 187 at 10, LMRDA Leg. Hist. at 406. Congress concluded that such consultant activities ''should be exposed to public view,'' *id.,* S. Rep. at 11, ''since most of them are disruptive of harmonious labor relations and fall into a gray area,'' even if the consultant's conduct was not unlawful or did not otherwise constitute an unfair labor practice under the NLRA. *Id.* at 12; *see also* 29 U.S.C. 401(a) (in enacting LMRDA, Congress found that ''the relations between employers and labor organizations and the millions of workers they represent have a substantial impact on the commerce of the Nation'').

As a result, Congress imposed reporting requirements on employers and their consultants under LMRDA section 203. 29 U.S.C. 433. Under LMRDA section 208, the Secretary of Labor is authorized to issue, amend, and rescind rules and regulations prescribing the form and publication of required reports, as well as ''such other reasonable rules and regulations . . . as [the Secretary] may find necessary to prevent the circumvention or evasion of such reporting requirements.'' 29 U.S.C. 438. The Secretary is also authorized to bring civil actions to enforce the LMRDA's reporting requirements. 29 U.S.C. 440. Willful violations of the reporting requirements, knowing false statements made in a report, and knowing failures to disclose a material fact in a report are subject to criminal penalties. 29 U.S.C. 439.

B. Statutory and Regulatory Requirements for Employer Reporting

Section 203(a) of the LMRDA, 29 U.S.C. 433(a), requires employers to file a report, subject to certain exemptions, covering the following payments and arrangements made in a fiscal year: certain payments to, or other financial arrangements with, a labor organization or its officers, agents, or employees; payments to employees for the purpose of causing them to persuade other employees with respect to their bargaining and representation rights; payments for the purpose of interfering with employees in the exercise of their bargaining and representation rights or for obtaining information on employee or labor organization activities in connection with labor disputes involving their employer; and arrangements (including related payments) with a labor relations consultant for the purpose of persuading employees with respect to their bargaining and representation rights, or for obtaining information concerning employee activities in connection with a labor dispute involving their employer. 29 U.S.C. 433.

The employer must file with the Secretary a report, in a form prescribed by the Secretary, signed by the employer's president and treasurer or corresponding principal officers showing in detail the date and amount of each such payment, loan, promise, agreement, or arrangement and the name, address, and position, if any, in any firm or labor organization of the person to whom it was made and a ''full explanation'' of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made. 29 U.S.C. 433(a). The implementing regulations of the Department require employers to file a Form LM–10 Employer Report (''Form LM–10'') that contains this information. *See* 29 CFR part 405.

C. Overview and History of the Form LM–10

The Form LM–10 must be filed by any employer who has engaged in certain financial transactions or arrangements, of the type described in LMRDA section 203(a), with any labor organization, union official, employee, or labor relations consultant, or who has made expenditures for certain objects relating to activities of employees or a union. 29 U.S.C. 433(a). Employers are required to file only one Form LM–10 each fiscal year that covers all instances of reportable activity even if activity occurs at multiple locations.

In its current iteration, the Form LM–10 is divided into two parts: Part A and Part B. Part A consists of pages 1 and 2 of the Form LM–10. In Part A, Items 1–7 request basic identifying information about the employer: namely file number, fiscal year, address of the employer, address of the president or corresponding officer, any other address where records needed to verify the report can be made available for examination, a checklist of each location where records needed to verify the report can be made available for examination, and what type of legal entity is filing the report (''Corporation, Partnership, Individual, Other (specify)''). Items 13 and 14 are also featured on page 1 of Part A and are the signature boxes for the president and treasurer of the employer, respectively. Page 2 consists entirely of Part A, Item 8, which contains six ''Yes or No'' questions pertaining to reportable employer activities. If the employer can answer ''No'' to every question in Item 8, then no Form LM–10 needs to be filed. With each question answered ''Yes,'' the filer must complete a separate Part B for every person or organization with whom a reportable agreement was made or to whom a reportable payment was made as to that ''Yes'' answer. The form also asks for the total number of Part Bs filed for each question in Item 8.

Part B comprises page 3, and requires the name of the reporting employer and the file number again to ensure it is matched with Part A. Similarly, the next field is a checkbox indicating the questions in Item 8 (labeled a through f) to which this Part B applies. Items 9–12 require various details regarding the agreement or payments the employer-filer made.

Item 9 consists of four parts, 9.a.–9.d. Item 9.a. asks whether this Part B concerns itself with an ''Agreement,'' a ''Payment,'' or ''Both.'' Item 9.b. requires the name and address of the person with whom or through whom a separate agreement was made or to whom payments were made. Item 9.c. requires the position of any persons mentioned in 9.b. Item 9.d. requires the name and address of the labor organization or firm any person mentioned in 9.b. is a part of.

Item 10 consists of two parts, 10.a. and 10.b. Item 10.a. requires the date of the promise, agreement, or arrangement pursuant to which payments or expenditures were agreed to or made. Item 10.b. consists of three checkboxes and filers are required to mark whether the promise, agreement, or arrangement was ''Oral,'' ''Written,'' or ''Both.'' If the agreement is written and entered into during the fiscal year, it must be attached to the report.

Item 11 consists of three parts, 11.a.–11.c. Item 11.a. requires the date of each payment or expenditure referred to in Item 9. Item 11.b. requires the amount of each of those payments. Item 11.c. requires the filer to indicate the kind of each payment or expenditure, specifying whether it was a payment or a loan and whether it was made in cash or property.

Historically, Item 12 required a narrative response from the filers with a full explanation identifying the purpose and circumstances of the payments, promises, agreements, or arrangements included in the report.

The explanation needed to include a detailed account of services rendered or promised in exchange for promises or payments the filer has either already made or agreed to make. The explanation needed also to fully outline the conditions and terms of any oral agreement or understanding pursuant to which they were made. Finally, the filer was required to indicate whether the payments or promises reported specifically benefited the person or persons listed in Item 9.b., or the firm, group, or labor organization named in Item 9.d. If the employer-filer made payments, promises, or agreements through a person or persons not shown above, it needed to provide the full name and address of such person or persons. The explanation needed to clearly indicate why the filer must report the payment, promise, or agreement. Any incomplete responses or unclear explanations rendered a report deficient. These requirements continue, substantively unchanged by this final rule, in new Item 12.a.

III. Revision to the Form LM–10

A. General Overview of Revision and Comments Received

As proposed in its September 13, 2022, proposed form revision, the Department revises the Form LM–10 to supplement the identifying information that OLMS already collects from employers required to file, such as the employer's name, address, and status as a corporation, partnership, or individual. *See* 87 FR 55952 (September 13, 2022). The revised Item 12 does not change which employers are required to file Form LM–10; it requires employers who are already required to file the Form to provide an additional item of identifying information—whether the employer is a federal contractor or subcontractor—and, if so, a short entry indicating the federal contracting agency and the contractor's Unique Entity Identifier (UEI), if the contractor has one. If providing the name of a federal contracting agency would reveal classified information, the filer should omit the name of the agency. All federal prime contractors, and, in some cases, subcontractors performing on federal prime contracts, must have a UEI to do business with the federal government or to meet reporting requirements pursuant to the Federal Acquisition Regulation (FAR). For example, FAR part 52.204–6 requires prime contractors to obtain a UEI to register to obtain contracts with the federal government.[1]

The Department has revised Item 12 to contain two parts: Item 12.a, which will now require the information previously required in Item 12, and a new Item 12.b. To collect the new information quickly and efficiently, the Department is adding one ''Yes,'' ''No,'' or ''N/A'' checkbox at the end of the form, in Item 12.b, regarding federal contractor status. In addition, this revision adds two lines where filers who are federal contractors or subcontractors will enter their UEI and the federal contracting agency involved.

Not all filers will be required to complete Item 12.b. Filers who answer ''Yes'' to Item 8.a., but ''No'' to Items 8.b.–8.f., will not be required to complete Item 12.b., and the electronic form will automatically check the ''N/A'' box and grey out (render nonfunctional) the remaining portions of Item 12.b. for those filers so that no entry can be made.[2]

The instructions also make explicit that filers must enter information in Item 12.a. that the Form LM–10 already encompassed before this revision—including the subject group of employees (*e.g.,* the particular unit or division in which those employees work). *See* unrevised Item 12 (''Provide a full explanation identifying the purpose and circumstances of the payments, promises, agreements, or arrangements included in the report. Your explanation must contain a detailed account of services rendered or promised in exchange for promises or payments you have already made or agreed to make. Your explanation must fully outline the conditions and terms of all listed agreements.''). This necessarily includes identifying certain payments, expenditures, agreements, and arrangements regarding employees. Filers previously would have identified the subject group of employees in Item 12.

On September 13, 2022, the Department published a proposed revision to the Form LM–10, which provided a 30-day comment period ending on October 13, 2022. The Department received 35 comments on the LM–10 revisions. Comments were received from labor organizations, nonprofit organizations, private individuals, and members of Congress. Of the 35 total comments, 32 expressed overall support for the proposed revisions while three opposed them. As discussed below, the Department adopts the revisions as proposed.

B. Overview of Item 12.a.

The new Item 12.a. consists of a narrative section that mirrors the prior Item 12, and the revised instructions add a clarification. In both the prior Item 12 and the new Item 12.a., filers must explain fully the circumstances of all payments, including the terms of any oral agreement or understanding pursuant to which they were made. As the instructions indicated for Item 12 and now indicate for Item 12.a., filers must provide ''a full explanation identifying the purpose and circumstances of the payments, promises, agreements, or arrangements included in the report.'' The instructions are revised to make explicit that a ''full explanation'' continues to require filers to identify the subject group of employees (*e.g.,* the particular unit or division in which those employees work). This was accomplished by adding a new final clause to an existing sentence. The sentence, ''Your explanation must fully outline the conditions and terms of all listed agreements,'' was revised. It now reads, ''Your explanation must fully outline the conditions and terms of all listed agreements, including fully identifying the subject group of employees (*e.g.,* the particular unit or division in which those employees work).''[3] This revision will help ensure that filers understand that a full description requires information on the subject group of employees.

C. Overview of Item 12.b.

Filers who check ''Yes'' for any item in Items 8.b. through 8.f. must complete

[1] ''As of April 4, 2022, the federal government stopped using the DUNS Number to uniquely identify entities. Now, entities doing business with the federal government use the Unique Entity ID created in *SAM.gov*. They no longer go to a third-party website to obtain their identifier. This transition allows the government to streamline the entity identification and validation process, making it easier and less burdensome for entities to do business with the federal government.'' *Unique Entity Identifier Update,* U.S. General Services Administration, available at *https://www.gsa.gov/about-us/organization/federal-acquisition-service/office-of-systems-management/integrated-award-environment-iae/iae-systems-information-kit/unique-entity-identifier-update* (last visited December 10, 2022).

[2] Item 8 requires filers to indicate the type of reportable activity engaged in by the employer. Item 8 a. asks filers: Did you make or promise or agree to make, directly or indirectly, any payment or loan of money or other thing of value (including reimbursed expenses) to any labor organization officer, agent, shop steward, or other representative or employee of any labor organization? Items 8 b. through 8 f. ask about payments and expenditures related to a labor dispute or the right to organize and bargain collectively. *See also https://www.dol.gov/agencies/olms/reports/electronic-filing.*

[3] The preamble of the proposed revision provided, ''The instructions would also make explicit that a 'full explanation' requires that filers must identify the subject group of employees (*e.g.,* the particular unit or division in which those employees work).'' 87 FR 55954. Through an editing error, the instructions used the Latin abbreviation ''*i.e.*'' 87 FR 55969. The Department adopts the abbreviation used in the preamble.

Item 12.b. indicating their status as a federal contractor or subcontractor. Regarding such status, the Department, as proposed, adopts the following definitions from the regulations implementing Executive Order (E.O.) 13496, Notification of Employee Rights Under Federal Labor Laws: (a) ''contract,'' (b) ''contracting agency,'' (c) ''contractor,'' (d) ''government contract,'' (e) ''modification of a contract,'' (f) ''prime contractor,'' (g) ''subcontract,'' and (h) ''subcontractor.'' 29 CFR 471.1. Therefore, filers must answer Item 12.b. in accordance with those eight definitions.[4] *Id.*

Item 12.b. consists of two parts. First, filers must complete the ''Yes,'' ''No,'' or ''N/A'' checkbox in response to the following question: ''If your Part B applies to Items 8.b.–8.f., did the expenditures, payments, arrangements or agreements concern employees performing work pursuant to a federal contract or subcontract?'' Second, if the filer answers ''Yes,'' it must enter, on the two lines provided, their UEI and the name of the federal contracting agency involved. If a filer does not have a UEI, then the filer (most likely a subcontractor) should so state in Item 12.b. If providing the name of a federal contracting agency would reveal classified information, the filer should omit the name of the agency. When filers answer ''Yes,'' in the checkbox portion of Item 12.b., failure to complete the entry on the two lines provided, or providing an unclear explanation in that entry, will render the report deficient.

IV. Purpose and Justification for the Revisions

A. OLMS Has Authority To Issue This Rule

As the Department stated in its proposed revision, both the public and the employees whose rights are at issue have an interest in understanding the full scope of activities undertaken by employers to persuade employees regarding the exercise of their rights to organize or bargain collectively, to surveil employees, or to commit unfair labor practices. *See* S. Rep. 187 at 10–11, LMRDA Leg. Hist. at 406–07. This interest is heightened when the employees' own tax dollars may be indirectly funding an employer's reportable activities. The public and employees also have an interest in knowing whether the federal government is paying for goods and services from an employer who would seek to engage in activity that may disrupt the harmonious labor relations that the federal government is bound to protect. *See* S. Rep. 187 at 12; *see also* 29 U.S.C. 401(a). OLMS has authority to protect this interest.

The Form LM–10 reporting requirement is based on Congress's concerns over the ''large sums of money [that] are spent in organized campaigns on behalf of some employers'' on persuader activities that ''may or may not be technically permissible'' and Congress's determination that the appropriate response to such persuader campaigns is to disclose them in the public interest and for the preservation of ''the rights of employees.'' *See* S. Rep. 187 at 10–12, LMRDA Leg. Hist. at 406–07.

As set forth in Section I, Statutory Authority, above, LMRDA Section 208 authorizes the Secretary to ''issue . . . regulations prescribing the form and publication of reports required to be filed[.]'' 29 U.S.C. 438. The statutory provision authorizing the issuance of the Form LM–10 describes the data and information to be reported in the Secretary's form. Employers shall file with the Secretary a report, in a form prescribed by the Secretary, signed by the employer's president and treasurer or corresponding principal officers showing in detail the date and amount of each such payment, loan, promise, agreement, or arrangement and the name, address, and position, if any, in any firm or labor organization of the person to whom it was made and a ''full explanation'' of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made. 29 U.S.C. 433(a). The statutory intent to require employers to provide a ''full explanation'' of payments was reflected in the Form LM–10 the Secretary established. Employers are told to provide a ''full explanation'' of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made. 29 U.S.C. 433(a).

This revision, as with the proposal, explains that one of the ''circumstances'' that must be explained is whether the payments concerned employees performing work pursuant to a federal contract or subcontract. If so, the filer must provide its UEI, if it has one, and name the relevant federal contracting agency. Disclosing contractor status is consistent with Congress's intent in enacting the LMRDA: ''[I]t continues to be the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection.'' 29 U.S.C. 401(a); *see also* E.O. 13494 (reiterating ''the policy of the United States to remain impartial concerning any labor-management dispute involving Government contractors.''). As discussed in more detail, below, employees will more fully understand the circumstances under which they seek to exercise their rights when they know the contractor status and UEI of their employer, as well as the division or unit of the employees whose rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities the employer seeks to influence.

Half of all supportive commenters specifically referenced the Department's authority to make this revision, and two-thirds of supportive comments expressly indicated that making this revision is consistent with the LMRDA purpose of providing transparency through reporting and disclosure.

As one commenter stated, ''OLMS is well within its authority to prescribe these modest changes to the Form LM–10 [and] . . . [b]ecause the NPRM fully explains this sound basis for the revisions, we do not address them further.'' Another commenter similarly outlined the clear statutory basis for making the change: ''This statute [LMRDA] requires the disclosure of persuader activity payments to include 'full explanation of the circumstances' surrounding those payments . . . [and] delegates authority to the Agency to 'prescribe[]' the 'form' in which these reports are made, further reinforcing the authority of OLMS to implement this propose change.''

Other supportive commenters agreed that the revision was consistent with, and a reasonable alteration pursuant to, the reporting requirements of section 203 of the LMRDA and within the Department's authority under section 208 to ''issue . . . regulations prescribing the form and publication of reports required to be filed[.]'' 29 U.S.C. 438. As a union commenter described, the LM–10 already directs filers ''to '[e]xplain fully the circumstances of all payments, including the terms of any oral agreement or understanding pursuant to which they were made.'' Accordingly, the commenter continued, ''it is reasonable and appropriate for [filers] to disclose their status as a federal contractor or subcontractor, and information about the employees (or

[4] The Form LM–10 instructions list the definitions adopted from the implementing regulations of E.O. 13496 (Notification of Employee Rights Under Federal Labor Laws) at 29 CFR 471.1 for *Contract, Contracting agency, Contractor, Government contract, Modification of a contract, Prime Contractor, Subcontract, and Subcontractor. See* 29 CFR 471.1.

groups thereof) that are the subject of the payments, expenditures, agreements, or arrangements covered by the statute, as a part of their obligation to provide a full explanation of this conduct.''

Commenters also turned to legislative history for further support of the Department's authority to issue this revision. A union commenter citing the LMRDA Legislative History, highlighted Congress' concern with ''middlemen'' and the applicable statutory language as ''provid[ing] clear authority for the modest action proposed in the NPRM.'' A different union commenter also looked to the legislative history of the LMRDA, citing a Senate Report that concluded most persuader activity is '' 'disruptive of harmonious labor relations and fall[s] into a gray area' such that it 'should be exposed to public view.' '' The Department enacts this revision to more fully realize the ideal of transparency that is central to section 203 of the LMRDA. As many union commenters noted, the broad authority granted to the Secretary by section 208 allows for these modest changes to the form. Another union commenter agreed that the Department's ''clear interest in understanding the full scope of activities undertaken by employers that enter into agreements to persuade employees not to exercise these rights'' is indeed served by these revisions.

B. The Revision Furthers the Intent of the Act

One intent of the Act is to support a harmonious relationship among employees, labor organizations, employers, and labor relations consultants. *See* 29 U.S.C. 401 (congressional declaration of findings, purposes, and policy for LMRDA); *id.* at 401(a) (in enacting the LMRDA, Congress found that ''the relations between employers and labor organizations and the millions of workers they represent have a substantial impact on the commerce of the Nation''). The Act therefore requires transparency and accountability not just for labor organizations, but employers and labor relations consultants as well. Congress intended the LMRDA to provide for the elimination and prevention of improper practices on the part of ''labor organizations, *employers,* labor relations consultants and their officers and representatives.'' 29 U.S.C. 401(c) (emphasis added).

Members of Congress commented that the ''proposed rule does not subject any employer to new filing requirements.'' The Department agrees that the revision does not change the criteria that determines which employers are required to file the Form LM–10. The revision also does not impair any rights that filers had prior to the change to Item 12, including First Amendment rights, as addressed below in Part V.B. It does not increase required filers' liability in connection with activities that they already had to report and does not impose duties to file reports that filers did not already have under the LMRDA. It adds, for certain filers only, the straightforward step of providing basic identifying details regarding contractor status that filers will be able to quickly enter on the Form LM–10. Consistent with the statutory scheme enacted by Congress, the revision outlines aspects of the ''full explanation'' that filers must report on the Form LM–10. 29 U.S.C. 433(a).

