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Title 3—**Executive Order 14129 of December 18, 2024****The President****Providing for the Closing of Executive Departments and Agencies of the Federal Government on December 24, 2024**

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. All executive departments and agencies of the Federal Government shall be closed and their employees excused from duty on Tuesday, December 24, 2024, the day before Christmas Day.

Sec. 2. The heads of executive departments and agencies may determine that certain offices and installations of their organizations, or parts thereof, must remain open and that certain employees must report for duty on December 24, 2024, for reasons of national security, defense, or other public need.

Sec. 3. December 24, 2024, shall be considered as falling within the scope of Executive Order 11582 of February 11, 1971, and of 5 U.S.C. 5546 and 6103(b) and other similar statutes insofar as they relate to the pay and leave of employees of the United States.

Sec. 4. The Director of the Office of Personnel Management shall take such actions as may be necessary to implement this order.

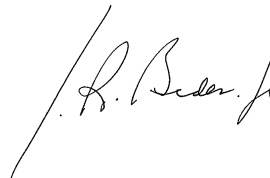
Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
December 18, 2024.

Rules and Regulations

Federal Register

Vol. 89, No. 247

Thursday, December 26, 2024

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.

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OFFICE OF THE FEDERAL REGISTER

5 CFR Chapter XL

Interstate Commerce Commission Regulations; Removal of Chapter

Editorial Note: Under section 101 of Public Law 104–88, the Interstate Commerce Commission was abolished on Dec. 29, 1995, effective January 1, 1996.

The Director of the Office of the Federal Register, pursuant to his authority to maintain an orderly system of codification under 44 U.S.C. 1510 and 1 CFR 8.2, hereby removes from the Code of Federal Regulations, Chapter XL of Title 5, consisting of Parts 5000 to 5099, containing supplemental standards of ethical conduct for the employees of the Interstate Commerce Commission.

■ Accordingly, Chapter XL of Title 5 of the Code of Federal Regulations is hereby removed as of December 26, 2024.

[FR Doc. 2024–31079 Filed 12–23–24; 8:45 am]

BILLING CODE 0099–10–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2024–BT–DET–0012]

RIN 1904–AE57

Energy Conservation Program: Commercial Warm Air Furnaces; Notification of Tentative Determination and Request for Comment

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

ACTION: Notification of tentative determination and request for comment.

SUMMARY: On June 2, 2023, the U.S. Department of Energy (“DOE” or the “Department”) published a test procedure final rule which established test procedures for commercial warm air

furnaces (“CWAFFs”). The Air-Conditioning, Heating, and Refrigeration Institute (“AHRI”) filed a petition for review of the final rule in the United States Court of Appeals for the Fourth Circuit on August 1, 2023. In a February 6, 2024, order, the Fourth Circuit granted a voluntary remand of the final rule to the Department of Energy (“DOE”) to determine whether establishment of the test procedure for the thermal efficiency two (“TE2”) metric is supported by the specific provisions applicable to CWAFFs under the Energy Policy and Conservation Act (“EPCA”). More specifically, DOE agreed in this voluntary remand to only establish the TE2 test procedure if the Department makes a determination that the TE2 test procedure is consistent with the amended industry test procedure, or a determination, supported by clear and convincing evidence, that the amended industry test procedure fails to satisfy the statutory requirements. This document provides DOE’s tentative determination that the amended industry test procedure fails to satisfy EPCA’s statutory requirements and requests comment on this topic.

DATES: DOE will accept comments, data, and information regarding this document no later than January 8, 2025. See section V, “Public Participation,” for details.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at www.regulations.gov under docket number EERE–2024–BT–DET–0012. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2024–BT–DET–0012, by any of the following methods:

(1) *Email:*

FurnacesDet2024DET0012@ee.doe.gov. Include the docket number EERE–2024–BT–DET–0012 in the subject line of the message.

(2) *Postal Mail and Hand Delivery/Courier:* 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.

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

Docket: The docket for this activity, which includes **Federal Register** notices, public meeting attendee lists and transcripts (if a public meeting is held), 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-2024-BT-DET-0012. The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Julia Hegarty, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (240) 597–6737. Email: ApplianceStandardsQuestions@ee.doe.gov.

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

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I. Introduction

A. Authority

The Energy Policy and Conservation Act, Public Law 94–163, as amended (“EPCA”),¹ authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317, as codified) Title III, Part C of EPCA, added by Public Law 95–619, title IV, sec. 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes CWAFFs, the subject of this document. (42 U.S.C. 6311(1)(J))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316; 42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(b); 42 U.S.C. 6296), and (2) making other representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE uses these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. DOE’s test procedures for CWAFFs are currently prescribed at subpart D of part 431 of title 10 of the Code of Federal Regulations (“CFR”).

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede state laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and 42 U.S.C. 6316(b); 42 U.S.C.

6297) DOE may, however, grant waivers of Federal preemption for particular state laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6316(b)(2)(D))

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered equipment. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results that reflect energy efficiency, energy use, or estimated annual operating cost of a given type of covered equipment during a representative average use cycle (as determined by DOE) and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

EPCA generally requires that, at least once every seven years, DOE evaluate test procedures for each type of covered equipment, including CWAFFs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1)–(3)) DOE refers to these provisions as the “lookback” provisions and rulemakings conducted under these provisions as “lookback” rulemakings.

Specific to certain commercial equipment, including CWAFFs, EPCA required that the initial test procedures for this equipment be those generally accepted industry testing procedures or rating procedures developed or recognized by AHRI or ASHRAE, as referenced in ASHRAE Standard 90.1, “Energy Standard for Buildings Except Low-Rise Residential Buildings” (“ASHRAE Standard 90.1”), that were in effect on June 30, 1992. (42 U.S.C. 6314(a)(4)(A)) Further, if such an industry test procedure is amended, DOE must update its test procedure to be consistent with the amended industry test procedure unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that the amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3), in which case DOE may establish an amended test procedure that does satisfy those statutory provisions. (42 U.S.C. 6314(a)(4)(B) and (C)) DOE refers to these provisions as the “ASHRAE trigger” provisions and rulemakings conducted under these

provisions as “ASHRAE trigger” rulemakings.

Whether pursuant to the lookback provision or the trigger provision, if DOE determines that a test procedure amendment is warranted, EPCA requires that the Department publish proposed test procedures in the **Federal Register** and afford interested persons an opportunity (of not less than 45 days duration) to present oral and written data, views, and arguments on the proposed test procedures. (42 U.S.C. 6314(b))

B. Energy Conservation Standards Rulemaking Process Under EPCA

The purpose of energy conservation standards issued under EPCA is to reduce energy use by improving the energy efficiency of covered products and equipment. (See 42 U.S.C. 6312(a)) The first step in establishing new or amended energy conservation standards for any covered product or equipment is to determine what energy use by a covered product or equipment will be within the scope of the energy conservation standard, *i.e.*, what is the representative average use cycle for the covered product or equipment. For example, prior to the Energy Independence and Security Act of 2007 (“EISA 2007”), the representative average use cycle for many covered products only included active mode energy use, *i.e.*, energy used while the product was performing its main function. As such, the representative use cycle did not include any energy used while the product was in a standby or off mode. Thus, manufacturers had little incentive to reduce standby or off mode energy use as it had no effect on whether a covered product complied with the applicable energy conservation standards. But in EISA 2007, Congress required DOE to include standby and off mode energy use as part of the representative average use cycle for any energy conservation standard adopted after July 1, 2010. (42 U.S.C. 6295(gg)(3)).

Representative average use cycles for covered products and equipment can also change over time as DOE’s understanding of how the product or equipment is used in the field improves, consumer habits change, or technologies improve. For example, DOE recently issued an amended test procedure for air-cooled commercial package air conditioners and heat pumps that reflects how the representative average use cycle for this equipment has changed over time. 89 FR 43986 (May 20, 2024). DOE adopted this new test procedure for air-cooled commercial air conditioners and heat pumps with 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.

support of a cross-section of stakeholders, including the heating and cooling industry, who recommended the details of the new test procedure to DOE as part of a negotiated consensus recommendation. *Id.* at 89 FR 43991. The consensus recommendation recognized that the introduction of innovative technologies in the market, such as the ability for compressors to run at part-load values in response to different operating conditions in the field, has contributed to changes in the representative average use cycle for air-cooled commercial air conditioners and heat pumps. The consensus recommendation also recognized that air-cooled commercial air conditioners and heat pumps operate in additional heating and cooling modes not encompassed by the current representative average use cycle. As a result, the representative use cycle for air-cooled commercial air conditioners and heat pumps was updated to include, among other things, part-load operation at a variety of outdoor temperature points and additional modes of operation, *e.g.*, integrated mechanical and economizer cooling, economizer-only cooling, cooling season ventilation, and unoccupied no-load hours. *Id.* at 89 FR 43997–43998.