Next, one commenter opposed the proposed Form LM–10 revision because it claimed that the proposed revision is contrary to the intent of the LMRDA. The commenter asserted that while the LMRDA does place some requirements on management, the main intent of the law is to ''ensure that individual workers are apprised of the financial actions *of their own unions*[.]'' (Emphasis in original.) This assertion is contradicted by both the legislative history and the plain language of the statute. The Act expressly requires employer reports, 29 U.S.C. 433 (''Report of employers''), and authorizes the Department ''to issue, amend, and rescind rules and regulations prescribing the form and publication'' of the employer reports required to be filed under the statute. 29 U.S.C. 438. The commenter explained, however, that in its view, ''[w]orkers have a direct and obvious interest in being aware of the actions of their unions, which purport to speak on their behalf as their collective voice. The workers' interest is less compelling when it involves the financial disclosure by employers as that is, by definition, not the workers' own money and they do not have control over its use under ordinary circumstances.'' The Department disagrees that this is a reason to reject the revision. Congress, aware that employers were spending their own money on what are now reportable activities, enacted the LMRDA to expose those payments, agreements, and arrangements to public view. *See* S. Rep. No. 86–187 (''S. Rep. 187'') at 10–11 (1959), reprinted in 1 NLRB, LMRDA Leg. Hist., at 406–07.

Legislative history shows that the revisions are in accord with the congressional intent of the Act. When debating and enacting the LMRDA, Congress considered conduct by some employers and their labor relations consultants as interfering with the right of employees to organize labor unions and to bargain collectively under the NLRA. *See* S. No. 86–187. Rep, at 50–51, reprinted in 1 LMRDA Leg. Hist., at 446–447. Congress believed that employer payments and activities aimed at employee unionization efforts should be made public even if they are lawful.[5] *See* S. No. 86–187. Rep, at 81–82, reprinted in 1 LMRDA Leg. Hist., at 477–478. Among the concerns that prompted Congress to enact the LMRDA was employers retaining labor relations consultants whose actions discouraged or impeded the right of employees to organize labor unions and to bargain collectively under the NLRA, 29 U.S.C. 151 *et. seq. See, e.g.,* S. No. 86–187. Rep, at 6, 10–12, reprinted in 1 LMRDA Leg. Hist., at 397, 402, 406–408. Therefore, the Department finds that employer reporting on persuader, surveillance, and unfair labor practice activity is a fundamental part of the Act.

Moreover, Congress authorized the Department to collect detailed reports from employers. 29 U.S.C. 433, 438. The Senate Report explained that the Department's collection and public disclosure of employer reports under section 203 ''will accomplish the same purpose as public disclosure of conflicts of interest and other union transactions which are required to be reported'' under other sections of the bill that was to become the LMRDA. S. Rep. No. 86–187, at 5, 12, reprinted in 1 LMRDA Leg. Hist., at 401, 408.[6] The Senate Report also explained that employers required to file must ''file a detailed report.'' Consistent with this congressional intent, Form LM–10 reports have required a variety of details from employers including whether they are partnerships, corporations, or individuals. *See* Form LM–10, Item 7. Similarly, the revision now adds an additional piece of identifying

[5] Congress recognized that some of the persuader activities occupied a ''gray area'' between proper and improper conduct and chose to rely on disclosure rather than proscription, to ensure harmony and stability in labor-management relations. *See* S. Rep. No. 86–187, at 5, 12; 1 LMRDA Leg. Hist., at 401, 408.

[6] H.R. Rep. No. 86–741(1959), at 12–13, 35–37, reprinted in 1 LMRDA Leg. Hist., at 770–771, 793–795, contained similar statements However, it should be noted that the House bill contained a much narrower reporting requirement—reports would be required only if the persuader activity interfered with, restrained, or coerced employees in the exercise of their rights, *i.e.,* if the activity would constitute an unfair labor practice. The House bill also contained a broad provision that would have essentially exempted attorneys, serving as consultants, from any reporting. In conference, the Senate version prevailed in both instances, restoring the full disclosure provided in the Senate bill. *See* H. Rep. No. 86–1147 (Conference Report), at 32–33; 1 LMRDA Legis. Hist., at 936–937.

information in Item 12.b. for certain filers—whether they are federal contractors or subcontractors and, if so, their UEI and agency involved.

C. The Revision Ensures That Filing Employers Fully Explain the Circumstances of Payments, Agreements, and Arrangements

This revision ensures that filers fully explain the circumstances of all covered payments, as required by the statute. The statute states in broad terms that the details of the reportable activity are to be collected in a ''form prescribed by [the Secretary] . . . showing . . . a full explanation of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made.'' 29 U.S.C. 433(a). For example, the group of employees affected by a covered agreement (scope of agreement) and the worksite of the employees to be targeted (location of performance on the agreement) are basic details readily captured by the statute's use of the phrase ''terms of any agreement.'' 29 U.S.C. 433. The status of an employer as a federal contractor is captured within ''full explanation'' of those terms. In many cases, it may also be captured in the terms of the agreement itself, and reportable for that reason alone.

One commenter who opposed the revision noted that Congress did not include federal contractor status as an explicit requirement in the drafting of the LMRDA, indicating that Congress did not find such status relevant. The Department does not agree as Congress, instead of making explicit all aspects of the reporting requirements, authorized the Secretary to, ''issue . . . rules and regulations prescribing the form and publication of reports required to be filed'' including concerning the details of a ''full explanation of the circumstances of all such payments[.]'' 29 U.S.C. 433, 438. Congress declined to enumerate each ''circumstance[]'' to be reported, delegating authority to the Secretary to determine the relevant details when prescribing the form and publication of the Form LM–10.

Members of Congress commented that the revision ''would only inform employees of whether their employer is a federal contractor, a fact typically already known by employees since they work on the contracts.'' Another commenter also thought it would be ''self-evident'' if employees' work for a company involved the federal government. In contrast, an international union representing employees throughout the economy, including manufacturing employees, commented that the form may provide the first notice to employees that they are employees of a federal contractor: ''In many instances, manufacturing employees may be unaware that their employer is a federal contractor or subcontractor.'' The commenter described analogous circumstances for service sector employees. Similarly, a national union commented that it only discovered during the pandemic that some of the employers it bargains with consider themselves to be federal contractors because those employers sought aid available to such contractors. In support of the revision, another commenter said that adding Item 12.b. will add a level of accountability. The Department agrees that some employees may not be aware that their work is pursuant to a federal contract and that the revision adds a level of accountability envisioned by the LMRDA. It adds identifying details regarding filers' contractor status that are part of the ''full explanation'' Congress intended to be publicized under the Act.

D. Both the Public and Workers Have an Interest in Transparency Concerning Employers' Federal Contractor Status

As stated in the notice of proposed revision, the Department makes these revisions in response to the increased prevalence of, and public interest in, persuader activities in recent years.

1. Persuader Activity Has Increased in Prevalence

The media, academics, and non-governmental organizations (NGOs) have noted persuader activity in a number of industries, including multiple high-profile instances of companies investing substantial resources in persuader activity. Over the decades, employer efforts to defeat unions have become more prevalent, with more employers turning to union avoidance consultants.[7] Further, members of Congress have noted recently that federal contractors have engaged in such agreements and activities.[8] As the Agency responsible for promoting transparency around management attempts to influence employees' organizing and collective bargaining rights, OLMS closely monitors developments in the ways management interacts with union organizing efforts. As union avoidance activity increases, it is well within OLMS's role to increase the quality and utility of the information being disclosed on such activity.

The noted prevalence of persuader activity accordingly increases the interest of the federal government in obtaining information about employers' spending on reportable activities. Congress found that most of this kind of persuader activity is ''disruptive of harmonious labor relations,'' even if lawful. S. Rep. 187 at 12, LMRDA Leg. Hist. at 406. The federal government has an increased interest in fully identifying employers who may be disrupting the harmonious labor relations that the federal government is bound to protect when those employers are receiving tax dollars through federal contracts. *See* 29 U.S.C. 401(a). In other words, greater transparency is even more important when persuader activities are increasingly undertaken by employers that receive federal funds through contracting relationships. *See* E.O. 13494 (reiterating ''the policy of the United States to remain impartial concerning any labor-management dispute involving Government contractors.'').

[7] Celine McNicholas, et. al, *Unlawful: U.S. Employers Charged with Violating Federal Labor Law in 41.5 percent of all Union Elections,* Economic Policy Institute, (Dec. 11, 2019) available at *https://www.epi.org/publication/unlawful-employer-opposition-to-union-election-campaigns/* (''The data show that U.S. employers are willing to use a wide range of legal and illegal tactics to frustrate the rights of workers to form unions and collectively bargain . . . . [E]mployers spend roughly $340 million annually on 'union avoidance' consultants to help stave off union elections . . . . Over the past few decades, employers' attempts to thwart organizing have become more prevalent, with more employers turning to the scorched-earth tactics of 'union avoidance' consultants.''); Heidi Shierholz et. al, *Latest Data Release on Unionization,* Economic Policy Institute, (Jan. 20, 2022) available at *https://www.epi.org/publication/latest-data-release-on-unionization-is-a-wake-up-call-to-lawmakers/* (describing how ''it is now standard, when workers seek to organize, for employers to hire union avoidance consultants''); John Logan, *The New Union Avoidance Internationalism,* 13 Work Org., Lab. & Globalisation 2 (2019) available at *https://www.scienceopen.com/hosted-document?doi=10.13169/workorgalaboglob.13.2.0057;* Thomas A. Kochan et. al, U.S. Workers' Organizing Efforts and Collective Actions: A Review Of The Current Landscape, Worker Empowerment Research Network, (June 2022) available at *https://mitsloan.mit.edu/sites/default/files/2022-06/Report%20on%20Worker%20Organizing%20Landscape%20in%20US%20by%20Kochan%20Fine%20Bronfenbrenner%20Naidu%20et%20al%20June%202022.pdf;* In Solidarity: Removing Barriers to Organizing, Hearing Before the United States House Committee on Education and Labor, 117th Congress (September 14, 2022), available at *https://edlabor.house.gov/hearings/in-solidarity-removing-barriers-to-organizing.*

[8] Should Taxpayer Dollars Go to Companies that Violate Labor Laws?, Comm. on the Budget, 117th Congress (May 5, 2022), available at *https://www.budget.senate.gov/hearings/should-taxpayerdollars-go-to-companies-that-violate-labor-laws* (discussing the propriety of government contracting with Federal contractors that engage in legal and illegal tactics, including ''union busters,'' to dissuade workers from exercising their organizing and collective bargaining rights).

One commenter disagreed with this rationale and opposed the proposed Form LM–10 revisions because they believe the Department failed to provide any evidence of persuader activities negatively affecting labor relations or leading to increased costs or delays for the contracts. Evidence of the efficiency of federal contracts is not necessary, as this is not part of the justification for this revision. Independent evidence of persuader activities negatively affecting labor relations is also not necessary as Congress determined that workers and the public needed disclosure of persuader activities, even if lawful. Nevertheless, an international union that represents employees in an array of industries, including employees of federal contractors, commented that, based on its long experience with anti-union campaigns waged by labor consultants, persuader activity is harmful to workers' ability to exercise their collective bargaining rights. Consistent with this comment, and as discussed above, in enacting the LMRDA Congress was concerned with the impact of persuader activities on harmonious labor relations and believed that increased transparency about employer efforts to persuade employees regarding their organizing and collective bargaining rights would benefit workers and the public. The revision furthers this statutory purpose.

2. The Revisions Will Lead To Increased Transparency

Many commenters favored the revision because it supports increased transparency regarding persuader, surveillance, and unfair labor practice activity. One commenter observed that the revision will provide ''notice to workers and the public when a corporation reporting anti-union spending is also a government contractor.'' The commenter believed that this will ''help organizing workers better understand the full extent of corporate opposition.'' The Department agrees that the revision to Form LM–10 will increase transparency regarding which federal contractors and subcontractors are engaging in activities reported on the LM–10. Confirming a filer's status as a federal contractor, as well as its UEI and federal agency involved, as part of a full explanation of persuader activities will provide a method for the public and employees to quickly identify whether a filer is a federal contractor.

Like the federal government itself, workers and the public also have a strong interest in spending choices by federal contractors. As a policy institute commenter researched, and many commenters cited, employers spend at least $340 million a year to bring union avoidance consultants to influence workers as they decide whether to support an organizing effort. The policy institute commenter argued that the revision would allow workers and the public more transparency into the willingness of federal contractors to engage in such practices. The Department agrees that this may be relevant information to employees as they choose how to exercise their organizing and collective bargaining rights. It is therefore part of the ''full explanation'' that Congress envisioned employers reporting. 29 U.S.C. 433(a).

One commenter opposing the revision said that ''if the company does work on a federal contract, it is unlikely that this will be a central or even relevant issue when the workers and the management negotiate their own contract.'' The commenter asserted that ''workers still work for the company and it is its policies and contract terms that will be at issue.'' In the commenter's view, it is ''extremely unlikely that workers would oppose the company accepting federal contracts, for example.'' The Department is not revising the LM–10 because it expects employees to make a particular choice regarding how they wish to exercise their organizing and collective bargaining rights. Instead, the revision outlines further information that employees may choose to consider when determining whether and how to exercise their rights.

Two commenters supported the revision because it would empower employees to speak out against both unlawful and lawful efforts by their employer to convince them to remain unrepresented. Publicizing which Form LM–10 filers are federal contractors will give workers more information as they choose whether or not to speak out against such efforts by their employer to convince them to remain unrepresented. And as an advocacy center commenter also maintained, ''the public is entitled to know whether public funds may indirectly lead to any sort of disruption of labor relations and workers' rights.''

By learning of the federal contractor status of their employer, those employees would have convenient access to the information that would allow them to meaningfully exercise their organizing and collective bargaining rights such as their First Amendment right to choose whether to contact their representatives in Congress to inquire about the federal appropriations underlying the contracts with their employers, or the employers' activities undertaken pursuant to such contracts, or allow the employees to work more effectively with advocacy groups or the media to disseminate their views as employees to a wider audience. *See* 29 U.S.C. 157; 45 U.S.C. 152, Fourth. This is consistent with Congress' expectations when enacting the LMRDA—that in the public interest citizens would have the benefit of public reports regarding employer conduct that falls in a ''gray area.'' S. Rep. 187 at 11, LMRDA Leg. Hist. at 407 (persuader activities ''should be exposed to public view, for if the public has an interest in preserving the rights of employees then it has a concomitant obligation to insure the free exercise'' of those rights).

Another comment discussed the Department's authority to ensure LMRDA compliance and ''strongly support[ed] the proposed change to the LM–10's instructions to make explicit that Filers must identify the specific group of employees—such as the work unit or division—that were subjected to the reportable, employer-sponsored anti-union activities.'' The Department received no negative comments on its proposed clarification that filers must identify the subject group of employees and will retain the revised instructions as proposed. The Department finds that doing so will increase compliance.

Multiple commenters also cited better NLRB cross-matching as a benefit of the revision. The Department finds that by clarifying that filers must identify the unit of employees subjected to their persuader activity, representation and unfair labor practice cases before the NLRB that have similar information documented can be matched more easily by employees, allowing them to know whether they were subjected to persuader activities more readily. This in turn would allow them to make better-informed decisions regarding their workplace representation.

Several commenters spoke to how the revision is justified as a matter of policy by the public need for greater transparency in these times of increased public interest in joining a union. As one commenter indicated, ''[i]n 2022, workers voted to unionize in more elections than they have in nearly two decades. Support for labor unions is [at] its highest level since 1965, with 71 percent of Americans saying they approve of unions[.]'' The commenter went on to say ''roughly half of nonunion workers—or 60 million workers—would join a union if they could[.]''

One commenter, an independent advocacy organization, also emphasized that while the LMRDA provides statutory authority for employer reporting form revisions that the

Secretary deems necessary, this rulemaking is further justified by the particular legal status of the group it now seeks to secure disclosure from: federal contractors. This commenter noted that starting with E.O. 8802, Administrations of both parties since 1941 have held entities that receive federal money to ''the highest ethical standards.'' The commenter said that this policy was reflected in legislation including Title VI of the Civil Rights Act of 1964, and the Workforce Investment and Opportunities Act. The commenter also wrote that regulations require federal contractors to ''conduct themselves with the highest degree of integrity and honesty.'' [9] The Department acknowledges the benefits of these laws but need not rely on them as the LMRDA expressly contains a similar policy choice for all employers that must report, including filers that are federal contractors. One of Congress' stated purposes was to hold all covered employers to ''the highest standards of responsibility and ethical conduct[.]'' 29 U.S.C. 401(a). The revision does so regarding filers that are federal contractors and is therefore consistent with the LMRDA.

The increased transparency from the revision will benefit employees working on federal contracts who are subject to persuader activity, information gathering, or interference, by giving them a ''full explanation'' about their employers' reportable activities—as intended by Congress in enacting the LMRDA. 29 U.S.C. 433(a). Generally, the transparency created by the reporting requirements is designed to provide workers with necessary information to make informed decisions about the exercise of their rights to organize and bargain collectively. For example, with the knowledge that the source of the information received is an anti-union campaign managed by an outsider, workers will be better able to assess the merits of the arguments directed at them and make an informed choice about how to exercise their rights.

Here, employees have a particular interest in knowing whether their employers are federal contractors because, as taxpayers themselves, those employees should know whether they are indirectly financing persuasion campaigns regarding their own rights to organize and bargain collectively. An individual commenter added that ''employees of federal contractors and subcontractors are often given constitutional protections and other protections that would be awarded to government employees,'' and thus the federal government has a special interest in seeing what forces such contractors bring to bear on their employees' exercise of their rights. The Department agrees with this line of reasoning that federal contractors and subcontractors occupy a particular role in civil society through their relationship with the federal government and receipt of federal monies. *See* 29 U.S.C. 401(a) (providing it is ''the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection''). Although persuader campaigns are not themselves reimbursable under the federal contract or subcontract,[10] federal contractors receive substantial financial benefits from these federal contracts.

As one commenter explained, ''these employers often receive 'significant' sums of money under federal contracts, funds which 'directly or indirectly' support their business activities, including any decision to hire union avoidance consultants or otherwise engage in persuader activities.'' In the same vein, a union commenter noted that although no federal funds could be properly expended to engage in reportable activity under section 203(a), federal contractors can nonetheless still engage in this activity using other funding, and while federal agencies may not be supporting that activity directly, the federal agencies nonetheless support businesses that engage in employee persuasion, helping to make them profitable. The Department agrees that the funds free up other funds to be spent on consultants. They support directly or indirectly contractors' businesses and additional activities, which may include the decision to hire consultants to persuade employees.

The revision will increase transparency about these circumstances by ensuring that Form LM–10 reports include which federal contractors and subcontractors are engaging in persuader, surveillance, and unfair labor practice activities. Confirming a filer's status as a federal contractor, as well as its UEI and the federal agency involved, as part of a full explanation of reportable activities will provide a method for the public and employees to quickly identify whether a filer is a federal contractor.

E. Including the Unique Entity Identifier Will Prevent Confusion and Ease Access

Multiple commenters supported the requirement to provide the Unique Entity Identifier (UEI) on Form LM–10. An international union commented that requiring certain filers to provide their UEIs on the Form LM–10 is critical to avoid confusion. Another international labor organization agreed, noting that the revision would allow for ''better identification of filing employers through the use of the UEI[.]'' The Department agrees that the requirement that certain filers provide their UEI, if they have one, will avoid confusion and allow the public and employees to more easily confirm the identity of filers who are federal contractors. It will also ensure other, more detailed, information regarding federal contracts is easily obtainable to employees and the general public. Two or more employers may have a similar name, which can create difficulty for workers and the public in determining whether the employer is, in fact, receiving federal funds. Individual employers often use multiple names, including trade, business, assumed, or fictitious names, such as a DBA (''doing business as'') designation. Nevertheless, all federal prime contractors have their own individual identifier to seek and secure federal contracts, which can more explicitly link an employer to a particular federal contract.[11] Requiring employers to provide this federal contract identifier on the Form LM–10 furthers the congressional purpose of detailed employer reporting under the LMRDA, 29 U.S.C. 401, 433, because members of the public and employees will be able to more easily distinguish companies with similar names or locate reports on companies that have changed their names. This information can also help employees and the general public to more expeditiously search detailed government contract data for these employers in the *SAM.gov* (System for Award Management system) and *USASpending.gov* websites. By using the UEI, employees and the general public can be certain that the detailed contract information available in the SAM System, for example, is an award granted to the specific employer who has filed the Form LM–10.