Having determined a representative average use cycle for a covered product or equipment, the next step in EPCA's energy conservation standards rulemaking process is to prescribe a test procedure that is reasonably designed to produce test results that measure energy use of the covered product or equipment for that representative average use cycle and that is not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3); 42 U.S.C. 6314(a)(2)) For example, when Congress required DOE to include standby and off mode energy use in standards for covered products, it first directed DOE to amend test procedures for all covered products to include provisions for measuring standby and off mode energy use. (42 U.S.C. 6295(gg)(2)(A)) Congress then directed DOE to use these amended test procedures when prescribing new or amended standards that incorporate standby and off mode energy use. (42 U.S.C. 6295(gg)(3)(A)) As the new standards would be based on a different representative use cycle, *i.e.*, one that includes active mode, standby mode, and off mode, Congress clarified that the amended test procedures "shall not be used to determine compliance with product standards established prior to the adoption of the amended test procedures." (42 U.S.C. 6295(gg)(2)(C)) It would have made little sense for Congress to require manufacturers to

use test procedures that measure active, standby, and off mode energy when determining compliance with an energy conservation standard that is only based on active mode energy use. DOE takes the same approach when prescribing an amended test procedure for use in evaluating new or amended energy conservation standards that are based on an updated representative average use cycle. Use of the amended test procedure is only required upon the compliance date of the new or amended energy conservation standards. *See* sec. 8(f) of appendix A to subpart C of 10 CFR part 430.

C. Background

Under EPCA's lookback provision, DOE initiated a test procedure rulemaking for CWAFFs by publishing a request for information ("RFI") in the **Federal Register** on May 5, 2020 ("May 2020 RFI"). 85 FR 26626. The current energy conservation standards for CWAFFs are based on a representative average use cycle that assumes CWAFFs always operate at 100% capacity in the field and that the only energy losses are from flue exhaust gases. The May 2020 RFI solicited public comments, data, and information on aspects of the existing DOE test procedure for CWAFFs at 10 CFR part 431, subpart D, appendix A ("appendix A"), which measures Thermal Efficiency ("TE") and is used for determining compliance with the current energy conservation standards for CWAFFs, including whether there were any issues with the existing test procedure at that time and whether it was in need of updates or revisions. *Id.*

DOE subsequently published a notice of proposed rulemaking ("NPR") for the CWAFFs test procedure in the **Federal Register** on February 25, 2022, which proposed amendments to the existing test procedure for TE as well as a new test procedure based on DOE's tentative determination that the representative average use cycle for CWAFFs should include jacket losses and part-load operation. 87 FR 10726 ("February 2022 NPR"). DOE noted that CWAFFs are typically installed outdoors and, as a result, jacket losses can be a significant source of energy loss. 87 FR 10726, 10735. DOE also noted that many CWAFFs now have multiple heating stages and performance for these CWAFFs can vary at different heating loads. *id.* As a result, DOE proposed that any new or amended energy conservation standards for CWAFFs should be based on a representative average use cycle that includes jacket losses and part-load operation, *i.e.*, the TE2 metric. DOE proposed a new test procedure in 10

CFR part 431, subpart D, appendix B ("appendix B"), to measure energy efficiency under the TE2 metric. DOE tentatively determined that the appendix B test procedure met the statutory criteria in 42 U.S.C. 6314(a)(2) and (3). 87 FR 10726, 10737–10738.

The February 2022 NPR had a 60-day comment period and DOE held a webinar public meeting on March 29, 2022. As directed by the remand order from the Fourth Circuit, this document considers whether the amended industry test procedure fails to satisfy the applicable statutory requirements. In this document, DOE focuses on two discrete issues related to whether the amended industry test procedure is reasonably designed to produce test results that reflect energy use during a representative average use cycle: the lack of jacket loss and part-load testing provisions in the amended industry test procedure. DOE believes the comment period provided for in the **DATES** section is more than sufficient for interested parties to provide comments on these two issues and notes that DOE already satisfied the comment period required in 42 U.S.C. 6314(b) for prescribing the appendix A and appendix B test procedures with the 60-day comment period provided for in the February 2022 NPR.