F. The Revisions Do Not Create a Significant Burden on Employers

By using existing definitions and requiring reporting of information easily

[9] Federal Acquisition Regulations System § 3.1002.

[10] *See* E.O. 13494 (federal agencies ''shall treat as unallowable the costs of any activities undertaken to persuade employees . . . to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively through representatives of the employees' own choosing'').

[11] *See* Federal Acquisition Regulations System § 4.605(b).

accessible to the filers, the Department has avoided imposing any significant burden on filers. As discussed above, the Form LM–10 uses a list of definitions adopted from the implementing regulations of E.O. 13496 (Notification of Employee Rights Under Federal Labor Laws) at 29 CFR 471.1. The Department expects that federal contractors and subcontractors are already familiar with these definitions because they are also, with minimal changes, the same definitions that already govern Federal contractors and subcontractors under E.O. 11246, Equal Employment Opportunity, and its implementing regulations. *See* 41 CFR 60–1.3 (definitions regarding obligations of federal contractors and subcontractors). Executive Order 11246 prohibits federal contractors and federally assisted construction contractors and subcontractors who do over $10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin. The E.O. also requires Government contractors to take affirmative action to ensure that equal employment opportunity is provided in all aspects of employment. Additionally, E.O. 11246 prohibits federal contractors and subcontractors from, under certain circumstances, taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or the pay of their co-workers. E.O. 11246 is enforced by the Department's Office of Federal Contract Compliance Programs (OFCCP) and covers approximately one–fifth of the entire U.S. labor force. E.O. 11246's requirements are incorporated in applicable government contracts or subcontracts and includes nondiscrimination, notice posting,[12] annual reporting,[13] record keeping,[14] and, for contractors that meet certain threshold requirements, development and maintenance of a written affirmative action program,[15] among other requirements. Therefore, the Department expects that all filers who are federal contractors and subcontractors will already know their status as such under E.O. 11246 and its implementing regulations, *see* 41 CFR 60–1.3 and 60–1.5, and that most filers are able to easily identify the information required for Item 12.b—their UEI and federal contracting agency or agencies.

In addition, federal contractors and subcontractors are required to comply with E.O. 13496. Executive Order 13496 applies to federal contractors and subcontractors subject to the NLRA. Pursuant to E.O. 13496, covered employers are already required to know whether they are federal contractors or subcontractors under the definitions used in this revision and, if they are, to post a notice and to inform employees of their rights under the NLRA, the primary law governing relations between unions and employers in the private sector. *See* 29 CFR 471. The notice, prescribed in the regulations of the Department, informs employees of federal contractors and subcontractors of their rights under the NLRA to organize and bargain collectively with their employers and to engage in other protected concerted activity. The Department expects that most filers are subject to the NLRA.[16]

Several supportive comments discussed the minimal burden of the revision. Multiple comments indicated the limited nature of the burden on employers given the minimal amounts of time and effort the revisions necessitate, and that, for whatever burden does exist, it is justified by the substantial benefit to employees and the public.

As one union commenter stated, ''OLMS is not imposing an onerous burden on employers with these minor revisions,'' and the revisions ''are minor but important changes to employer's reporting requirements.'' The commenter went on to say that ''the proposed revision does not change which employers must file Form LM–10 or when or how often they must be filed. The revision mainly requires employers to check a box disclosing if they are federal contractors and, if so, to provide a federal unique entity identifier if applicable, and identify the federal agencies involved[.]'' Another union commenter echoed the sentiment: ''This is a modest revision that results in almost no additional burden on employer filers and will provide important information to OLMS, employees, the public, and other federal agencies.'' And, as another union commenter stated, ''it is worth noting that the proposed rule's required disclosures are narrowly tailored to be minimally invasive on employers.''

Comments highlighted that the form offers little burden increase. ''This small change will reap significant benefits while creating almost no additional administrative burden for LM–10 filers,'' one commenter stated. As another indicated, ''the Agency is proposing to incorporate the same definitions of 'contract,' 'contracting agency,' 'contractor' and other related terms that are included in E.O. 13496, which is currently effective and imposes obligations on federal contractors and subcontractors.'' The comment continued to rightly point out ''federal contractors and subcontractors are generally required to obtain a Unique Entity Identifier ('UEI') as a condition of performing work on federal contracts.''

As described in the burden analyses below, in Section VI.A(1), it will take filers on average five minutes to gather and enter the information required by this revision. This cost is not significant. While the Department recognizes the merits of the argument from some commenters that there should be no increase in the time estimate for the LM–10 due to this *de minimis* burden, especially as many filers will simply check ''No,'' the entry of the UEI and federal contracting agency(ies) will take slightly more time and the Department believes five minutes is a reasonable estimate for filers who have to complete it.

V. Additional Comments Received

A. Comments Concerning Potential Duplication of Existing Reporting Requirements

One comment, filed by Members of Congress, opposed the proposed Form LM–10 revision because the commenters believe requesting contractor status on the Form LM–10 elicits duplicative information. The commenters reasoned that because the public can determine whether an employer has contracts with the federal government through other governmental systems, requesting federal contractor status information for Form LM–10 is contrary to E.O. 12866. Executive Order 12866 directs federal agencies to issue

[12] Notices to be posted, 41 CFR 60–1.43 (2022).

[13] Reports and other Required Information, CFR 60–1.7 (2022).

[14] Record Retention, 41 CFR 60–1.12 (2022).

[15] Affirmative Acton Programs, § 60–1.40; 60–2.1 (2022).

[16] Employers covered by the Railway Labor Act (RLA) are not covered by E.O. 13496, however, both NLRA and RLA employers are subject to the reporting requirements of the LMRDA. Thus, RLA employers may need more time to identify which employees who are the subject of the LM–10 report have duties relating to the performance of the Federal contract or subcontract. The Department expects that only a small number of filers will be Federal contractors or subcontractors subject to the RLA. The Department received no comments on the issues of RLA coverage or lack of NLRA coverage. The Department received no comments from anyone—including specifically from RLA-covered employers or their representatives—on this subject. *See: https://www.nlrb.gov/reports/nlrb-case-activity-reports/representation-cases/election/election-statistics* and *https://nmb.gov/NMB_Application/wp-content/uploads/2021/12/FY-2021-NMB-Performance-and-Accountability-Report-PAR.pdf.*

rules that ''are required by law, are necessary to interpret the law, or are made necessary by compelling public need such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people.'' The comment asserts that an employee could search the Federal Procurement Data System (FPDS) or *USASpending.gov* websites to determine whether their employer has contracts with the federal government. The comment also mentions that a listing of federal government contractors is available from the Small Business Administration and the General Services Administration.

While the Department acknowledges that some information on contractor status is available on other government websites, the Department disagrees that any duplication in public disclosure of contractor status negates or undermines the need for this revision or is contrary to E.O. 12866. The websites and databases where this information is currently available are either not designed for the general public or provide a far greater level of detail about federal contracts, which is not duplicated in the Form LM–10 by this rule. Also, as mentioned above, this minor addition to the Form LM–10 will significantly reduce confusion between employers with similar names, as it can readily distinguish which employer is which in these expansive databases. Thus, consistent with E.O. 12866, the Department has identified a problem and chosen a method which is most cost-effective and tailored to impose minimal burden on regulated entities. The information required by the revision, while minimal, is not otherwise easily available to the public. The change places almost no burden at all on reporting entities while, in contrast, the alternative solution offered by the comment would place the burden to research the reportable information on the very population for whom disclosure is intended to benefit.

For example, subcontractor information is available on the GSA Electronic Subcontracting Reporting System (ESRS), but this information is made available only to individuals with a registered government or contractor log-in account. The LM–10 forms are offered for public viewing on the OLMS Online Public Disclosure Room (OPDR), which does not require a registered government or contractor account. Including contractor identification information on the Form LM–10, available on the OPDR, will allow employees and the public to easily identify all filers who are paid under federal contracts, regardless of whether they are a prime contractor or a subcontractor. This reporting will provide a more transparent representation of when federal dollars go to filers who may also make disbursements to labor relations consultants designed to persuade employees regarding their rights to organize and bargain collectively or surveil employees. *See* Form LM–10, Items 8.b. through 8.f. This information cannot be readily ascertained from the SBA or GSA contractor lists.

The reporting of contractor status on the Form LM–10 is limited to identifying information and is therefore minimally duplicative of the more detailed reporting on the *USASpending.gov* website or what is listed on the GSA and SBA contractor lists. OLMS only requires the UEI number and the identification of the contracting agency and no other details of the contracts provided on other government lists. The UEI number required by the Department is the same number reported on the *USASpending.gov* website, but the final rule does not require duplicative reporting of the detailed financial information on federal contracts provided on that website.

The *USASpending.gov* website is compiled by the U.S. Department of the Treasury under the authority of the Federal Funding Accountability and Transparency Act of 2006 (FFATA), as amended by the Digital Accountability and Transparency Act (DATA Act), codified at 31 U.S.C. 6101 note. Consistent with the FFATA, detailed information about federal awards must be made publicly available on *USASpending.gov*. The DATA Act expanded the FFATA for purposes that include linking ''federal contract, loan, and grant spending information to programs of federal agencies to enable taxpayers and policy makers to track federal spending more effectively. . . .'' [17] The website is generally adapted for the American public to show constituents how the federal government spends money every year. Federal agencies covered by the DATA Act report spending data to Treasury for posting on the website using standardized data elements, and Treasury also gathers required Federal agency spending data from financial and other government systems (such as the Federal Procurement Data System (FPDS)). Prime contractors and subcontractors that received Federal awards directly from federal agencies also self-report data on their awards to the FFATA Subaward Reporting System (FSRS). The FSRS is a component of ESRS (mentioned above) but requires different reports than ESRS. FSRS requires reporting of executive compensation and sub-award recipient information by prime contractors, while ESRS requires reporting of the Individual Subcontract Report, Summary Subcontract Report, and Commercial Report, required, in effect, under the FFATA. One purpose of the DATA Act was to ''simplify reporting requirements for entities receiving Federal funds by streamlining reporting requirements. . . .'' [18] It also provides that the method of collection and reporting data, in the context of subawards, shall minimize the burdens on Federal recipients and sub-recipients.[19] Requesting contractor identification numbers is not an overly burdensome or a duplication of financial reporting, as it does not require any additional information required by the FFATA and DATA Act, but simply requires the reporting of an identification number already known to a federal contractor. For example, employers filing a Form LM–10 are not required to include information on whether contracts are awarded to Small Businesses, Women-Owned Small Businesses, Veteran-Owned Small Business, and related characteristics, which are to be reported to the ESRS. Reporting contractor identification numbers on the Form LM–10 is not unnecessarily burdensome for federal award recipients because the employer is already aware of their identification number from reporting under the FFATA.

An international union commenter observed that there is ''a significant gap in data concerning the scope of dissuasion campaigns undertaken by federal contractors and subcontractors'' to dissuade employees from joining a union. A nonpartisan organization agreed that the revision will help fill this information gap. Nine commenters supported the revision so that there will be a public record of which contractors engage in persuader activities. The Department agrees that such a public record is consistent with congressional intent to publicize a ''full explanation'' of reportable activities and will bridge an important information gap. 29 U.S.C. 433(a). These benefits outweigh any

[17] 31 U.S.C. 6101 note (DATA Act—Digital Accountability and Transparency Act of 2014, Pub. sec. 2(1)).

[18] Public Law 113–101, sec. 2(3).

[19] 31 U.S.C. 6101 note (FFATA sec. 2(d)(2)(A)); *see also* 31 U.S.C. 6101 note (DATA Act sec. 5) (discussing, in general, efforts to avoid unnecessary duplication and burdensome reporting).

minor duplication of contractor identifying information in government databases, especially when, as discussed above, some employees are not already aware that their employers are federal contractors. By including federal contractor identification on LM–10 Forms, the Department is linking federal contractor status with employer reporting to the Department to enable workers and the general public to easily evaluate federal spending within the context of the LMRDA. As mentioned above, the GSA and SBA websites provide lists of contractors within the context of those agencies. The SBA directory, for example, provides a listing of those contractors who have subcontracting plans with small businesses. Neither GSA nor SBA publishes reportable information under the LMRDA. Including basic identifying information about federal contractor status on LM–10 Forms allows OLMS, employees, and the general public to have all the relevant information in one, easily accessible reporting database pursuant to the LMRDA.

Similarly, Federal contractor status as required by OLMS in this revision provides less detailed information than the reporting required by the GSA *SAM.gov* website and is easier for the public to access and use. *SAM.gov* is generally designed for contractors who may, among other tasks, access publicly available award data and federal assistance listings. *SAM.gov* includes contract data derived from the FPDS, as well as some additional information submitted by *SAM.gov* contractor account users. With a *SAM.gov* user account, one can analyze federal spending by federal organization, geographical area, business demographics, and product or service type, among other characteristics. The Department does not seek to duplicate this detailed contract information provided on *SAM.gov*, but rather is requesting only for Form LM–10 filers to report their UEI and federal agency involved. Additionally, *SAM.gov* does not focus on LMRDA-reportable activities. In contrast to *SAM.gov*, the OLMS OPDR provides Form LM–10 data to the public and does so without the barrier of a user account. Therefore, any duplication of information on the Form LM–10 poses a minimal burden, if any, to the reporting entity and bridges an important information gap by making this information more easily accessible to the general public. OLMS, employees, and the public should not have to research voluminous collections of contracting information and multiple websites to glean which federal contracts are being fulfilled by employees who are subjected to persuader, surveillance, or unfair labor practice activity. Employees and the general public should have the ability, by getting the UEI, to learn the extent to which the filer engages in reportable activity while providing its goods and services to the Federal government.

Disclosing federal contractor status on the Form LM–10 is also consistent with E.O. 12866. Taken holistically, E.O. 12866 requires that a rulemaking identify a problem it intends to address, choose a method which is most cost-effective, and tailor that method to impose the least burden on society. Through its enforcement of the LMRDA, the Department ensures public, transparent reporting of certain activities that impact protected labor rights. The Department determined that filers engaging in activities that may impact protected labor rights should disclose whether they hold government contracts. Through this rule, the Department has chosen to require minimal information about federal contractor status. While the request of federal contractor status on Form LM–10 may also serve the function of the DATA Act's interest in linking federal expenditures to federal agency programs, as mentioned above, this is wholly distinct from the problem of transparent reporting under the LMRDA. Therefore, while the federal contractor status information may be available elsewhere, it does not make the regulation, in total, duplicative as to be in contravention of E.O. 12866.

The revision will allow employees access to the ''full explanation'' and circumstances of employers' reportable activity, including federal contractor status, in a location and context in which it is more accessible and useful to them. While general information about federal contracts is provided via other means, including this information on the Form LM–10 furthers the interest of transparency as intended by the LMRDA. Employees, union organizers, and the general public who are reviewing LM forms are more accustomed to reviewing documents like the Form LM–10 than extensive procurement- and employer-centric database platforms. Further, an employee or member of the public can more easily ascertain from the revised Form LM–10 whether the federal contract directly impacts a specified employment group because the federal contract identification is provided alongside information about the employer and subject group of employees. Minor redundancies in reportable information do not outweigh the benefits of having all LMRDA reportable information in one, easily accessible site on the Department's website.

The LMRDA reporting regime emphasizes access to information at the cost of minor redundancies. By statute, the information reported on one LM form may well appear in another LM form. Employer reporting (under 29 U.S.C. 433(a)) consists of the same information reported by labor relations consultants (under 29 U.S.C. 433(b)). In addition, employers report (under 29 U.S.C. 433(a)(1)) the same payments reported as receipts by labor unions (under 29 U.S.C. 431(b)(2)). Further, employers report (under 29 U.S.C. 433(a)(1)) the same payments reported by labor union officers and employees (under 29 U.S.C. 432). Plainly, therefore, the LMRDA was constructed to allow the public to more easily find relevant information by putting identical information in different reports targeted to different audiences.

In addition, this revision is similar to other Department requirements that include minor redundancies and cross-references to information provided to other governmental agencies in more depth. For example, on Form LM–2, labor organizations are required to report whether they have any political action committees (PAC), the full name of each PAC, and in addition, they must list the name of any government agency with which the PAC has a publicly available report, and the relevant file number of the PAC.[20] Despite being arguably redundant, these disclosures allow for a greater degree of transparency for union members and the public, by allowing viewers of the reports to connect such report with other labor related disclosures. The revision follows this same pattern when it takes three discrete pieces of information from locations where those interested in persuader reporting are not likely to look and brings it into the Form LM–10 where those who are interested will easily come across it.

B. Comments Concerning First Amendment Protected Activities and Other Employee and Employer Rights

Two comments opposed the proposed Form LM–10 revision because, they argued, the revision would have a ''chilling effect'' on contractors' right to engage in First Amendment-protected speech. The commenters asserted that the Department intends the revision to discourage lawful persuader activities by federal contractors. One commenter was concerned that the revision would

[20] LM–2 Instructions, Item 11, Item 69.

''restrict fair and open competition and discriminate against nonunion construction workers and businesses.'' The commenters noted that under the LMRDA, employers are permitted to hire outside labor relations consultants, including attorneys, to help persuade their employees regarding union organizing or collective bargaining representation. The commenters believed that the revision would increase public pressure on federal contractors and will assist advocacy efforts against employers. The commenters opined that ''the clear intent of the proposed rule is to encourage labor unions and other pro-union advocates to pressure federal agencies to stop awarding contracts to federal contractors who engage in lawful persuader activity.'' The commenters expressed concern that the government will use the information collected as a result of the revision to disqualify companies that engage in persuader activity from being awarded federal contracts.[21] The Department disagrees with these comments. The commenters' concern about a chilling effect appears purely speculative as they have not given any examples of how revealing basic identifying information of employers engaging in reportable activity has chilled speech or led to federal agencies barring or disqualifying employers from federal contracting. The argument also assumes bad faith on the part of labor organizations and federal agencies which the comment presumes will not comply with procurement standards.

There are safeguards built into the procurement process, *i.e.,* how agencies select successful bidders on contracts, that protect against the kinds of harm the commenters envision. When awarding contracts, agencies are generally required to follow strict rules designed to promote open and fair competition among vendors, without any improper bias or inappropriate consideration. That includes requirements for announcement in advance of the criteria to be used in selecting the winning firms. See, for example, Federal Acquisition Regulation (FAR) (48 CFR) 15.203(a), on the content of requests for proposals, and FAR 15.304(d), on evaluation factors and significant subfactors. See also FAR 3.101–1 which sets strict standards of conduct for the acquisition workforce, including ''complete impartiality'' and ''preferential treatment for none.'' In cases where there is reason to believe a firm has engaged in conduct that may be a cause for debarment or suspension, agencies must follow suspension and debarment regulations at FAR Subpart 9.4, Debarment, Suspension, and Ineligibility, or parallel suspension and debarment rules at Part 180 of Title 2 of the Code of Federal Regulations, for non-procurement transactions. Those suspension and debarment rules provide firms proposed for debarment or that are being suspended notice of such action and an opportunity to contest such action. See, for example, FAR 9.406–3, Procedures.

These commentors misinterpret First Amendment jurisprudence, and the Department is not persuaded by their speculative assertions. Initially, there is some tension between the commenters' concern that the Department is unnecessarily duplicating information and their concern that the disclosure of this already available information on the LM–10 will have a chilling effect. While the Department agrees that the revision will make contractor status available in a new context, the commenters' free speech concerns are both speculative and unsupported by First Amendment precedent.

The argument that the revision will discourage lawful persuader activities by federal contractors, as some commenters fear, is unsupported because persuader activities have been reported and disclosed since the inception of Form LM–10 reporting, yet no commenter identified evidence of a chilling effect. As discussed above, the Form LM–10 has always required filers to disclose the name of the employer, the reportable activity, and a ''full explanation of the circumstances'' of the activity, which encompassed identification of the group of employees subject to that activity. Federal contracting agencies have long had the means to identify federal contractors who also file LM–10 reports. No commenters identified evidence of contractors being barred, disqualified, ''blacklisted,'' or steered away from federal contracting as a result of such connections. If being publicly linked to persuader activity had a negative impact on an employer's ability to obtain federal contracts, that issue would likely have already arisen. The placement of this existing, publicly available information in the convenient Form LM–10 report does not inflict a constitutional injury, as discussed below.

In multiple opinions, the Supreme Court has held that transparency promotes informed decision making amongst shareholders and the electorate, rather than chilling speech. *See Citizens United* v. *Fed. Election Comm'n,* 558 U.S. 310 (2010); *McConnell* v. *Fed. Election Comm'n,* 540 U.S. 93 (2003); *Buckley* v. *Valeo,* 424 U.S. 1 (1976). In *Citizens United,* the Court stated that ''disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.'' *Citizens United,* 558 U.S. at 371. In upholding the disclosure requirements of the statute there at issue, the Court discussed *Buckley* v. *Valeo* and the Court's later opinion in *McConnell* and instructed that: ''Disclaimer and disclosure requirements may burden the ability to speak, but they . . . 'do not prevent anyone from speaking'; rather they help citizens to 'make informed choices in the political marketplace.' '' 558 U.S. at 367 (internal citations and quotations omitted). The interests served by requiring employers to report on persuader and surveillance activities are also congruent with those interests served by disclosure provisions in federal and state laws regulating lobbyists.[22]

In support of its argument that the proposed revision would chill LM–10 filers' protected speech, one commenter cited *Chamber of Commerce* v. *Brown,* 554 U.S. 60 (2008). This commenter argued that the proposed revision is invalid for the same reasons as those relied on by the U.S. Supreme Court in striking down a California State law, which prohibited certain employers who received certain state funds from using such funds to ''assist, promote, or

[21] One commenter stated a fear of being ''blacklisted'' as a federal contractor as a specific potential cause of the chilling effect. Another was ''concerned the proposed rule will be used to steer federal contracts away from companies that exercise their right to speak with their employees about unionization.''

[22] *See U.S.* v. *Harriss,* 347 U.S. 612, 625–626 (1954) (holding that ''those who for hire attempt to influence legislation'' may be required to disclose the sources and amounts of the funds they receive to undertake lobbying activities); accord, *e.g., Fla. League of Prof'l Lobbyists, Inc.* v. *Meggs,* 87 F.3d 457, 460 (11th Cir. 1996) (upholding state lobbyist disclosure statutes in light of state interest in helping citizens ''apprais[e] the integrity and performance of officeholders and candidates, in view of the pressures they face''). *See* also *Nat'l Ass'n of Mfrs.* v. *Taylor,* 582 F.3d 1, 9–10 (D.C. Cir. 2009) (upholding requirement that registered lobbyists disclose the identity of organizations that made monetary contributions and actively participated in or controlled the registrant's lobbying activities); *Kimbell* v. *Hooper,* 164 Vt. 80, 85–88, 665 A.2d 44 (1995) (upholding state lobbying statute against First Amendment challenge); *Gmerek* v. *State Ethics Comm'n,* 569 Pa. 579, 595, n. 1, 807 A.2d 812, 822 (2002) (dissent) (collects cases in which state lobbying disclosure laws were upheld against First Amendment and other challenges).

deter union organizing.'' *Id.* at 62. The decision in *Brown* was based on the Court's determination that this prohibition was preempted by Section 8(c) of the NLRA because it regulated activity (non-coercive employer speech on the subject of union organizing) that Congress intended to leave unregulated. *Id.* at 68–69.

The Department, as discussed above, has explicit authority from Congress to prescribe the form of reports that employers must file to disclose certain payments, including lawful payments, related to their activities around union organizing, collective bargaining, and surveillance of union activity. 29 U.S.C. 433, 438. The revision does not change or expand the payments or activities on which employers must report. Accordingly, there is no speech that was formerly protected from disclosure that this revision now brings to light. It simply requires current filers to provide additional, basic information about their status as a federal contractor, which will promote the congressional interest in free debate around issues of union organizing and collective bargaining.

The Supreme Court has also held that it would not strike down a statute based on speculative arguments, particularly those relating to assertions that amount to ''self-censorship'' or, in this case, self-censorship for fear of being disqualified as a federal contractor. *U.S.* v. *Harriss,* 347 U.S. 612, 626 (1954) (holding that ''those who for hire attempt to influence legislation'' may be required to disclose the sources and amounts of the funds they receive to undertake lobbying activities). The Court stated that the hypothetical hazards of self-censorship or restraint are at most indirect and too remote to require striking down a statute which on its face is otherwise plainly within the area of congressional power and is designed to safeguard a vital national interest. *Id.* Indeed, the Court has held that those resisting disclosure can prevail under the First Amendment if they can show ''a reasonable probability that the compelled disclosure [of personal information] will subject them to threats, harassment, or reprisals from either Government officials or private parties.'' *John Doe No. 1* v. *Reed,* 561 U.S. 186, 200 (2010) (upholding the state of Washington's Public Records Act requirements making referendum petitions available to the public), *citing Buckley* v. *Valeo,* 424 U.S. 1, 74 (1976). The Department is requiring limited additional disclosure that is within its delegated authority under section 208 of the LMRDA. The commenters have not shown any actual basis or reasonable probability for their fear of being disqualified or steered away from federal contracting due to revealing their contractor status on the Form LM–10.

Moreover, the Courts of Appeals for the Fourth and Sixth Circuits, in *Master Printers of America* and *Humphreys,* determined that a showing of threats, harassment, or reprisals to specific individuals must be shown to prove that government regulation will substantially chill free speech. *Master Printers of America* v. *Donovan,* 751 F.2d 700, 704 (4th Cir. 1984)*; Humphreys, Hutcheson and Mosely* v. *Donovan,* 755 F.2d 1211, 1220 (6th Cir. 1985). In *Master Printers of America* and *Humphreys,* the Courts of Appeals for the Fourth and Sixth Circuits focused on four factors in determining whether section 203(b) of the LMRDA had a deterrent effect and therefore violated free speech rights: (1) the degree of infringement on free speech; (2) the importance of the governmental interest protected by the LMRDA; (3) whether a ''substantial relation'' exists between the governmental interest and the information required to be disclosed; and (4) the closeness of the fit between the LMRDA and the governmental interest it purports to further. *Master Printers of America,* 751 F.2d at 704; *Humphreys,* 755 F.2d at 1220.

The Fourth Circuit in *Master Printers of America* determined that the challenger had not met its burden of showing that the section 203 disclosures had exposed its members to economic reprisal, loss of employment, threat of physical coercion and other manifestations of public hostility directed at specific individuals necessary to establish a ''deterrent effect.'' 751 F.2d at 704–705. In *Humphreys,* the Sixth Circuit also rejected First Amendment challenges to the disclosure obligation under section 203. The court concluded that the persuader law firm had failed to meet the ''deterrent effect'' standard for demonstrating an unconstitutional violation of its right to freely associate. 755 F. 2d at 1220–1222. The court rejected the persuader's free speech claim, ruling instead that the disclosures ''are unquestionably 'substantially' related to the government's compelling interest'' in preventing improper activities in labor-management relations. 755 F. 2d at 1222. In support of that conclusion, the court observed that the required disclosures would help employees exercise their right to support or not support a union, ''enabl[ing] employees in the labor relations setting, like voters in the political arena, to understand the source of the information they are given during the course of a labor election campaign.'' *Id.* The courts were able to examine evidence of the alleged chilling effect in reaching their conclusions. Neither the Department nor the commenters, of course, have at this stage of the final rule the benefit of any actual evidence to review the effects of requiring the disclosure of whether an employer is a federal contractor on the Form LM–10.

The requirement that a filer indicate whether it was a federal contractor or subcontractor in the prior fiscal year, and include related identification information, does not restrict employers from hiring outside labor relations consultants, including attorneys, to persuade employees regarding union organizing or collective bargaining, any more than the existing LM–10 and LM–20 reporting requirements. The revision does not discourage lawful persuader activities as labor relations consultants may still persuade employees in conformity with the NLRA and First Amendment rights of the employer and labor relations consultants. The requirement that employers report labor relations consultant activity is unchanged. In addition, both the public and the employees whose rights are at issue have an interest in more fully understanding the financial circumstances of employers who surveil employees, commit unfair labor practices, or persuade employees regarding their rights to organize or bargain collectively. *See* S. Rep. 187 at 10–11, LMRDA Leg. Hist. at 406–07.

Next, a commenter argued that the revision is preempted by the NLRA because it affects activity that is allowed by that statute. The Department disagrees. As discussed above, Congress was aware that some reportable activity would be lawful under the NLRA and still chose to require that that same employer activity be publicly reportable under the LMRDA. *See* S. No. 86–187. Rep, at 81–82, reprinted in 1 LMRDA Leg. Hist., at 477–478.

One commenter said that the revision will support employees and the public as they choose whether to ''engage in their own appropriate First Amendment protected persuasion activity.'' Another commenter asserted that it is ''improper for OLMS to collect information with the objective of encouraging the media and advocacy groups to use it to browbeat federal contractors who engage in persuader activity.'' The Department rejects the contention that the revision is intended to encourage the browbeating of federal contractors. Like the contention above that the revision will chill speech, it is speculative and unsupported by the

facts. Both presuppose that an employer that discloses persuader activity and federal contractor status will be subjected to intimidation. However, LM–10 filers' persuader activities have long been available to the public by the very same forms, and the filers' federal contract status has always been discoverable by the public through different data sets, yet no commenter asserted that ''browbeating'' has occurred. As was stated in the proposed revision, the objective of these revisions is to provide increased transparency for the public as a whole. This public exposure will allow for an open public discussion and debate, not intimidation, about the prevalence of persuader activity and the extent to which specific federal agencies might be indirectly supporting such activities by doing business with employers that engage in persuader activities.

One commenter, a non-profit research and advocacy organization, believed that the revisions would result in small and mid-sized businesses not seeking legal advice or counsel on their rights and responsibilities under the NLRA or the Railway Labor Act. The commenter asserted that these smaller businesses ''are more likely to be run by managers with little experience relating to collective bargaining and consequently more need to seek outside legal counsel to advise them on their legal rights and responsibilities.'' The commenter said that these ''companies are less likely to seek that advice if doing so gets them flagged on a public list.'' The commenter believed that the ''legal firms that these companies could afford are less likely to provide this advice due to concern over targeted campaigns by union activists.'' The commenter asserted that this ''will result in workers being less-informed of their rights under those laws, as unions are unlikely to fully explain rules that allow workers to opt out of membership or to hold their union to account.'' Further, according to the commenter, ''there is reason to be concerned that it could result in workers being uninformed regarding the practical impact of collective bargaining on their workplace and their relationship with their employer, their rights under the Supreme Court's *Beck* decision [23] or any rights they may have if they reside in a state with a right to work statute.'' The Department disagrees with the premise of this comment because seeking legal advice does not trigger an employer's duty to file a Form LM–10. *See* 29 U.S.C. 433(c). Therefore, the commenters conclusions based on that premise are also unpersuasive. Moreover, these employers already have a duty to file Form LM–10s for any covered activity. The principal disclosures secured by the Form LM–10 are unchanged; there is no evidence that the addition of a government contractor checkbox would in itself chill any activities.

The comments also referenced the right of employees to obtain balanced and informed input from both the employer and the labor organization when employees decide whether to unionize. Again, the commenters seemed concerned that the revision would affect this balance by chilling employer free speech or making decisions for workers instead of allowing workers to make their own organizing and collective bargaining decisions. As discussed above, the Department disagrees. The commenters offered no specific examples of chilled speech, and the revision takes no position on whether or how employees should exercise their rights—it simply enables employees to easily access information that gives them more context about those decisions.

C. Comments Outside the Scope of This Rulemaking

Some comments offered perspectives on issues that fell outside the scope of this rulemaking or offered reasons for the revision upon which the Department does not rely. While not amongst the reasons that the Department is adopting the revision, some commenters provided examples of how the information made available by the revision might be helpful outside the LMRDA context, which the Department will address in this section. Although the Department does not rely on these examples as a reason to promulgate the revision, the collateral consequences of the rule may provide additional benefits for the public. For example, a union commenter highlighted that the form may prompt employees of federal contractors to become aware of protections afforded to them under the Walsh-Healey Public Contracts Act. Similarly, the commenter outlined how a similar dynamic exists between private sector service employees and the McNamara-O'Hara Service Contract Act, as well as other Executive Orders. And regardless of their industry, the commenter believes employees should be made aware of their employer's status because all federal contractor employees are protected when whistleblowing under the False Claims Act when reporting certain instances in which their employer attempts to defraud the government. The Department believes these potential benefits are excellent examples of the derivative good that the increased transparency of the revisions will provide.

Further, even knowing that the employer is a contractor, employees do not necessarily know how and where they can find additional information about the contractor. With knowledge of the contractor status and the UEI, workers and the public will be able to connect the Form LM–10 reports with other disclosures, as mentioned by this commenter. This cross-referencing furthers transparency in a variety of areas while limiting the burden on filers. Therefore, the efficient accessibility of federal contractor status is in the interest of the American public and any minimal duplication that may exist serves the interest of transparency.

Regarding revisions to Form LM–10, many unions offered an array of amendments to other items on the form, in addition to Item 12. One policy center commenter suggested that the Department ''should look into requiring that federally-assisted contractors check a similar box, along with state and local contractors.'' Such adjustments fall outside the scope of the proposed revisions, and while it will not be considered for adoption here, the Department will make note of this request as it considers future rulemaking.

Multiple union commenters indicated that the Department must significantly increase its Form LM–10 enforcement and offered statistics on declining reports being filed over the last decade despite this not being accompanied by a decrease in persuader activity. One union commenter provided specific examples of particular employers who, in the commenter's opinion, owed Form LM–10s. The Department continues to enforce all provisions of the reporting requirements of the LMRDA, including the Form LM–10, and any employee, union organizer, or other member of the public may report instances in which it believes a Form LM–10 is owed and has not been submitted by an employer.[24]

A union commenter argued that the Form LM–10 should be filed as soon as the employer engages the services of labor relations consultants, offering immediate availability to the public. The LMRDA does not offer flexibility in when the Form LM–10 (or any other employer report) must be filed, explicitly requiring annual reporting in Section 203(a) of the Act. 29 U.S.C.

[23] *Communications Workers of Am.* v. *Beck,* 487 U.S. 735 (1988).

[24] Members of the public may submit information about entities which need to report by emailing *olms-public@dol.gov.*

433(a). The Form LM–20 documenting the labor relations consultant-side of the persuader agreement, on the other hand, is due within 30 days of the labor relations consultant entering into the agreement. 29 U.S.C. 433(b).

Multiple commenters advocated for additional minor changes. One union commenter offered a number of additional changes to the LM–10 and its instructions focused on providing more examples of reportable activity under Items 8.b, 8.c, and 8.d. Another commenter outlined various form sections and new, recommended form language. While the Department agrees with providing additional examples of reportable activity to increase compliance rates, this can be accomplished through the publicly available Form LM–10 Frequently Asked Questions and other compliance materials. Further alterations to the instructions and form beyond those outlined in the revision proposal are out of the scope of this rulemaking.

Some union commenters discussed the idea of updating the Electronic Forms System to allow for cross-matching LM–20s and LM–21s to LM–10s. These commenters, as well as others, also advocated vigorously that the focus of any reporting clarifications should be regarding activity pursuant to section 203(a)(2) and (3), 29 U.S.C. 433(a)(2) and (3), not section 203(a)(4) and (5), 29 U.S.C. 433(a)(4) and (5), even offering numerous examples for those provisions that they believe should be explicitly stated in the instructions.[25] These commenters offered examples even for section 203(a)(4), emphasizing the holistic approach that improving the Form LM–10 over time should take.

While ultimately these concerns fall outside the scope of this rulemaking, the Department is reviewing these examples and those submitted by other commenters. Compliance assistance material, as mentioned, is another excellent avenue for providing examples so that employers understand the activity that they should report.

One comment advocated for specific factors that the government should consider when awarding federal contracts. Another commenter said that the revision is not necessary to prevent federal payments for persuader activities because the current regulations regarding E.O. 13494 are sufficient. These topics are outside the scope of the Department's rule. In making the revision, the Department is not relying on any benefits it may provide in enforcement of E.O. 13494 or other federal procurement standards.

D. The Revision May Provide Other Benefits to the Government

While not amongst the reasons that the Department is adopting the revision, some commentors raised other benefits to the government, outside of the LMRDA context, that the Department will address in this section. First, regulations and an Executive Order prohibit federal contractors from obtaining reimbursement from the Government for the costs of any activities they undertake to persuade employees to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively. E.O. 13494, 74 FR 6101; 48 CFR 31.205–21. Several commenters noted that the LM–10 revision is consistent with E.O. 13494. A union commenter remarked, ''this [revision] will also serve an important governmental function . . . enabl[ing] the public, the various federal contracting agencies, Congress, OLMS, and any other federal agencies to better track the use of federal taxpayer dollars and federal funds.'' A policy institute commenter stated the new disclosure will make it easier for federal agencies to identify the work that should not be reimbursed under federal acquisition regulations and E.O. 13494. The Department agrees that is a possible residual benefit of the revision. One individual commenter stated ''[t]he federal government has a special interest in the companies it gives federal contracts to and therefore should be able to monitor which companies are federal contractors when looking at the Form LM–10.'' Although these are not the Department's reasons for the Form LM–10 revision, they may be secondary benefits of the rule.

Other commenters remarked on a need for the Department to work closer with other agencies, especially the NLRB, to identify reportable activities. While the information gained through the revision could aid in efforts to prevent circumvention and evasion of reporting requirements occurring among federal contractors, such efforts are outside of the scope of this rule.

VI. Regulatory Procedures

A. Executive Order 12866 (Regulatory Planning and Review), Executive Order 14094 (Modernizing Regulatory Review), and 13563 (Improving Regulation and Regulatory Review)

Under E.O. 12866 (as amended by Executive Order 14094), the Office of Management and Budget (OMB)'s Office of Information and Regulatory Affairs determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and review by OMB. 58 FR 51735. As amended by Executive Order 14094, section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as a regulatory action that is likely to result in a rule that may: (1) have an annual effect on the economy of $200 million or more; or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, territorial, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or (4) raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in the Executive Order. OMB has determined that this revision is a significant regulatory action under E.O. 12866.

Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitative values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

[25] Section 203 (a)(4) and (a)(5) require reporting in association with an agreement or arrangement and payment to a labor relations consultant or other independent contractor where an object thereof, directly or indirectly, is to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing, or undertakes to supply such employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer. 29 U.S.C. 433(a)(4)–(5). Whereas 203(a)(2) and (a)(3) require the employer to file a report for payments to employees with an object to persuade other employees to exercise or not to exercise the right to organize and bargain collectively through representatives of their own choosing or expenditures wherein their object is to interfere with, restrain, or coerce employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing, or is to obtain information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer. *Id.* at 433(a)(2)–(3).