Following publication of the February 2022 NPR, the latest update to ASHRAE Standard 90.1 was released in January 2023 ("ASHRAE Standard 90.1–2022"). ASHRAE Standard 90.1–2022 references CSA/ANSI Z21.47–2021, *Gas-fired central furnaces* ("ANSI Z21.47–2021"), as the test method for gas-fired CWAFFs and Underwriters Laboratories ("UL") standard UL 727–2018, "Standard for Safety Oil-Fired Central Furnaces" ("UL 727–2018"), as the test method for oil-fired CWAFFs.

On June 2, 2023, DOE published a test procedure final rule for CWAFFs. 88 FR 36217 ("June 2023 Final Rule"). In the June 2023 Final Rule, DOE amended the current test procedure for TE in appendix A and incorporated by reference the latest industry test procedures referenced in ASHRAE Standard 90.1–2022. The amendments to the industry test procedure were relatively minor and not based on any updates to the representative average use cycle for CWAFFs. Rather, they were clarifications to the existing test procedure intended to improve clarity and help with the execution of the current test procedure. DOE also finalized the proposed appendix B test procedure that is based on an updated representative average use cycle that includes jacket losses and part-load operation. Similar to other rulemakings

where DOE has determined that the representative average use cycle should be updated, e.g., air-cooled commercial air conditioners and heat pumps, the June 2023 Final Rule states that use of the appendix B test procedure would not be required until such time as compliance is required with amended energy conservation standards based on the new metric, should DOE adopt such standards.

Following publication of the June 2023 Final Rule, the Air-Conditioning, Heating, and Refrigeration Institute (“AHRI”) filed a petition for review of the final rule in the United States Court of Appeals for the Fourth Circuit on August 1, 2023. In its opening brief, AHRI argued that DOE failed to provide notice and an opportunity for comment after being triggered by the ASHRAE Standard 90.1–2022 publication prior to publishing the June 2023 Final Rule; DOE did not undertake the required analysis under 42 U.S.C. 6314(a)(4)(B); and that if DOE had conducted the correct analysis under 42 U.S.C. 6314(a)(4)(B), it would necessarily have concluded that it lacked clear and convincing evidence that the industry test procedure did not meet the statutory requirements. See *Air-Conditioning, Heating, and Refrigeration Institute v. United States Department of Energy*, No. 23–1793 (4th Cir. Oct. 23, 2023), 15–1.

On February 6, 2024, the Fourth Circuit granted the Department’s motion for voluntary remand. In its order, the Court granted DOE’s motion for voluntary remand to clarify that, in this particular circumstance, where ASHRAE published an amended industry test procedure during the pendency of a rulemaking under the 7-year lookback provision, the Department will solicit public comment prior to making: (1) a final determination that the test procedure in appendix B for the TE2 metric is consistent with the amended industry test procedure; or (2) a final determination, supported by clear and convincing evidence, that the industry test procedure fails to satisfy the statutory requirements. See *Air-Conditioning, Heating, and Refrigeration Institute v. United States Department of Energy*, No. 23–1793 (4th Cir. Feb. 6, 2024), 22–1. The remand order did not vacate the June 2023 Final Rule, nor did it require DOE to revisit its determination that the appendix B test procedure meets the statutory requirements at 42 U.S.C. 6314(a)(2) and (3).

DOE is publishing this document in accordance with the order from the Fourth Circuit. Specifically, DOE is presenting its tentative determination,

supported by clear and convincing evidence, that the industry test procedure is not reasonably designed to produce test results that reflect energy efficiency during a representative average use cycle that, as determined by DOE, includes jacket losses and part-load operation. DOE requests public comment on this tentative determination.

II. Discussion

A. ASHRAE Trigger

As discussed, EPCA requires that if the industry test procedure for CWAFFs is amended, DOE must update its test procedure to be consistent with the amended industry test procedure unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that the amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3), in which case DOE may establish an amended test procedure that does satisfy those statutory provisions. (42 U.S.C. 6314(a)(4)(B) and (C)) The publication of ASHRAE Standard 90.1–2022 represented an ASHRAE trigger for CWAFFs. The test procedure established in appendix A for the TE metric references the industry test standards from the most recent version of ASHRAE Standard 90.1 (2022), which satisfies DOE’s obligations under the ASHRAE trigger provision with respect to the appendix A test procedure for the TE metric. See 42 U.S.C. 6314(a)(4)(B). In this document, DOE is applying the ASHRAE trigger provision to the appendix B test procedure for the TE2 metric. In the following section, DOE discusses its tentative determination, supported by clear and convincing evidence,² that the industry test procedure is not reasonably designed to produce test results that reflect energy efficiency during a representative average use cycle that, as determined by DOE, includes jacket losses and part-load operation.