1. Costs of the Updated Form LM–10 for Affected Employers

The Form LM–10 is filed by private business entities that engage in certain financial transactions or arrangements, and these employer entities only have reporting obligations during fiscal years in which the entity makes such transactions or enters in such arrangements. As such, the Form LM–10 is not an annually mandatory form, so not all employers must file the Form LM–10 in a given year. Further, as has been discussed, the revisions to the Form LM–10 do not add a new form or remove any forms, nor does it expand or contract the circumstances under which it is necessary for an employer to file an LM–10. This revision slightly changes the structure of Item 12 by adding one checkbox and two items for certain filers. The Department will account for the potentially minimal costs of the slight changes to the structure of Item 12.

Based upon estimates for the existing Form LM–10 and other LM forms, the Department adopts its proposed estimate that the new Item 12.b. will take approximately 5 minutes to complete, thus adding approximately 5 minutes of reporting burden to the existing Form LM–10 (which the current existing instructions estimate to take approximately 35 minutes to complete, including the current Item 12). Five minutes is an estimate that takes into account that not all filers will be federal contractors or subcontractors and not all federal contractors or subcontractors that file will be required to complete the two lines in Item 12.b.

The Department made this burden determination for the following reasons. Some filers will spend zero minutes on Item 12.b. because, after only checking ''Yes'' to Item 8.a., the form will automatically check ''N/A'' and grey out the rest of Item 12.b. as no answer will be required. Many filers will need less than 5 minutes to address Item 12.b. because they will only need to check ''No,'' to indicate that they are not a federal contractor or subcontractor.

The Department does not attribute any burden to the revision's clarification requiring the filer to provide identifying information about the employees who are the subject of the employer's activities. This has always been a requirement. *See* unrevised Item 12 (''Provide a full explanation identifying the purpose and circumstances of the payments, promises, agreements, or arrangements included in the report. Your explanation must contain a detailed account of services rendered or promised in exchange for promises or payments you have already made or agreed to make. Your explanation must fully outline the conditions and terms of all listed agreements.''). This necessarily includes identifying certain payments, expenditures, agreements, and arrangements regarding employees.

As described above, federal contractors and subcontractors subject to reporting requirements are already aware of their UEI (if they have one) and will need no more than 5 minutes to complete Item 12.b. Checking ''Yes'' regarding their status as a federal contractor or subcontractor will only take a few minutes because most federal contractors and subcontractors are already required to be familiar with the definitions here regarding that status, which are based on E.O. 11246 and E.O. 13496 and their implementing regulations. *See* 41 CFR 60–1.3 (definitions regarding obligations of federal contractors and subcontractors); 29 CFR 471 and note 3, *supra* (including eight definitions OLMS adopts). The Department received some comments in support of its time estimate and no comments indicating that contractors need more time to complete Form LM–10 based on these revisions or that the Department's estimate is inaccurate.

Similarly, most federal contractors and subcontractors should be able to easily enter their UEI. *See* note 1, *supra.* If a filer does not have a UEI, the filer should so state in Item 12.b. Along with their UEI, federal contractors and subcontractors will enter the name of the federal contracting agency(ies) on the two lines in Item 12.b. If providing the name of a contracting agency would reveal classified information, the filer may omit the name of the agency.

Employers covered by the Railway Labor Act (RLA) are not covered by E.O. 13496. Executive Order 13496 applies to federal contractors and subcontractors subject to the NLRA. Pursuant to E.O. 13496, NLRA covered employers are required to know whether they are federal contractors or subcontractors and, if they are, to post a notice and to inform employees of their rights under the NLRA, the primary law governing relations between unions and employers in the private sector. *See* 29 CFR part 471. The notice, prescribed in the regulations of the Department, informs employees of federal contractors and subcontractors of their rights under the NLRA to organize and bargain collectively with their employers and to engage in other protected concerted activity. RLA employers do not have this posting requirement and therefore may need more time to identify whether the employees who are the subject of the LM–10 report have duties relating to the performance of a federal contract or subcontract.

While some RLA-covered employers may need more than 5 minutes, because they may not be immediately familiar with whether the subject group of employees perform work on a federal contract or subcontract (for Item 12.b.), the Department does not expect RLA-covered filers to be as numerous as NLRA-covered filers. The Department presumes that the large majority of employers that constitute federal contractors or subcontractors would need no more than 5 minutes for Item 12.b., because they will be covered by the NLRA and therefore they will already be required to retain information relevant to Item 12.b., including whether the subject group of employees performed work under such contracts, pursuant to E.O. 13496 (Notification of Employee Rights Under Federal Labor Law). No comments received opposed this view.

While a few filers may have a slightly higher time burden, and some will have a time burden that is lower than 5 minutes, the Department has accounted for this in determining the estimated time burden of 5 minutes. The Department asked for comment on this point, specifically asking whether to increase the estimate to 15 minutes. Some commenters noted that the additional time burden was insignificant or would be substantially less than 5 minutes, and none of the commenters argued for greater than 5 minutes. Thus, the Department adopts its five-minute estimate.

The Department estimates that the 5 additional minutes, just as the previous 35-minute total estimate, represents an estimate of affected filers. Indeed, not all Form LM–10 filers will need to complete the new Item 12.b.[26] More specifically, filers need not fill out Item 12.b. if they have only checked ''Yes'' to Item 8.a. Rather, only if a filer answers ''Yes'' to any of Items 8.b.–8.f. would they need to answer Item 12.b. Additionally, filers who check ''No'' on Item 12.b. will not have to enter any further information in Item 12.b., further decreasing the estimated time burden. Further, because the Form LM–10 represents a situationally occurring reporting requirement rather than an annual reporting requirement, it would be imprudent to try to estimate differing burden levels associated with first-year

[26] In FY 22, based upon an electronic review of reports submitted, OLMS received approximately 235 Form LM–10 reports covering persuader-related transactions and agreements, among the 496 total Form LM–10 reports received during that year. See *https://www.dol.gov/agencies/olms/data.* and subsequent exposures to the new questions.

exposure and subsequent exposures to the new questions.

To determine the cost increase per Form LM–10 filer associated with the new Item 12, and as proposed, the Department utilized an approach consistent with the information collection request (ICR) filed with the Office of Management and Budget pursuant to the Paperwork Reduction Act (PRA). In the existing ICR, the Department assumed that employers would hire a lawyer to complete the form, and it derived the average hourly salary for lawyers ($71.17) from the Occupational Employment and Wages Survey, May 2021 survey (released in March 2022), Table 1, from the Bureau of Labor Statistics (BLS), Occupational Employment Statistics (OES) Program. *See: https://www.bls.gov/oes/current/oes231011.htm.* Further, the Department determined the total compensation (salary plus fringe benefits) by increasing the hourly wage rate by approximately 45.0 percent, which is the percentage total of the average hourly benefits compensation figure ($12.52 in December 2021) over the average hourly wage figure ($27.83 in December 2021). *See* Employer Costs for Employee Compensation Summary, September 2021 (released in December 2021), from the BLS at *http://www.bls.gov/news.release/ecec.nr0.htm.* Thus, the Department increased its estimate of the total hourly compensation for lawyers to $103.20 ($71.17 × 1.450).

As such, the average individual employer filing the LM–10 as modified under this rule can expect to incur an increased cost per year of, approximately, $8.60 ($103.20 × 5/60 = $8.60).

Although not all Form LM–10 filers will need to complete Item 12.b., the Department nevertheless estimates that each of the approximately 580 annual Form LM–10 filers (based upon a 5-year average of submitted reports from FYs 18–22) will incur the additional 5 minutes of annual reporting burden. See: *https://www.dol.gov/agencies/olms/data.* As such, the overall cost of this revision for all entities filing a Form LM–10 per year is $4,988 ($8.60 × 580 reporting entities = $4,988). The Department asked for comments on this approach, and, other than the comments addressed above, did not receive any response.

2. Summary of Costs

In sum, this revision to the Form LM–10 has an approximated 10-year cost of $49,880 (10 years × $4,988 per year = $49,880) spread across 580 separate yearly Form LM–10 filers. OLMS does not believe that this cost will cause a significant burden on reporting entities.

3. Benefits

The revision furthers the purpose of the LMRDA. The Act provides that ''in the public interest, it [is] . . . the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection[.]'' 29 U.S.C. 401(a). Congress found that to accomplish this objective, ''it is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor-management relations.'' *Id.* Congress simultaneously found that public reporting by employers was one way to accomplish this, given that the substance of employer persuader activities was often ''unethical.'' S. Rep. 187 at 11, LMRDA Leg. Hist. at 407.

The Form LM–10 reporting requirement is based on Congress's concerns over the ''large sums of money [that] are spent in organized campaigns on behalf of some employers'' on persuader activities that ''may or may not be technically permissible'' and Congress's determination that the appropriate response to such persuader campaigns is to disclose them in the public interest and for the preservation of ''the rights of employees.'' *See* S. Rep. 187 at 10–12, LMRDA Leg. Hist. at 406–07.

As set forth in Section I, Statutory Authority, above, LMRDA Section 208 authorizes the Secretary to ''issue . . . regulations prescribing the form and publication of reports required to be filed[.]'' 29 U.S.C. 438. The statutory provision authorizing the issuance of the Form LM–10 describes the data and information to be reported in the Secretary's form. Employers shall file with the Secretary a report, in a form prescribed by the Secretary, signed by the employer's president and treasurer or corresponding principal officers showing in detail the date and amount of each such payment, loan, promise, agreement, or arrangement and the name, address, and position, if any, in any firm or labor organization of the person to whom it was made and a ''full explanation'' of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made. 29 U.S.C. 433(a). The statutory intent to require employers to provide a ''full explanation'' of payments was reflected in the Form LM–10 the Secretary established. Employers are told to provide a ''full explanation'' of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made. 29 U.S.C. 433(a).

The Form LM–10 serves the public as well as the employees whose rights are at issue. Both have an interest in understanding the full scope of activities undertaken by employers to persuade employees regarding the exercise of their rights to organize or bargain collectively, to surveil employees, or to commit unfair labor practices. *See* S. Rep. 187 at 10–11, LMRDA Leg. Hist. at 406–07. This interest is heightened when the employees' own tax dollars may be indirectly funding an employer's reportable activities. The federal government also has an interest in knowing whether it is paying for goods and services from an employer who would seek to disrupt the harmonious labor relations that the federal government is bound to protect. *See* 29 U.S.C. 401(a). OLMS has authority to protect this interest.

Today's revision, as with the proposal, explains that one of the ''circumstances'' that must be explained is whether the payments concerned employees performing work pursuant to a federal contract or subcontract. If so, the filer must provide its UEI, if it has one, and name the relevant federal contracting agency. The reporting requirements associated with the unrevised Form LM–10 already called for the reporting of other aspects of an employer's contact and identifying information as part of the ''full explanation of the circumstances'' of the reportable activity. The revision clarifies that that ''full explanation'' continues to require filers to identify the subject group of employees (*e.g.,* the particular unit or division in which those employees work).

The revision to the Form LM–10 will therefore benefit employers in the filing of complete and accurate forms. By updating the form and instructions to clearly and accurately describe the information employers must disclose, the final rule will facilitate their understanding and compliance, thereby reducing incidents of noncompliance and associated costs incurred when noncompliant.

The revision will also benefit filers' employees and the public. As discussed above, employees will more fully understand the circumstances under which they seek to exercise their rights when they know the contractor status and UEI of their employer, the federal agency involved, as well as the division or unit of the employees whose rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities the employer seeks to influence. The revision will ensure that, as Congress envisioned, persuader activity that is most often ''disruptive of harmonious labor relations and fall[s] into a gray area'' will be ''exposed to public view.'' S. Rep. 187 at 11, LMRDA Leg. Hist. at 407.

The revision thus supports harmonious labor relations consistent with the LMRDA. One intent of the Act is to support a harmonious relationship among employees, labor organizations, employers, and labor relations consultants. This requires transparency and accountability not just for labor organizations, but employers and labor relations consultants as well. Congress intended the LMRDA to provide for the elimination and prevention of improper practices on the part of ''labor organizations, *employers,* labor relations consultants and their officers and representatives.'' 29 U.S.C. 401(c) (emphasis added).

The proposed rule increases transparency but does not change the criteria that determines which employers are required to file the Form LM–10. The revision also does not impair any rights that filers had prior to the change to Item 12, including First Amendment rights, as addressed above in Part V.B. It does not increase required filers' liability in connection with activities that they already had to report and does not impose duties to file reports that filers did not already have under the LMRDA. It adds, for certain filers only, the straightforward step of providing basic identifying details regarding contractor status that filers will be able to quickly enter on the Form LM–10. Consistent with the statutory scheme enacted by Congress, the revision outlines aspects of the ''full explanation'' that filers must report on the Form LM–10. 29 U.S.C. 433(a).

Congress believed that employer payments and activities aimed at employee unionization efforts should be made public even if they are lawful.[27] *See* S. No. 86–187. Rep, at 81–82, reprinted in 1 LMRDA Leg. Hist., at 477–478. Among the concerns that prompted Congress to enact the LMRDA was employers retaining labor relations consultants whose actions discouraged or impeded the right of employees to organize labor unions and to bargain collectively under the NLRA, 29 U.S.C. 151 *et seq. See, e.g.,* S. No. 86–187. Rep, at 6, 10–12, reprinted in 1 LMRDA Leg. Hist., at 397, 402, 406–408. Therefore, the Department finds that employer reporting on persuader, surveillance and unfair labor practice activity is a fundamental part of the Act.

The revision to Form LM–10 will increase transparency regarding which federal contractors and subcontractors are engaging in persuader activities. Confirming a filer's status as a federal contractor, as well as its Unique Entity Identifier and the federal contracting agency involved, as part of a full explanation of persuader activities will provide a method for the public and employees to quickly identify which federal contractors are reporting persuader activities in a given year.

Increased transparency also informs the public of when federal monies go to federal contractors who subject their employees to persuader, surveillance, or interference activity, and thus protects harmonious labor relations, even if these activities are not unlawful. *See* S. Rep. 187 at 10–12, LMRDA Leg. Hist. at 406. Given the potential for disruption, the public, like employees, has an interest in knowing whether the government is indirectly funding persuader activity by engaging in business with these companies. The required disclosure of such information is consistent with and fully authorized by sections 203 and 208 of the LMRDA and their broad grant of authority to prescribe the form of the required reports. 29 U.S.C. 433 and 438.

Congress authorized the Department to collect detailed reports from employers. 29 U.S.C. 433 and 438. The Senate Report explained that the Department's collection and public disclosure of employer reports under section 203 ''will accomplish the same purpose as public disclosure of conflicts of interest and other union transactions which are required to be reported'' under other sections of the bill that was to become the LMRDA. S. Rep. No. 86–187, at 5, 12, reprinted in 1 LMRDA Leg. Hist., at 401, 408.[28] The Senate Report also explained that employers required to file must ''file a detailed report.'' Consistent with this congressional intent, Form LM–10 reports have required a variety of details from employers including whether they are partnerships, corporations, or individuals. *See* Form LM–10, Item 7. Similarly, the revision now adds an additional piece of identifying information in Item 12.b. for certain filers—whether they are federal contractors or subcontractors and, if so, their UEI and agency involved. This revision ensures that filers fully explain the circumstances of all covered payments, as required by the statute.

Congress declined to enumerate each ''circumstance [ ]'' to be reported, delegating authority to the Secretary to determine the relevant details when prescribing the form and publication of the Form LM–10. The Department finds that some employees may not be aware that their work is pursuant to a federal contract and that the revision adds a level of accountability envisioned by the LMRDA. It adds identifying details regarding filers' contractor status that are part of the ''full explanation'' Congress intended to be publicized under the Act.

Over the decades, employer efforts to defeat unions have become more prevalent, with more employers turning to union avoidance consultants.[29]

[27] Congress recognized that some of the persuader activities occupied a ''gray area'' between proper and improper conduct and chose to rely on disclosure rather than proscription, to ensure harmony and stability in labor-management relations. *See* S. Rep. No. 86–187, at 5, 12; 1 LMRDA Leg. Hist., at 401, 408.

[28] H.R. Rep. No. 86–741 (1959), at 12–13, 35–37, reprinted in 1 LMRDA Leg. Hist., at 770–771, 793–795, contained similar statements. However, it should be noted that the House bill contained a much narrower reporting requirement—reports would be required only if the persuader activity interfered with, restrained, or coerced employees in the exercise of their rights, *i.e.,* if the activity would constitute an unfair labor practice. The House bill also contained a broad provision that would have essentially exempted attorneys, serving as consultants, from any reporting. In conference, the Senate version prevailed in both instances, restoring the full disclosure provided in the Senate bill. *See* H. Rep. No. 86–1147 (Conference Report), at 32–33; 1 LMRDA Legis. Hist., at 936–937.

[29] Celine McNicholas, et al., *Unlawful: U.S. Employers Charged with Violating Federal Labor Law in 41.5 percent of all Union Elections,* Economic Policy Institute, (Dec. 11, 2019) available at *https://www.epi.org/publication/unlawful-employer-opposition-to-union-election-campaigns/* (''The data show that U.S. employers are willing to use a wide range of legal and illegal tactics to frustrate the rights of workers to form unions and collectively bargain . . . . [E]mployers spend roughly $340 million annually on 'union avoidance' consultants to help stave off union elections . . . . Over the past few decades, employers' attempts to thwart organizing have become more prevalent, with more employers turning to the scorched-earth tactics of 'union avoidance' consultants.''); Heidi Shierholz et al., *Latest Data Release on Unionization,* Economic Policy Institute, (Jan. 20, 2022) available at *https://www.epi.org/publication/latest-data-release-on-unionization-is-a-wake-up-call-to-lawmakers/* (describing how ''it is now standard, when workers seek to organize, for employers to hire union avoidance consultants''); John Logan, *The New Union Avoidance*

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Further, members of Congress have noted recently that federal contractors have engaged in such agreements and activities.[30] As the Agency responsible for promoting transparency around management attempts to influence employees' organizing and collective bargaining rights, OLMS closely monitors developments in the ways management interacts with union organizing efforts. As union avoidance activity increases, it is well within OLMS's role to increase the quality and utility of the information being disclosed on such activity.

The noted prevalence of persuader activity accordingly increases the interest of the federal government in obtaining information about employers' spending on reportable activities. In enacting the LMRDA, Congress was concerned with the impact of persuader activities and believed that increased transparency about employer efforts to persuade employees regarding their organizing and collective bargaining rights would benefit workers and the public. Congress found that most of this kind of persuader activity is ''disruptive of harmonious labor relations,'' even if lawful, and determined that workers and the public needed disclosure of persuader activities. S. Rep. 187 at 12, LMRDA Leg. Hist. at 406. The revision furthers this statutory purpose.

The federal government has an increased interest in fully identifying employers who may be disrupting the harmonious labor relations that the federal government is bound to protect when those employers are receiving tax dollars through federal contracts. *See* 29 U.S.C. 401(a). In other words, greater transparency is even more important when persuader activities are increasingly undertaken by employers that receive federal funds through contracting relationships. *See* E.O. 13494 (reiterating ''the policy of the United States to remain impartial concerning any labor-management dispute involving Government contractors.'').

Like the federal government itself, workers and the public also have a strong interest in spending choices by federal contractors. Therefore, whether a filer is a federal contractor may be relevant information to employees as they choose how to exercise their organizing and collective bargaining rights. The Department is not revising the LM–10 because it expects employees to make a particular choice regarding how they wish to exercise their organizing and collective bargaining rights. Instead, the revision outlines further information that employees may choose to consider when determining whether and how to exercise their rights. It is therefore part of the ''full explanation'' that Congress envisioned employers reporting. 29 U.S.C. 433(a).