B. Appendix B Test Procedure for TE2

In the June 2023 Final Rule, DOE considered that the existing test procedure and standards were based on a representative average use cycle that did not include consideration of jacket losses or part-load performance. 88 FR 36217, 36223–36227. CWAFFs lose energy to the environment through

jacket losses and are capable of and do operate differently under part-load conditions. As a result, DOE determined in the June 2023 Final Rule that jacket losses and part-load performance can contribute significantly to overall equipment energy use and should be part of the representative average use cycle for CWAFFs. *Id.* As such, DOE established a new test procedure (appendix B) based on a representative average use cycle that includes jacket losses and part-load operation. The June 2023 Final Rule includes an extensive discussion supporting DOE’s determination that the appendix B test procedure is reasonably designed to produce test results that reflect energy efficiency during a representative average use cycle that, as determined by DOE, includes jacket losses and part-load operation, and is not unduly burdensome to conduct. *Id.* In that discussion, DOE acknowledged that accounting for jacket losses and part-load operation would increase test burden. *Id.* at 88 FR 36224. But after a thorough analysis of the increased test costs, DOE concluded that the additional costs are not unduly burdensome and the inclusion of jacket losses and part-load operation provides for a more representative average use cycle. *Id.* at 88 FR 36230.

C. Industry Test Procedure (Appendix A Test Procedure for TE)

As discussed previously, the industry test procedure, which is referenced in appendix A and is used for determining compliance with the current energy conservation standards, is based on a representative average use cycle that assumes CWAFFs only operate at 100 percent capacity and that energy is only lost through flue exhaust gases. As discussed previously, these assumptions are an over-simplification of how CWAFFs operate in the field. In this document, DOE evaluates the industry test procedure in the context of the ASHRAE trigger provisions and presents DOE’s tentative determination, supported by clear and convincing evidence, that the industry test procedure does not satisfy all of the criteria in 42 U.S.C. 6314(a)(2) and (3). Specifically, DOE has tentatively determined that the industry test procedure is not reasonably designed to produce test results which reflect energy efficiency during a representative average use cycle that, as determined by DOE, includes jacket losses and part-load operation. As such, DOE’s adoption of the appendix B test procedure, which DOE determined met the applicable statutory criteria in the June 2023 Final Rule, is consistent with the ASHRAE

² “[C]lear and convincing evidence requires a factfinder . . . to have an ‘abiding conviction’ that her findings . . . are ‘highly probable’ to be true.” *Am. Pub. Gas Ass’n v. United States Dep’t of Energy*, 22 F.4th 1018, 1025 (D.C. Cir. 2022) (quoting *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984)).

trigger provisions in 42 U.S.C. 6314(a)(4)(B) and (C).

As explained in more detail in the following sections, DOE estimates that the test procedure for TE2 could produce a result that is between 3.5 percent lower (in a model with high jacket loss and poor part-load performance) to 1 percent higher (in a model with negligible jacket loss and good part-load performance) than the industry test procedure because the TE2 metric includes jacket loss and part-load performance. This variation in efficiency is significant. For example, when DOE last amended the standards for gas-fired CWAFFs, the minimum required efficiency went from 80 to 81 percent, which DOE determined would result in significant additional conservation of energy. 81 FR 2420, 2430. Further, the average life-cycle cost savings to a consumer from that 1 percent increase in efficiency was \$284. *Id.* at 81 FR 2423. Those already significant impacts are only magnified when larger differences in measured efficiency are considered. Therefore, DOE has tentatively determined, supported by clear and convincing evidence, that the industry test procedures referenced in ASHRAE Standard 90.1–2022 are not reasonably designed to produce test results which reflect energy efficiency during a representative average use cycle that, as determined by DOE, includes jacket losses and part-load operation. The following sections discuss the significance of jacket loss and part-load performance to overall energy use and efficiency during a representative average use cycle in more detail.

1. Jacket Loss

As discussed, the current energy efficiency metric for CWAFFs is TE. 10 CFR 431.77. TE for a CWAFF is defined in 10 CFR 431.72 as 100 percent minus the percent flue loss and is determined using the test procedure in appendix A. Appendix A and the industry test procedure produce results that are essentially a measure of combustion efficiency. However, the energy efficiency of CWAFFs in the field is influenced by factors in addition to combustion efficiency (e.g., jacket loss). Jacket losses are losses from the commercial warm air furnace to the ambient environment that occur because heat is lost through the jacket, *i.e.*, the cabinet surrounding the heating section, of the CWAFF during operation. Jacket loss contributes to the overall energy use of a CWAFF and is, therefore, one of the parameters that determines a CWAFF's overall efficiency. In fact, table 6.8.1–5 of ASHRAE Standard 90.1–2022

includes performance requirements for CWAFFs and specifies that units must have jacket losses not exceeding 0.75 percent of the input rating, indicating that jacket loss is an important aspect of CWAFF operation. Additionally, the test methods for similar products, such as consumer furnaces, account for jacket loss further demonstrating that jacket losses are an important factor in determining a furnace's efficiency. Heat loss through the cabinet (*i.e.*, jacket loss) is generally proportional to the thickness of the insulation and/or insulative material used in the cabinet. CWAFFs with the same TE, as determined under the current appendix A test procedure, could have different performance in the field if, for example, one unit has different insulation than the other (resulting in different levels of jacket loss). DOE also notes that the vast majority of CWAFFs are installed within commercial unitary air conditioners (“CUACs”) located on rooftops,³ and that these outdoor installations will result in greater jacket loss than CWAFFs installed indoors because of the colder ambient air. As such, DOE has tentatively determined that energy use of a CWAFF will vary depending on installation location because of different levels of jacket loss. Differences in energy use based on differences in jacket loss are not captured by the industry test procedure. Incorporating jacket loss into the representative average use cycle and corresponding new metric, TE2, allows consumers to get a more accurate picture of CWAFF energy use in the field by capturing differences in CWAFF performance due to different levels of jacket loss (which as previously described could be caused by different levels of insulation, for example).

While manufacturers currently complying with the ASHRAE Standard 90.1 requirements would have to limit jacket losses so as not to exceed 0.75 percent of the input rating, DOE notes that because the jacket loss percentage would be multiplied by the jacket loss factor for weatherized CWAFFs designed to be installed outdoors (which represent the majority of CWAFFs on the market and which have a jacket loss factor of 3.3), a jacket loss of 0.75 percent could result in a difference of nearly 2.5 percent as compared to a unit with negligible jacket losses. As

discussed previously, even a 1 percent difference in efficiency is significant both in terms of the national benefits of energy conservation standards and benefits to individual consumers.

2. Part-Load Performance

DOE has reviewed the current CWAFF market and found that the vast majority of CWAFFs have two or more stages of heating. DOE notes that CWAFFs with two or more stages can operate at reduced firing rates to meet the building load. Part-load performance refers to the efficiency of the CWAFF when operating at a reduced firing rate (as opposed to full-load performance which reflects the efficiency when operating at the maximum firing rate).

Under the appendix A test procedure, TE reflects the efficiency of the CWAFF when firing at the maximum input rate (*i.e.*, at full load). When a CWAFF burner operates at a reduced input rate (*i.e.*, part load), the ratio of heat exchanger surface area to burner input rate is increased (in comparison to operation at the maximum input rate), which could increase the efficiency of the CWAFF compared to operating at full load, if other aspects of operation are consistent. However, depending on the air-fuel ratio or other factors impacting combustion efficiency, the combustion efficiency could instead decrease when operating at a reduced firing rate, especially if the air-fuel ratio is not maintained at an optimal level. The change in performance, including whether efficiency is improved or reduced at part-load, would vary from model to model depending on the design and control strategies employed when operating at input rates below the maximum input rate. Therefore, CWAFF part-load performance has the potential to be substantively different from full-load performance and including part-load performance in the measurement of CWAFF efficiency would allow the efficiency metric to account for this potential.

In previous testing of similar products, DOE has observed that the efficiency when operating at the reduced input rate can be as much as 2 percent higher or lower than the efficiency when operating at the maximum input rate.⁴ In a CWAFF that exhibits similar performance differences, the resulting difference in

³ On January 15, 2016, DOE published a direct final rule amending energy conservation standards for various types of commercial air conditioning equipment and CWAFFs. 81 FR 2420. As discussed in appendix 8D of the Direct Final Rule Technical Support Document, DOE found that 95% of gas-fired CWAFFs are installed outdoors and packaged with a CUAC.