Publicizing which Form LM–10 filers are federal contractors will give workers more information as they choose whether or not to speak out against lawful and unlawful efforts by their employer to convince them to remain unrepresented. Such workers and the public are entitled to know whether public funds may indirectly lead to any sort of disruption of labor relations and workers' rights.

Employees have a particular interest in knowing whether their employers are federal contractors because, as taxpayers themselves, those employees have an interest in knowing whether they may be indirectly financing persuasion campaigns regarding their own rights to organize and bargain collectively. Although the persuader campaigns are not themselves reimbursable under the federal contract or subcontract,[31] the government is paying federal dollars for goods and services, sometimes in large amounts, which support such contractors' businesses. Additionally, by learning of the federal contractor status their employer enjoys, those employees would have convenient access to the information that would allow them to meaningfully exercise their organizing and collective bargaining rights such as their First Amendment right to choose whether to contact their representatives in Congress about federal appropriations underlying the contracts with their employers, or the employers' activities undertaken pursuant to such contracts, or allow the employees to work more effectively with advocacy groups or the media to disseminate their views as employees to a wider audience. *See* 29 U.S.C. 157; 45 U.S.C. 152, Fourth. This is consistent with Congress' expectations when enacting the LMRDA—that in the public interest, and consistent with First Amendment rights to speak out on these issues, citizens would have the benefit of public reports regarding employer conduct that falls in a ''gray area.'' S. Rep. No. 86–187 at 11 (1959), reprinted in 1 NLRB, LMRDA Legislative History, at 407 (persuader activities ''should be exposed to public view, for if the public has an interest in preserving the rights of employees then it has a concomitant obligation to insure the free exercise'' of those rights).

Another benefit of the rule is increasing compliance by revising the Form LM–10 Instructions to clarify that filers must identify the group of employees subjected to the persuasion, surveillance or interference reported. This clarification will also enable better NLRB cross-matching by employees and the public. By clarifying that filers must identify the unit of employees subjected to their persuader activity, representation and ULP cases before the NLRB that have similar information documented can be matched more easily by employees, allowing them to know whether they were subjected to persuader activities more readily. This in turn would allow them to make better-informed decisions regarding their workplace representation.

One of Congress' stated purposes was to hold all covered employers to ''the highest standards of responsibility and ethical conduct[.]'' 29 U.S.C. 401(a). The revision does so regarding filers that are federal contractors and is therefore consistent with Act.

The increased transparency from the revision will benefit employees working on federal contracts who are subject to persuader activity, information gathering, or interference, by giving them a ''full explanation'' about their employers' reportable activities—as intended by Congress in enacting the LMRDA. 29 U.S.C. 433(a). Generally, the transparency created by the reporting requirements is designed to provide workers with necessary information to make informed decisions about the exercise of their rights to organize and bargain collectively. For example, with the knowledge that the source of the

Internationalism, 13 Work Org., Lab. & Globalisation 2 (2019) available at *https://www.scienceopen.com/hosted-document?doi=10.13169/workorgalaboglob.13.2.0057;* Thomas A. Kochan et al., U.S. Workers' Organizing Efforts and Collective Actions: A Review Of The Current Landscape, Worker Empowerment Research Network, (June 2022) available at *https://mitsloan.mit.edu/sites/default/files/2022-06/Report%20on%20Worker%20Organizing%20Landscape%20in%20US%20by%20Kochan%20Fine%20Bronfenbrenner%20Naidu%20et%20al%20June%202022.pdf;* In Solidarity: Removing Barriers to Organizing, Hearing Before the United States House Committee on Education and Labor, 117th Congress (September 14, 2022), available at *https://edlabor.house.gov/hearings/in-solidarity-removing-barriers-to-organizing.*

[30] Should Taxpayer Dollars Go to Companies that Violate Labor Laws?, Comm. on the Budget, 117th Congress (May 5, 2022), available at *https://www.budget.senate.gov/hearings/should-taxpayerdollars-go-to-companies-that-violate-labor-laws* (discussing the propriety of government contracting with Federal contractors that engage in legal and illegal tactics, including ''union busters,'' to dissuade workers from exercising their organizing and collective bargaining rights).

[31] *See* E.O. 13494 (federal agencies ''shall treat as unallowable the costs of any activities undertaken to persuade employees . . . to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively through representatives of the employees' own choosing'').

information received is an anti-union campaign managed by an outsider, workers will be better able to assess the merits of the arguments directed at them and make an informed choice about how to exercise their rights.

The requirement that a filer provide its UEI, if it has one, will prevent confusion and allow the public and employees to more easily confirm the identity of filers who are federal contractors. It will also ensure other, more detailed information regarding federal contracts is easily obtainable to employees and the general public. Two or more employers may have a similar name, which can create difficulty for workers and the public in determining whether the employer is, in fact, receiving federal funds. Individual employers often use multiple names, including trade, business, assumed or fictitious names, such as a DBA (''doing business as'') designation. Nevertheless, all federal prime contractors have their own individual UEI to seek and secure federal contracts which can more explicitly link an employer to a particular federal contract.[32]

Requiring employers to provide this federal contract identifier on the Form LM–10 furthers the congressional purpose of detailed employer reporting under the LMRDA, 29 U.S.C. 401 and 433, because members of the public and employees will be able to more easily distinguish companies with similar names or locate reports on companies that have changed their names. This information can also help employees and the general public to more expeditiously search detailed government contract data for these employers in the SAM system and *USASpending.gov* websites. By using the UEI, employees and the general public can be certain that the detailed contract information available in the SAM System, for example, is an award granted to the specific employer who has filed the Form LM–10.

By using existing definitions and requiring reporting of information easily accessible to the filers, the Department has avoided imposing any significant burden on filers. As discussed above, the Form LM–10 uses a list of definitions adopted from the implementing regulations of E.O. 13496 (Notification of Employee Rights Under Federal Labor Laws) at 29 CFR 471.1. The Department expects that federal contractors and subcontractors are already familiar with these definitions because they are also, with minimal changes, the same definitions that already govern Federal contractors and subcontractors under E.O. 11246, Equal Employment Opportunity, and its implementing regulations. *See* 41 CFR 60–1.3 (definitions regarding obligations of federal contractors and subcontractors). Executive Order 11246 prohibits federal contractors and federally assisted construction contractors and subcontractors who do over $10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin. The E.O. also requires Government contractors to take affirmative action to ensure that equal employment opportunity is provided in all aspects of employment. Additionally, E.O. 11246 prohibits federal contractors and subcontractors from, under certain circumstances, taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or the pay of their co-workers. Executive Order 11246 is enforced by the Department's Office of Federal Contract Compliance Programs (OFCCP) and covers approximately one-fifth of the entire U.S. labor force. E.O. 11246's requirements are incorporated in applicable government contracts or subcontracts and includes nondiscrimination, notice posting,[33] annual reporting,[34] record keeping,[35] and, for contractors that meet certain threshold requirements, development and maintenance of a written affirmative action program,[36] among other requirements. Therefore, the Department expects that all filers who are federal contractors and subcontractors will already know their status as such under E.O. 11246 and its implementing regulations, *see* 41 CFR 60–1.3 and 60–1.5, and that most filers are able to easily identify the information required for Item 12.b—their UEI and federal contracting agency or agencies.

In addition, federal contractors and subcontractors are required to comply with E.O. 13496. Executive Order 13496 applies to federal contractors and subcontractors subject to the NLRA. Pursuant to E.O. 13496, covered employers are already required to know whether they are federal contractors or subcontractors under the definitions used in this revision and, if they are, to post a notice and to inform employees of their rights under the NLRA, the primary law governing relations between unions and employers in the private sector. *See* 29 CFR 471. The notice, prescribed in the regulations of the Department, informs employees of federal contractors and subcontractors of their rights under the NLRA to organize and bargain collectively with their employers and to engage in other protected concerted activity. The Department expects that most filers are subject to the NLRA.[37]

It will therefore take filers on average five minutes to gather and enter the information required by this revision. This cost is not significant. The change places almost no burden at all on reporting entities.

In contrast, it benefits employees and the public. The information required by the revision, while minimal, is not otherwise easily available to the public. For example, subcontractor information is available on the GSA Electronic Subcontracting Reporting System (ESRS), but this information is made available only to individuals with a registered government or contractor log-in account. The LM–10 forms are offered for public viewing on the OLMS Online Public Disclosure Room (OPDR), which does not require a registered government or contractor account. Including contractor identification information on the Form LM–10, available on the OPDR, will allow employees and the public to easily identify all filers who are paid under federal contracts, regardless of whether they are a prime contractor or a subcontractor. This reporting will provide a more transparent representation of when federal dollars go to filers who may also make disbursements to labor relations consultants designed to persuade employees regarding their rights to organize and bargain collectively or

[32] *See* Federal Acquisition Regulations System § 4.605(b).

[33] Notices to be posted, 41 CFR 60–1.43 (2022).

[34] Reports and other Required Information, 41 CFR 60–1.7 (2022).

[35] Record Retention, 41 CFR 60–1.12 (2022).

[36] Affirmative Acton Programs, § 60–1.40; 60–2.1 (2022).

[37] Employers covered by the Railway Labor Act (RLA) are not covered by E.O. 13496, however, both NLRA and RLA employers are subject to the reporting requirements of the LMRDA. Thus, RLA employers may need more time to identify which employees who are the subject of the LM–10 report have duties relating to the performance of the Federal contract or subcontract. The Department expects that only a small number of filers will be Federal contractors or subcontractors subject to the RLA. The Department received no comments on the issues of RLA coverage or lack of NLRA coverage. The Department received no comments from anyone—including specifically from RLA-covered employers or their representatives—on this subject. *See: https://www.nlrb.gov/reports/nlrb-case-activity-reports/representation-cases/election/election-statistics* and *https://nmb.gov/NMB_Application/wp-content/uploads/2021/12/FY-2021-NMB-Performance-and-Accountability-Report-PAR.pdf.*

surveil employees. *See* Form LM–10, Items 8.b. through 8.f. This information cannot be readily ascertained from the SBA or GSA websites.

The reporting of contractor status on the Form LM–10 is limited to identifying information and is therefore minimally duplicative of the more detailed reporting on the *USASpending.gov* website or what is listed on the GSA and SBA contractor lists. OLMS only requires the UEI number and the identification of the contracting agency, and no other details of the contracts provided on other government lists. The UEI number required by the Department is the same number reported on the *USASpending.gov* website, but the final rule does not require duplicative reporting of the detailed financial information on federal contracts provided on that website.

The *USASpending.gov* website is compiled by the U.S. Department of the Treasury under the authority of the Federal Funding Accountability and Transparency Act of 2006 (FFATA), as amended by the Digital Accountability and Transparency Act (DATA Act), codified at 31 U.S.C. 6101 note. Consistent with the FFATA, detailed information about federal awards must be made publicly available on *USASpending.gov*. The DATA Act expanded the FFATA for purposes that include linking ''federal contract, loan, and grant spending information to programs of federal agencies to enable taxpayers and policy makers to track federal spending more effectively.'' [38] The website is generally adapted for the American public to show constituents how the federal government spends money every year. Federal agencies covered by the DATA Act report spending data to Treasury for posting on the website using standardized data elements, and Treasury also gathers required Federal agency spending data from financial and other government systems (such as the Federal Procurement Data System (FPDS)). Prime contractors and subcontractors that received federal awards directly from federal agencies also self-report data on their awards to the FFATA Subaward Reporting System (FSRS). The FSRS is a component of ESRS (mentioned above) but requires different reports than ESRS. FSRS requires reporting of executive compensation and sub-award recipient information by prime contractors, while ESRS requires reporting of the Individual Subcontract Report, Summary Subcontract Report, and Commercial Report, required, in effect, under the FFATA. One purpose of the DATA Act was to ''simplify reporting requirements for entities receiving Federal funds by streamlining reporting requirements . . . .'' [39] It also provides that the method of collection and reporting data, in the context of subawards, shall minimize the burdens on Federal recipients and sub-recipients.[40] Requesting contractor identification numbers is not overly burdensome or a duplication of financial reporting, as it does not require any additional information required by the FFATA and DATA Act, but simply requires the reporting of an identification number already known to a federal contractor. For example, employers filing a Form LM–10 are not required to include information on whether contracts are awarded to Small Businesses, Women-Owned Small Businesses, Veteran-Owned Small Business, and related characteristics, which are to be reported to the ESRS. Reporting contractor identification numbers on the Form LM–10 is not unnecessarily burdensome for federal award recipients because the employer is already aware of their identification number from reporting under the FFATA.

As has been discussed above, the Department therefore believes that its revision to the Form LM–10 will also bridge important information gaps that have appeared in Form LM–10 reporting and is consistent with congressional intent to publicize a ''full explanation'' of reportable activities. 29 U.S.C. 433(a). The revision adds minimal but important information that had not been easily accessible to the public or employees regarding filers that engage in reportable activities, including whether they benefit from federal contracts.

These benefits outweigh any minor duplication of contractor identifying information in government databases, especially when, as discussed above, some employees are not already aware that their employers are federal contractors. By including federal contractor identification on LM–10 Forms, the Department is linking federal contractor status with employer reporting to the Department to enable workers and the general public to easily evaluate federal spending within the context of the LMRDA. As mentioned above, the GSA and SBA websites provide lists of contractors within the context of those agencies. The SBA directory, for example, provides a listing of those contractors who have subcontracting plans with small businesses. Neither GSA nor SBA publishes reportable information under the LMRDA. Including basic identifying information about federal contractor status on LM–10 Forms allows OLMS, employees, and the general public to have all the relevant information in one, easily accessible reporting database pursuant to the LMRDA.

Similarly, Federal contractor status as required by OLMS in this revision provides less detailed information than the reporting required by the GSA *SAM.gov* website and is easier for the public to access and use. *SAM.gov* is generally designed for contractors who may, among other tasks, access publicly available award data and federal assistance listings. *SAM.gov* includes contract data derived from the FPDS, as well as some additional information submitted by *SAM.gov* contractor account users. With a *SAM.gov* user account, one can analyze federal spending by federal organization, geographical area, business demographics, and product or service type, among other characteristics. The Department does not seek to duplicate this detailed contract information provided on *SAM.gov*, but rather is requesting only for Form LM–10 filers to report their UEI and federal agency involved. Additionally, *SAM.gov* does not focus on LMRDA-reportable activities. In contrast to *SAM.gov*, the OLMS OPDR provides Form LM–10 data to the public and does so without the barrier of a user account.

Therefore, any duplication of information on the Form LM–10 poses a minimal burden, if any, to the reporting entity and bridges an important information gap by making this information more easily accessible to the general public. OLMS, employees, and the public should not have to research voluminous collections of contracting information and multiple websites to glean which federal contracts are being fulfilled by employees who are subjected to persuader, surveillance, or unfair labor practice activity. Employees and the general public should have the ability, by getting the UEI, to learn the extent to which the filer engages in reportable activity while providing its goods and services to the Federal government.

Through its enforcement of the LMRDA, the Department ensures public, transparent reporting of certain activities that impact protected labor rights. The Department determined that

[38] Digital Accountability and Transparency Act of 2014, Public Law 113–101, 128 Stat. 1146.

[39] Public Law 113–101, sec. 2(3).

[40] 31 U.S.C. 6101 note (FFATA sec. 2(d)(2)(A)); *see also* 31 U.S.C. 6101 note (DATA Act sec. 5) (discussing, in general, efforts to avoid unnecessary duplication and burdensome reporting).

filers engaging in activities that may impact protected labor rights should disclose whether they hold government contracts. Through this rule, the Department has chosen to require minimal information about federal contractor status. While the request of federal contractor status on Form LM–10 may also serve the function of the DATA Act's interest in linking federal expenditures to federal agency programs, as mentioned above, this is wholly distinct from the problem of transparent reporting under the LMRDA.

The revision will allow employees access to the ''full explanation'' and circumstances of employers' reportable activity, including federal contractor status, in a location and context in which it is more accessible and useful to them. While general information about federal contracts is provided via other means, including this information on the Form LM–10 furthers the interest of transparency as intended by the LMRDA. Employees, union organizers, and the general public who are reviewing LM forms are more accustomed to reviewing documents like the Form LM–10 than extensive procurement- and employer-centric database platforms. Further, an employee or member of the public can more easily ascertain from the revised Form LM–10 whether the federal contract directly impacts a specified employment group because the federal contract identification is provided alongside information about the employer and subject group of employees. Minor redundancies in reportable information do not outweigh the benefits of having all LMRDA reportable information in one, easily accessible site on the Department's website.

The LMRDA reporting regime emphasizes access to information at the cost of minor redundancies. By statute, the information reported on one LM form may well appear in another LM form. Employer reporting (under 29 U.S.C. 433(a)) consists of the same information reported by labor relations consultants (under 29 U.S.C. 433(b)). In addition, employers report (under 29 U.S.C. 433(a)(1)) the same payments reported as receipts by labor unions (under 29 U.S.C. 431(b)(2)). Further, employers report (under 29 U.S.C. 433(a)(1)) the same payments reported by labor union officers and employees (under 29 U.S.C. 432). Plainly, therefore, the LMRDA was constructed to allow the public to more easily find relevant information by putting identical information in different reports targeted to different audiences.

In addition, this revision is similar to other Department requirements that include minor redundancies and cross-references to information provided to other governmental agencies in more depth. For example, on Form LM–2, labor organizations are required to report whether they have any political action committees (PAC), the full name of each PAC, and in addition, they must list the name of any government agency with which the PAC has a publicly available report, and the relevant file number of the PAC.[41] Despite being arguably redundant, these disclosures allow for a greater degree of transparency for union members and the public, by allowing viewers of the reports to connect such report with other labor related disclosures. The revision follows this same pattern when it takes three discrete pieces of information from locations where those interested in persuader reporting are not likely to look and brings it into the Form LM–10 where those who are interested will easily come across it.

This easily accessible transparency promotes informed decision making by employees subjected to reportable persuader, surveillance, and interference activity. The revision does not discourage lawful persuader activities as employers and labor relations consultants may still persuade employees in conformity with the NLRA and First Amendment rights of the employer. The requirement that employers report labor relations consultant activity is also unchanged.

The revision recognizes that both the public and the employees whose rights are at issue have an interest in more fully understanding the financial circumstances of employers who surveil employees, commit unfair labor practices, or persuade employees regarding their rights to organize or bargain collectively. *See* S. Rep. 187 at 10–11, LMRDA Leg. Hist. at 406–07. The revision will support employees and the public as they choose whether to engage in their own First Amendment protected activity.

Knowledge of filers' federal contractor status will also enable members of the public to understand which federal agencies are contracting with employers who are engaging in persuader activity. The public and employees will benefit from knowing whether a specific federal agency is choosing to do business with an employer that is attempting to influence the exercise of workers' rights to choose whether to organize and bargain collectively. This public exposure will allow for an open public discussion and debate about the prevalence of persuader activity and the extent to which specific federal agencies might be indirectly supporting such activities by doing business with employers that engage in persuader activities.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.,* requires agencies to prepare regulatory flexibility analyses, and to develop alternatives wherever possible, in drafting regulations that will have a significant impact on a substantial number of small entities. The Department is certifying that this form revision will not have a significant economic impact on a substantial number of small entities. The Department had estimated an increased cost per reporting entity of only $8.60 per employer. A five-year average of the number of employer filers for the LM–10 is 580. The SBA standard average yearly receipts for a small business total $7.5 million.[42] Assuming all 580 entities are small entities of less than $7.5 million in revenue, the total cost of $8.60 for all 580 entities would be $4,988 for the resulting changes from the revision of Item 12 of the Form LM–10. Further, using that figure of $7.5 million, the estimated increased cost per reporting entity—a minimum of $8.60, as mentioned above—represents only between 1.15 ten thousandth and 3.4 ten thousandth of a percent of the $7.5 million in yearly receipts for the average small business.[43] Therefore, a Final Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required. The Department did not receive any comments on this analysis or conclusion. The Secretary has certified this conclusion to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

This statement is prepared in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501.

A. Summary and Overview of the Final Form Revision

The following is a summary of the need for and objectives of the form revision. A more complete discussion of various aspects of the revisions are found in the preamble.

[41] LM–2 Instructions, Item 11, Item 69.

[42] *https://www.sba.gov/offices/headquarters/ogc_and_bd/resources/4562.*

[43] Form T–1 Rule, 85 FR 13438 (March 6, 2020). ''For this analysis, based on previous standards utilized in other regulatory analyses, the threshold for significance is 3 percent of annual receipts.'' *Id.*

The Department adds a checkbox to the Form LM–10 report requiring certain reporting entities to indicate whether they are federal contractors or subcontractors. If so, the report will direct the filer to indicate the federal contracting agency and the contractor's Unique Entity Identifier (UEI), if the contractor has one. The Department will also clarify in the Form LM–10's instructions that a filer must identify the subject group of employees (*e.g.,* the particular unit or division in which those employees work). This information has always been encompassed by Item 12 and the revised instructions now explicitly require it for Item 12.a.

The LMRDA was enacted to protect the rights and interests of employees, labor organizations and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and labor organization officers, employees, and representatives. Specifically, employers are required to file to disclose the following in Form LM–10 filings, pursuant to LMRDA section 203 and subject to certain exemptions: payments and loans made to any union or union official; payments to any of their employees for the purpose of causing them to persuade other employees with respect to their bargaining and representation rights, unless the other employees are told about these payments before or at the same time they are made; payments for the purpose of interfering with employees in the exercise of their bargaining and representation rights, or obtaining information on employee or union activities in connection with labor disputes involving their company, except information obtained solely for use in a judicial, administrative or arbitral proceeding; and arrangements (and payments made under these arrangements) with a labor relations consultant or other person for the purpose of persuading employees with respect to their bargaining and representation rights, or obtaining information on employee or union activities in connection with labor disputes involving their company, except information obtained solely for use in a judicial, administrative, or arbitral proceeding.

The Department, pursuant to the LMRDA, is filling in present information gaps occurring in Form LM–10 reporting regarding filers' federal contractor status. As has been stated above, the Department is acting pursuant to an interest in more fully understanding the full scope of activities undertaken by filers that engage in reportable activities, including whether they benefit from federal contracts.

B. Methodology of the Burden Estimate

For purposes of the PRA, the cost burden of the revision to the Form LM–10 has been calculated above and is as follows. Based upon the existing LM form estimates, the revision to Item 12 will take no longer than 5 minutes to complete on average for approximately 580 filers in any given year, thus adding approximately 5 minutes of reporting burden to the existing Form LM–10 (which the current existing instructions estimate to take approximately 35 minutes to complete, including the unrevised Item 12). The Form LM–10 is not an annually mandatory form for employers; rather, it is only necessary in fiscal years during which the employer engages in identified transactions or agreements. Further, the revision to Item 12 does not affect all Form LM–10 filers, just those that answer ''Yes'' to Items 8.b.–8.f. (*see* footnote 2, above)—and only a subset of those filers (federal contractors and subcontractors) would need to complete all of Item 12.b. In addition, only one Form LM–10 report at most must be filed per fiscal year. Thus, the rule does not affect the total number of Form LM–10 reports that the Department expects to receive, nor does it affect the recordkeeping burden, as the Department estimates that most employers that file and are federal contractors or subcontractors must already retain records relevant to that status pursuant to E.O. 13496 (Notification of Employee Rights Under Federal Labor Law). *See* 29 CFR part 471, in particular subsection 471.2(d), which states that employers must post the notice where employees covered by the NLRA engage in activities relating to the performance of the contract. Instead, the rule will result only in an increase in reporting burden of 5 minutes per Form LM–10 and an overall increase of 2,900 burden minutes, or 48.3 burden hours, for Form LM–10 filers. The Department received just one comment on this analysis, which agreed with the overall assumptions and conclusions. Specifically, it rejected an estimate higher than five minutes per form, even suggesting that two additional minutes per form would suffice. However, the Department will retain the five-minute estimate, as it is more consistent with past estimates for similar tasks in this and other LM forms.

The final revision will have no impact on the other 11 information collections approved under ICR #1245–0003. The summary of the burden below accounts for the burden for all ICs (reports) in ICR 1245–0003.

C. Conclusion

As this final form revision requires a revision to an existing information collection, the Department is submitting, contemporaneous with the publication of this document, an ICR to amend the burden estimates under OMB Control Number 1245–0003 and revise the PRA clearance to address the clearance term. A copy of this ICR, with applicable supporting documentation, including among other items a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at: *https://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=1245-0003* (this link will be updated following publication of this rule) or from the Department by contacting OLMS at 202–693–0123 (this is not a toll-free number)/email: *OLMSPublic@dol.gov.*

Agency: Department of Labor, Office of Labor-Management Standards.

Type of Review: Revision of a currently approved collection.

OMB Number: 1245–0003.

Title of Collection: Labor Organization and Auxiliary Reports.

Forms: LM–1—Labor Organization Information Report, LM–2, LM–3, LM–4—Labor Organization Annual Report, LM–10, Employer Report, LM–15—Trusteeship Report, LM–15A—Report on Selection of Delegates and Officers, LM–16—Terminal Trusteeship Report, LM–20—Agreement and Activities Report, LM–21—Receipts and Disbursements Report, LM–30—Labor Organization Officer and Employee Report, S–1—Surety Company Annual Report.

Affected Public: Private Sector—Business or other for-profits and not-for-profit institutions.

Estimated Number of Annual Respondents: 33,021.

Estimated Number of Responses: 35,067.

Frequency of Response: Varies.

Estimated Total Annual Burden Hours: 4,644,785.

Estimated Total Annual Other Burden Cost: $0.

D. Unfunded Mandates Reform

This final revision will not include any federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of $100 million or more, or in increased expenditures by the private sector of $100 million or more.

E. Small Business Regulatory Enforcement Act of 1996

This final revision is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This revision will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 29 CFR Part 405

Employers, Reporting and recordkeeping requirements

Signed in Washington, DC.

Jeffrey R. Freund,

Director, OLMS.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix A—Form LM–10

BILLING CODE 4510–86–P

U.S. Department of Labor
Office of Labor-Management Standards
Washington, DC 20210

Form approved
Office of Management and Budget
No.1245-0003
Expires XX-XX-XXXX

For Official Use Only

E

FORM LM-10
EMPLOYER REPORT

This report is mandatory under P.L. 86-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U.S.C. 439 or 440.

READ THE INSTRUCTIONS CAREFULLY BEFORE PREPARING THIS REPORT

Part A

1. File Number E-

2. Fiscal Year Covered — From: Month/Day/Year (mm/dd/yyyy) — Through: Month/Day/Year (mm/dd/yyyy)

3. Name and address of Reporting Employer (inc. trade name, if any).
Employer
Trade Name
Attention To
Title
Mailing Address
P.O. Box, Bldg., Room No., if any
Street
City
State
Zip Code + 4

4. Name and address of President or corresponding principal officer, if different from address in Item 3.
P.O. Box, Building and Room Number, if any
Street
City
State
ZIP Code +4

5. Any other address where records necessary to verify this report will beavailable for examination.
Name
Title
Organization
P.O. Box, Building and Room Number, if any
Street
City
State
ZIP Code + 4

6. Indicate by checking the appropriate box or boxes where records necessary to verify this report will be available for examination.
☐ Address in Item 3
☐ Address in Item 4
☐ Address in Item 5

7. Type of organization.
☐ Corporation ☐ Partnership ☐ Individual Other (specify)

Signatures

Each of the undersigned, duly authorized officers of the above employer declares, under penalty of perjury and other applicable penalties of law, that all of the information submitted in this report (including the information contained in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct, and complete. *(See Section VIII on penalties in the instructions.)*

13. Signed
Title President
President (if other title, see instructions)
On / /
Date
Telephone Number

14. Signed
Title Treasurer
Treasurer (if other title, see instructions)
On / /
Date
Telephone Number

Part A, Continued

Name of Reporting Employer:	File Number E-

8. Type of Reportable Activity Engaged In By Employer

Read the following questions and the accompanying instructions carefully, taking into consideration the exclusions listed in the instructions for these items, and check either "Yes" or "No" for each item. For each item that is answered "Yes", you must attach a Part B which appears on Page 3. Complete a separate Part B for each "Yes" answer to any of Items 8.a. through 8.f. Also, if the answer is "Yes" for more than one person or organization, complete a separate Part B for each person or organization. If you answer "Yes", enter the number of Part Bs that are submitted for that item in the line indicated.

DURING THE FISCAL YEAR COVERED BY THIS REPORT:

		YES	NO	If "Yes", number of Part Bs attached
8.a.	Did you make or promise or agree to make, directly or indirectly, any payment or loan of money or other thing of value (including reimbursed expenses) to any labor organization or to any officer, agent, shop steward, or other representative or employee of any labor organization?	☐	☐	
8.b.	Did you make, directly or indirectly, any payment (including reimbursed expenses) to any of your employees, or to any group or committee of your employees, for the purpose of causing them to persuade other employees to exercise or not to exercise, or as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing without previously or at the same time disclosing such payment to all such other employees?	☐	☐	
8.c.	Did you make any expenditure where an object thereof, directly or indirectly, was to interfere with, restrain, or coerce employees in the right to organize and bargain collectively through representative of their own choosing?	☐	☐	
8.d.	Did you make any expenditure where an object thereof, directly or indirectly, was to obtain information concerning the activities of employees or of a labor organization in connection with a labor dispute in which you were involved?	☐	☐	
8.e.	Did you make any agreement or arrangement with a labor relations consultant or other independent contractor or organization pursuant to which such person undertook activities where an object thereof, directly or indirectly, was to persuade employees to exercise or not to exercise, or as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or did you make any payment (including reimbursed expenses) pursuant to such an agreement or arrangement?	☐	☐	
8.f.	Did you make any agreement or arrangement with a labor relations consultant or other independent contractor or organization pursuant to which such person undertook activities where an object thereof, directly or indirectly, was to furnish you with information concerning activities of employees or of a labor organization in connection with a labor dispute in which you were involved; or did you make any payment pursuant to such agreement or arrangement?	☐	☐	

TOTAL NUMBER OF PART Bs FOR THIS REPORT IS

Part B

Name of Reporting Employer:		File Number E-	

Check Item Number (from Page 2) to which this Part B applies	ITEM 8.a ☐	ITEM 8.b ☐	ITEM 8.c ☐	ITEM 8.d ☐	ITEM 8.e ☐	ITEM 8.f ☐

9.a. ☐ Agreement ☐ Payment ☐ Both

9.c. Position in labor organization or with employer (if an independent labor consultant, so state).

9.b. Name and address of person with whom or through whom a separate agreement was made or to whom payments were made.

Name

P.O. Box, Building and Room Number, if any

Street

City

State ZIP Code + 4

9.d. Name and address of firm or labor organization with whom employed or affiliated.

Organization

P.O. Box, Building and Room Number, if any

Street

City

State ZIP Code + 4

10.a. Date of the promise, agreement, or arrangement pursuant to which payments or expenditures were agreed to or made.

10.b. The promise, agreement, or arrangement was:

☐ Oral ☐ Written* ☐ Both

(*Written agreements entered into during the fiscal year must be attached.)

11.a. Date of each payment or expenditure (mm/dd/yyyy).	11.b. Amount of each payment or expenditure.	11.c. Kind of each payment or expenditure (Specify whether payment or loan, and whether in cash or property).

12.a. Explain fully the circumstances of all payments, including the terms of any oral agreement or understanding pursuant to which they were made.

12.b. If your Part B applies to Items 8.b. – 8.f., did the payments or agreements concern employees performing work pursuant to a Federal contract or subcontract?

Yes ☐ No ☐ N/A ☐

If yes, enter your Unique Entity Identifier, if you have one. Enter the Federal contracting agency(ies) that are a party to the Federal contract(s).

Paperwork Reduction Act Statement

Public reporting burden for this collection of information is estimated to average 40 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Reporting of this information is mandatory and is required by the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), for the purpose of public disclosure. As this is public information, there are no assurances of confidentiality. If you have any comments regarding this estimate or any other aspect of this information collection, including suggestions for reducing this burden, please send them to the U.S. Department of Labor, Office of Labor-Management Standards, Division of Interpretations and Regulations, Room N-5609, 200 Constitution Avenue, NW, Washington, DC 20210.

DO NOT SEND YOUR COMPLETED FORM LM-10 TO THE ABOVE ADDRESS.

INSTRUCTIONS FOR FORM LM-10 EMPLOYER REPORT

GENERAL INSTRUCTIONS

I. WHY FILE

The Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), requires public disclosure of specific financial transactions or arrangements made between an employer **and** one or more of the following: a labor organization, union official, employee, or labor relations consultant. Pursuant to Section 203(a) of the LMRDA, every employer who has engaged in any such transaction or arrangement during the fiscal year must file a detailed report with the Secretary of Labor. The Secretary, under the authority of the LMRDA, has prescribed the filing of the Employer Report, Form LM- 10, for employers to satisfy this reporting requirement.

These reporting requirements of the LMRDA and of the regulations and forms issued under the Act only relate to the disclosure of specified payments. The reporting requirements do not address whether specific payments, transactions, or arrangements are lawful or unlawful. The fact that a particular payment, transaction, or arrangement is or is not required to be reported does not indicate whether it is or is not subject to any legal prohibition.

II. WHO MUST FILE

Any employer, as defined by the LMRDA, who has engaged in certain financial transactions or arrangements, of the type described in Section 203(a) of the Act, with any labor organization, union official, employee or labor relations consultant, **or** who has made expenditures for certain objects relating to activities of employees or a union, must file a Form LM-10. An employer required to file must complete only one Form LM-10 each fiscal year that covers all instances of reportable activity even if activity occurs at multiple locations.

NOTE: *Selected definitions from the LMRDA follow these instructions.*

III. WHAT MUST BE REPORTED

The types of financial transactions, arrangements, or expenditures which must be reported are set forth in Form LM-10. The LMRDA states that every employer involved in any such transaction or arrangement during the fiscal year must file a detailed report with the Secretary of Labor indicating the following: (1) the date of each arrangement and the date and amount of each transaction; (2) the name, address, and position of the person with whom the agreement or transaction was made; and (3) a full explanation of the circumstances of all payments made, including the terms of any agreement or understanding pursuant to which they were made.

Form LM-10 is divided into two parts, Part A and Part B. Item 8 of Part A contains six questions pertaining to reportable employer activities. Before completing any portion of the report, review these questions thoroughly and answer them, taking into account the exclusions listed in the instructions for Item 8. If the answer to each of these questions is **NO**, do not file this report. However, if the answer to any of these questions is **YES**, taking into account the applicable exclusions, complete Part A and complete a separate Part B for each **YES** answer. Also, if any of the **YES** answers applies to more than one person or organization, complete a separate Part B for each person or organization.

Special Reports. In addition to this report, the Secretary may require employers subject to the LMRDA to submit special reports on relevant information, including but not necessarily confined to reports involving specifically identified personnel on particular matters referred to in the second paragraph of the instructions for Item 8.a.

While Section 203 of the LMRDA does not amend, or modify, the rights protected by Section 8(c) of the National Labor Relations Act, as amended (NLRA), the LMRDA contains no provision exempting the activities protected by that section from the reporting requirements. Therefore, you must report activities of the type set forth in Item 8, since the LMRDA requires such reports, regardless of whether the activities are protected by Section 8(c) of the NLRA. Note, however, that the information you are required to report in response to Item 8.c does not include expenditures relating exclusively to matters protected by Section 8(c) of the NLRA, because the definition in Section 203(g) of the LMRDA of the term

"interfere with, restrain, or coerce," which is used in Item 8.c, does not cover such matters.

NOTE: The text of NLRA Section 8(c) is set forth following these instructions.

IV. WHO MUST SIGN THE REPORT

The completed Form LM-10 must be signed by both the president and the treasurer, or the corresponding principal officers, of the reporting employer. A report from a sole proprietor need only bear one signature.

V. WHEN TO FILE

Each employer, as defined in the LMRDA, who has engaged in any of the transactions or arrangements described in the form and instructions, must electronically file Form LM-10 *within 90 days* after the end of the employer's fiscal year.

VI. HOW TO FILE

The Form LM-10 must be completed and submitted electronically, via the Office of Labor-Management Standards (OLMS) Electronic Forms System (EFS), available on the OLMS website at www.dol.gov/olms. If you must file an amended report, follow the prompts within EFS. Filers will be able to submit a report in paper format only if they assert a temporary hardship exemption.

NOTE: Upon registering with OLMS, the signatories and preparers must enter email addresses they use to conduct business, in order to file the form via the OLMS Electronic Forms System. While the email addresses will not appear on the report, OLMS may use the email address of the signatories and any preparers to contact the employer concerning LMRDA compliance.

If you have difficulty navigating the software, or have questions about its functions and features, call the OLMS Help Desk at: (866) 401-1109. For questions concerning the reporting requirements, please send an e-mail to OLMS-Public@dol.gov or call (202) 693-0123.

TEMPORARY HARDSHIP EXEMPTION:

If an employer experiences unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing, the organization may assert a temporary hardship exemption to prepare and submit Form LM-10 in paper format by the required due date. An electronic format copy of the filed paper format document shall be submitted to the Department within ten business days after the required due date.

Unanticipated technical difficulties that may result in additional delays should be brought to the attention of OLMS by email at OLMS-Public@dol.gov, or by phone at (202) 693-0123.

NOTE: If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.

VII. PUBLIC DISCLOSURE

Pursuant to the LMRDA, the U.S. Department of Labor is required to make all submitted reports available for public inspection. Reports may be viewed and downloaded from the website at www.persuader-reports.gov. For assistance, please email OLMS-Public@dol.gov or call (202) 693-0123.

VIII. OFFICER RESPONSIBILITIES AND PENALTIES

The president and treasurer, or corresponding principal officers of the reporting employer required to sign Form LM-10, are personally responsible for its filing and accuracy. Under the LMRDA, these individuals are subject to criminal penalties for willful failure to file a required report and/or for false reporting. False reporting includes making any false statement or misrepresentation of a material fact while knowing it to be false, or for knowingly failing to disclose a material fact in a required report or in the information required to be contained in it or in any information required to be submitted with it.

The reporting employer and officers required to sign Form LM-10 are also subject to civil prosecution for violations of the filing requirements. Section 210 of the LMRDA provides that, "whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate."

IX. RECORDKEEPING

The individuals required to file Form LM-10 are responsible for maintaining records which will provide in sufficient detail the information and data necessary to verify the accuracy and completeness of the report.

You must retain the records for at least 5 years after the date you filed the report. You must retain any record necessary to verify, explain, or clarify the report including, but not limited to, vouchers, worksheets, and applicable resolutions.

X. COMPLETING FORM LM-10

Read the instructions carefully before completing Form LM-10.

Entering Dollars. In all Items dealing with monetary values, report amounts in dollars only; do not enter cents. Round cents to the nearest dollar. Enter a single "0" in the boxes for reporting dollars if the employer has nothing to report.

PART A (ITEMS 1 – 8)

1. FILE NUMBER—The software will enter the five-digit file number assigned by OLMS for the reporting individual or organization here and at the top of each page of Form LM-10. If the number is incorrect or you do not have the number on file and cannot obtain it from past reports, the number can be obtained at www.unionreports.gov, emailing OLMS at OLMS-Public@dol.gov, or calling OLMS at (202) 693-0123.

NOTE: If you have previously filed a Form LM-10 and seek to search for past report to obtain your employer file number, please visit the OLMS Online Public Disclosure Room and select "View Other Reports." You have the

option to select your employer's name or organization from the drop-down menu. This menu contains all the individuals and organizations from whom OLMS has received employer reports.

2. FISCAL YEAR—Enter the beginning and ending dates of the fiscal year covered in this report. The report must not cover more than a 12-month period. For example, if the reporting employer's 12-month fiscal year begins on January 1 and ends on December 31, do not enter a date beyond the 12-month period, such as January 1 to January 1; this is an invalid date entry.

3. NAME AND MAILING ADDRESS—Enter the full legal name of the reporting employer, a trade or commercial name, if applicable (such as a d/b/a or "doing business as" name), the name and title of the person to whom mail should be directed, and the complete address where mail should be sent and received, including any building and room number.

4. NAME AND ADDRESS OF PRINCIPAL OFFICER—Enter the name and business address of the president or corresponding principal officer if it is different from the address in Item 3.

5. ANY OTHER ADDRESS WHERE RECORDS ARE AVAILABLE—If you maintain any of the records necessary to verify this report at an address different from the addresses listed in Items 3 or 4, enter the appropriate name and address in Item 5.

6. RECORDS ARE AVAILABLE—Select the appropriate box(es) where the records necessary to verify this report are available for examination.

7. TYPE OF ORGANIZATION—Select the appropriate box which describes the reporting employer. If none of the choices apply, specify the type of reporting employer filing this report.

8. TYPE OF REPORTABLE ACTIVITY ENGAGED IN BY EMPLOYER—Read each question carefully, then read the exclusions listed below for each question. Select the appropriate **YES** or **NO** box next to each question; do not leave both boxes blank. If the answer to any of these questions is YES, indicate the number of Part Bs necessary for completing that question. With each question, complete a separate Part B for every person or organization with whom a reportable agreement was made as indicated by a **YES** answer. For example, if you answer Item 8.e **YES**, and you had agreements with two different labor relations consultants during the fiscal year, then you would complete two Part Bs for that question.

8.a. In answering Item 8.a, exclude the following:

(1) Payments of the kind referred to in Section 302(c) of the Labor Management Relations Act, 1947, as amended (LMRA); **and** (2) Payments or loans made in the regular course of business as a national or state bank, credit union, insurance company, savings and loan association, or other credit institution. (The text of Section 302(c) of the LMRA is set forth below.)

None of the following require a **YES** answer:

(a) payments made in the regular course of business to a class of persons determined without regard to whether they are, or are identified with, labor organizations and whose relationship to labor organizations is not ordinarily known to or readily ascertainable by the payer, for example, interest on bonds and dividends on stock issued by the reporting employer; (b) loans made to employees under circumstances and terms unrelated to the employees' status in a labor organization; (c) payments made to any regular employee as wages or other compensation for service as a regular employee of the employer, or by reason of his service as an employee of such employer, for periods during regular working hours in which such employee engages in activities other than productive work, if the payments for such periods of time are:

(1) required by law or a bona fide collective bargaining agreement, or (2) made pursuant to a custom or practice under such a collective agreement, or (3) made pursuant to a policy, custom, or practice with respect to employment in the establishment which the employer has adopted without regard to any holding by such employee of a position with a labor organization; (d) initiation fees and assessments paid to labor organizations and deducted from the wages of employees pursuant to individual assignments meeting the terms specified in paragraph (4) of Section 302(c) of the LMRA; (e) sporadic or occasional gifts, gratuities, or favors of insubstantial value, given under circumstances and terms unrelated to the recipients' status in a labor organization; for example, traditional Christmas gifts.

8.b. In answering Item *8.b,* ***exclude*** expenditures made to any regular officer, supervisor, or employee as compensation for services as a regular officer, supervisor, or employee.

8.c. In answering Item *8.c,* ***exclude*** expenditures relating exclusively to matters protected by Section 8(c) of the National Labor Relations Act, as amended (NLRA).

NOTE: The definition set forth in Section 203(g) of the LMRDA for the term "interfere with, restrain, or coerce" excludes matters protected by Section 8(c) of the NLRA. Therefore, expenditures related exclusively to such matters protected by Section 8(c) are not required to be reported in this question. (The text of Section 8(c) of the NLRA is set forth below.)

8.d. In answering Item *8.d,* ***exclude*** the following:

(1) Information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding; **and** (2) Expenditures made to any regular officer, supervisor, or employee as compensation for service as a regular officer, supervisor, or employee.

8.e. In answering Item *8.e,* ***exclude*** *a*greements or arrangements covering services related exclusively to the following: (1) giving you advice; **or** (2) agreeing to represent you before any court proceeding, administrative agency, or tribunal of arbitration; **or** (3) engaging in

collective bargaining on your behalf with respect to wages, hours, or other terms or conditions of employment or negotiating an agreement or any question arising thereunder.

If an agreement or arrangement covering the listed services also covers other activities referred to in the initial question, the exclusion does not apply and the information required for the entire agreement must be reported.

8.f. In answering Item *8.f,* ***exclude*** agreements or arrangements for obtaining information solely for use in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding.

PART B (ITEMS 9 – 12)

You must complete a separate Part B for each **YES** answer in Item 8 and for each separate reportable transaction as described in Section III of these instructions. At the top of Part B, check the appropriate Item number box to which this Part B applies.

9. AGREEMENT OR PAYMENT

9.a. Check the appropriate box describing whether this

Part B covers an agreement, a payment, or both.

9.b Enter the name and complete mailing address of the individual with whom you made a reportable agreement or to whom payments were made. Enter the name and address of the firm or organization in Item 9.d.

9.c. Give the position (or title) of each person listed in Item 9.b. as follows:

- If the answer to Item 8.a. in Part A is **YES**, indicate the position in the labor organization of each person listed in Item 9.b.
- If the answer to Item 8.b. in Part A is **YES,** identify the position in the reporting firm of each person listed in Item 9b.
- If the answer to Item 8.c. **or** Item 8.d. in Part A is **YES**, indicate the position in the firm or labor organization of each person listed in Item 9.b.
- If the answer to Item 8.e. **or** Item 8.f. in Part A is **YES**, indicate the position of each person in a firm or the occupation of each person listed in Item 9.b.

9.d. Enter the full name and address of the firm, group, or labor organization to whom payments were made, with whom the agreement or arrangement was made, or with whom the person listed in Item 9.b. was employed or affiliated.

10. DATE AND NATURE OF PROMISE, AGREEMENT, OR ARRANGEMENT

10.a. If you agreed or promised to make payments or if you actually made payments during the fiscal year pursuant to a promise, agreement, or arrangement, indicate the date on which either the promise was made or the agreement or arrangement was entered into. If the payments listed in Item 11 are unrelated to an agreement or arrangement, enter **NONE** in this section.

10.b Indicate whether the promise, agreement, or arrangement was oral, written, or both. Attach or upload a copy of any written agreement entered into during the fiscal year covered in this report.

11. PAYMENT OR EXPENDITURE

11.a. Enter the date of each payment referred to in Item 9.

11.b. If the form of payment was cash, enter the U.S. dollar amount of each payment made during the fiscal year. If the form of payment was property, provide the market value in U.S. dollars of the property at the time of the transfer.

11.c. Indicate whether the payment was either a remuneration, gift, or loan. Specify the method of payment (for example, cash, check, or securities, or other property).

12. CIRCUMSTANCES OF ALL PAYMENTS

12.a. Provide a full explanation identifying the purpose and circumstances of the payments, promises, agreements, or arrangements included in the report. Your explanation must contain a detailed account of services rendered or promised in exchange for promises **or** payments you have already made or agreed to make. Your explanation must fully outline the conditions and terms of all listed agreements, including fully identifying the subject group of employees (i.e., the particular unit or division in which those employees work).

In addition to the above, you must indicate whether the payments or promises reported specifically benefited the person or persons listed in Item 9.b, or the firm, group, or labor organization named in Item 9.d. If you made payments, promises, or agreements through a person or persons not shown above, you must provide the full name and address of such person or persons. Your explanation must clearly indicate why you must report the payment, promise, or agreement. Any incomplete responses or unclear explanations will render this report deficient.

12. b. If you are completing Part B because you checked **YES** to any item in Items 8.b. through 8.f., did the payments or agreements concern employees performing work pursuant to a Federal contract or subcontract? Select the appropriate **YES** or **NO** box below the question; if you checked **YES** to just Item 8.a., then the **N/A** box will automatically be checked. Do not leave all three boxes blank. If the answer to the question is **YES**, you must indicate your Unique Entity Identifier. If you do not have a Unique Entity Identifier, state on the form that you do not have one. Enter the Federal contracting agency or agencies that are a party to the Federal contract(s). If providing the name of a contracting agency would reveal classified information, the filer should omit the name of the agency. For a definition of Federal "contract," "contracting agency," "contractor," "government contract," "modification of a contract," "prime contractor," "subcontract," and "subcontractor," please see the

Executive Order 13496 (Notification of Employee Rights Under Federal Labor Laws) implementing regulations at 29 CFR § 471.1 (excerpts below). Any incomplete responses or unclear explanations will render this report deficient.

SIGNATURES

13-14. SIGNATURES—The completed Form LM-10 which is filed with OLMS must be electronically signed by both the president and treasurer, or corresponding principal officers, of the reporting employer. A report from a sole proprietor need only bear **one** signature which you should enter in Item 13. Otherwise, this report must bear **two (2)** signatures.

If the report is signed by an officer other than the president and/or treasurer, so indicate in Items 13 and/or 14 by so indicate by entering the correct title in the title field next to the signature. Then you must Save and revalidate the form. Once the form has passed validation, then you must click to sign the report.

NOTE: Upon registering with OLMS, the signatories and preparers must enter email addresses they use to conduct business, in order to file the form via the OLMS Electronic Forms System. While the email addresses will not appear on the report, OLMS may use the email address of the signatories and any preparers to contact the employer concerning LMRDA compliance.

Enter the telephone number used by the signatories to conduct official business. You do not have to report a private, unlisted telephone number.

SELECTED DEFINITIONS FROM THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959, AS AMENDED (LMRDA)

SEC. 3. For the purposes of titles I, II, III, IV, V except section 505), and VI of this Act-

(a) "Commerce" means trade, traffic, commerce,

transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(b) "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1343).

(c) "Industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended. (29 U.S.C. 402 (c)).

(d) "Person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, or receivers.

(e) "Employer" means any employer or any group or association of employers engaged in an industry affecting commerce

(1) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or

(2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.

(f) "Employee" means any individual employed by an employer, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice or because of exclusion or expulsion from a labor organization in any manner or for any reason inconsistent with the requirements of this Act.

(g) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(h) Not applicable.

(i) "Labor organization" means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body. (29 U.S.C. 402(i))

(j) A labor organization shall be deemed to be engaged in an industry affecting commerce if it –

(1) Is the certified representative of employees under the provisions of the National Labor

Relations Act, as amended, or the Railway Labor Act, as amended; or

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees or an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection, other than a State or local central body.

(k) Not applicable.

(l)Not applicable.

(m) "Labor relations consultant" means any person who, for compensation, advises or represents an employer, employer organization, or labor organization concerning employee organizing, concerted activities, or collective bargaining activities.

(n) "Officer" means any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body.

(o) Not applicable.

(p) Not applicable.

(q) "Officer, agent, shop steward, or other representative," when used with respect to a labor organization, includes elected officials and key administrative personnel, whether elected or appointed (such as business agents, heads of departments or major units, and organizers who exercise substantial independent authority), but does not include salaried non-supervisory professional staff, stenographic, and service personnel.

NATIONAL LABOR RELATIONS ACT, AS AMENDED

Section 8. "(c) The expressing of any views, argument, or opinion or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

RELATED PROVISIONS OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959, AS AMENDED (LMRDA)

Report of Employers

Sec. 203.

(a) Every employer who in any fiscal year made-

(1) any payment or loan, direct or indirect, of money or other thing of value (including reimbursed expenses), or any promise or agreement therefore, to any labor organization or officer, agent, shop steward, or other representative of a labor organization, or employee of any labor organization, except

(a) payments or loans made by any national or State bank, credit union, insurance company, savings and loan association or other credit institution and

(b) (b) payments of the kind referred to in section 302 (c) of the Labor Management Relations Act, 1947, as amended;

(2) any payment (including reimbursed expenses) to any of his employees, or any group or committee of such employees, for the purpose of causing such employee or group or committee of employees to persuade other employees to exercise or not to exercise, or as the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing unless such payments were contemporaneously or previously disclosed to such other employees;

(3) any expenditure, during the fiscal year, where an object thereof, directly or indirectly, is to interfere with, restrain, or coerce employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing, or is to obtain information concerning the activities of employees, or a labor organization in connection with a labor dispute involving such employer, except for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;

(4) any agreement or arrangement with a labor relations consultant or other independent contractor or organization pursuant to which such person undertakes activities where an

object thereof, directly or indirectly, is to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing, or undertakes to supply such employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding; or

(5) any payment (including reimbursed expenses) pursuant to an agreement or arrangement described in subdivision (4);

shall file with the Secretary a report, in a form prescribed by him, signed by its president and treasurer or corresponding principal officers showing in detail the date and amount of each such payment, loan, promise, agreement, or arrangement and the name, address, and position, if any, in any firm or labor organization of the person to whom it was made and a full explanation of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made.

(b) Every person who pursuant to any agreement or arrangement with an employer undertakes activities where an object thereof is, directly or indirectly-

(1) to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or

(2) to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;

shall file within thirty days after entering into such agreement or arrangement a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing the name under which such person is engaged in doing business and the address of its principal office, and a detailed statement of the terms and conditions of such agreement or arrangement. Every such person shall file annually, with respect to each fiscal year during which payments were made as a result of such an agreement or arrangement, a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing a statement (A) of its receipts of any kind from employers on account of labor relations advice or services, designating the sources thereof, and (B) of its disbursements of any kind, in connection with such services and the purposes thereof. In each such case such information shall be set forth in such categories as the Secretary may prescribe.

(c) Nothing in this section shall be construed to of arbitration or engaging or agreeing to engage in collective bargaining on behalf of such employer with respect to wages, hours, or other terms or conditions of employment or the negotiation of an agreement or any question arising thereunder.

(d) Nothing contained in this section shall be require any employer or other person to file a report covering the services of such person by reason of his giving or agreeing to give advice to such employer or representing or agreeing to represent such employer before any court, administrative agency, or tribunal construed to require an employer to file a report under subsection (a) unless he has made an expenditure, payment, loan, agreement, or arrangement of the kind described therein. Nothing contained in this section shall be construed to require any other person to file a report under subsection (b) unless he was a party to an agreement or arrangement of the kind described therein.

(e) Nothing contained in this section shall be construed to require any regular officer, supervisor, or employee of an employer to file a report in connection with services rendered to such employer nor shall any employer be required to file a report covering expenditures made to any regular officer, supervisor, or employee of an employer as compensation for service as a regular officer, supervisor, or employee of such employer.

(f) Nothing contained in this section shall be construed as an amendment to, or modification of the rights protected by, section 8 (c) of the National Labor Relations Act, as amended

(g) The term "interfere with, restrain, or coerce" as used in this section means interference, restraint, and coercion which, if done with respect to the exercise of rights guaranteed in section 7 of the National Labor Relations Act, as amended, would, under section 8(a) of such Act, constitute an unfair labor practice.

SECTION 302(c) OF THE LABOR MANAGEMENT RELATIONS ACT, 1947, AS AMENDED

"(c) The provisions of this section shall not be applicable (1) in respect to any money or other thing of value payable by an employer to any of his employees whose established duties include acting openly for such employer in matters of labor relations or personnel administration or to any representative of his employees, or to any officer or employee of a labor organization, who is also an employee or former employee of such employer, as compensation for, or by reason of, his

service as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement, or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: Provided, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, which-ever occurs sooner; (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents) Provided, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event of the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such dead- lock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities; or (6) with respect to money or other thing of value paid by any employer to a trust fund established by such a representative for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs: Provided, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (7) with respect to money or other thing of value paid by any employer to a pooled or individual trust fund established by such representative for the purpose of (A) scholarships for the benefit of employees, their families, and dependents for study at educational institutions, or (B) child care centers for preschool and school age dependents of employees: Provided, That no labor organization or employer shall be required to bargain on the establishment of any such trust fund, and refusal to do so shall not constitute an unfair labor practice: Provided further, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (8) with respect to money or any other thing of value paid by any employer to a trust fund established by such representative for the purpose of defraying the costs of legal services for employees, their families, and dependents for counsel or plan of their choice: Provided, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds: Provided further, That no such legal services shall be furnished: (A) to initiate any proceeding directed (i) against any such employer or its officers or agents except in workman's compensation cases, or (ii) against such labor organization, or its parent or subordinate bodies, or their officers or agents, or (iii) against any other employer or labor organization, or their officers or agents, in any matter arising under the National Labor Relations Act, as amended, or this Act; and (B) in any proceeding where a labor organization would be prohibited from defraying the costs of legal services by the provisions of the Labor- Management Reporting and Disclosure Act of 1959; or (9) with respect to money or other things of value paid by an employer to a plant, area or industry-wide labor management committee established for one or more of the purposes set forth in section 5(b) of the Labor Management Cooperation Act of 1978."

OLMS has adopted the following definitions from Executive Order 13496 Implementing Regulations at

29 CFR § 471.1

Contract means, unless otherwise indicated, any Government contract or subcontract.

Contracting agency means any department, agency, establishment, or instrumentality in the executive branch of the Government, including any wholly owned Government corporation, that enters into contracts.

Contractor means, unless otherwise indicated, a prime contractor or subcontractor.

Government contract means any agreement or modification thereof between any contracting agency and any person for the purchase, sale, or use of personal property or non-personal services. The term “personal property,” as used in this section, includes supplies, and contracts for the use of real property (such as lease arrangements), unless the contract for the use of real property itself constitutes real property (such as

easements). The term "non-personal services" as used in this section includes, but is not limited to, the following services: utilities, construction, transportation, research, insurance, and fund depository. The term Government contract does not include:

(1) Agreements in which the parties stand in the relationship of employer and employee; and

(2) Federal financial assistance, as defined in 29 CFR 31.2.

Modification of a Contract means any alteration in the terms and conditions of that contract, including amendments, renegotiations, and renewals.

Prime Contractor means any person holding a contract with a contracting agency, and, for the purposes of subparts B and C of [29 C.F.R. part 471], includes any person who has held a contract subject to the Executive Order and [29 C.F.R. part 471].

Subcontract means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(1) For the purchase, sale or use of personal property or non-personal services that, in whole or in part, is necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken or assumed.

Subcontractor means any person holding a subcontract and, for the purposes of subparts B and C of [29 C.F.R. part 471], any person who has held a subcontract subject to the Executive Order and [29 C.F.R. part 471].

If You Need Assistance

The Office of Labor-Management Standards has field offices located in the following cities to assist you if you have any questions concerning LMRDA and CSRA reporting requirements.

Atlanta-Nashville
Boston-Buffalo
Chicago
Cincinnati-Cleveland
Dallas-New Orleans
Denver-St. Louis
Detroit-Milwaukee
Los Angeles
Philadelphia-Pittsburgh
New York
San Francisco-Seattle
Washington, D.C.

Copies of labor organization annual financial reports, employer reports, and labor relations consultant reports filed for the year 2000 and after can be viewed and printed at http://www.unionreports.gov .

Code of Federal Regulations (CFR) documents are also available on the Internet at: http://www.dol.gov/olms

Additionally, you can call the OLMS national office at (202) 693-0123 or email OLMS-Public@dol.gov.

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