⁴ In 2019, DOE conducted testing of consumer furnaces, which included 2-stage, non-condensing furnaces. The consumer furnace test method requires testing at both the maximum and minimum input rates for 2-stage models, so DOE was able to compare the steady-state efficiency at each input rate to determine the difference in performance when operating at a reduced input rate.

TE2 would be 1 percent higher or lower than the TE of that unit (depending on whether part load operation is more or less efficient than at full load) when accounting for the weighting of 50 percent of time operating at the reduced input rate. As discussed previously, such a difference in efficiency is significant both in terms of the national benefits of energy conservation standards and benefits to individual consumers.

III. Conclusion

The potential difference in CWF efficiency measured under the industry test procedure and the appendix B test procedure is an excellent example of why Congress updated representative use cycles for covered products to include standby and off mode energy use in new or amended energy conservation standards and why stakeholders, including manufacturers, asked DOE to update the representative average use cycle for air-cooled commercial air conditioners and heat pumps—consumers and manufacturers are both better off when DOE test procedures and energy conservation standards capture more energy use in the field. For example, as discussed previously, a CWF with a TE of 81 percent as measured by the industry test procedure could, depending on jacket losses and part-load operation, have an actual range of efficiencies from 77.5 to 82 percent using the appendix B test procedure for TE2. That is a significant difference in efficiency and corresponds to a significant difference in fuel costs over the lifetime of the CWF, which is important information for consumers. The industry test procedure also does not allow manufacturers to fully differentiate their products in the market. For example, under the industry test procedure, a manufacturer with a line of CWF models with well-insulated jackets has no way to advertise their improved efficiency in the market. Under the industry test procedure, these models will have the same advertised efficiency as similar models that lack insulation and have higher jacket losses.

Having determined that any future, amended standards for CWFs should be based on a representative average use cycle that includes jacket losses and part-load operation, DOE adopted the appendix B test procedure in the June 2023 Final Rule. The appendix B test procedure contains specific provisions for measuring jacket losses and energy use during part-load operation and will be used by DOE to evaluate potential amended standards for CWFs. Use of the appendix B test procedure by

manufacturers would not be required until such time as compliance is required with amended energy conservation standards based on the new representative average use cycle, should DOE adopt such standards.

In this document, DOE evaluated whether the industry test procedure is reasonably designed to produce test results which reflect energy use during a representative average use cycle that, as determined by DOE, includes jacket losses and part-load operation. Unlike the appendix B test procedure, the industry test procedure does not have provisions for calculating jacket losses and changes in energy efficiency due to part-load operation. As discussed previously, this results in the industry test procedure producing test results that do not account for significant variations in energy use across different CWF models. As a result, DOE has tentatively determined, supported by clear and convincing evidence, that the industry test procedure is not reasonably designed to produce test results which reflect energy efficiency during a representative average use cycle. DOE requests comment on this tentative determination.

III. Procedural Issues and Regulatory Review

DOE has concluded that the determinations made pursuant to the various procedural requirements applicable to the June 2023 Final Rule remain unchanged for this notification of tentative determination. These determinations are set forth in the June 2023 Final Rule. 88 FR 36217, 36230–36233. DOE is publishing this document to present its tentative determination, supported by clear and convincing evidence, that the industry test procedure would not provide test results that are representative of an average use cycle for the TE2 metric, and to seek comment from interested parties.

IV. Public Participation

DOE will accept comments, data, and information regarding this document no later than the date provided in the **DATES** section at the beginning of this document. 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

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However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

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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, 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).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notification of tentative determination and request for comment.

Signing Authority

This document of the Department of Energy was signed on December 13, 2024, by Jeffrey Marootian, Principal Deputy 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 December 16, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024–30274 Filed 12–23–24; 8:45 am]

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

RIN 3133–AF42

Succession Planning

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is issuing this final rule to further strengthen succession planning efforts for all consumer federally insured credit unions (FICUs). This final rule requires that a FICU board of directors establish a written succession plan that addresses specified positions and contains certain information. In addition, the board of directors is required to regularly review the succession plan. The final rule also requires that newly appointed members of the board of directors have a working familiarity with the succession plan no later than six months after appointment. The final rule follows publication of a July 25, 2024, proposed rule and takes into consideration the public comments received on the proposed rule. In response to comments, the Board has amended the proposal to provide that a credit union board must review its succession plan no less than every 24 months, as opposed to the annual review that would have been required under the proposed rule. The Board has also revised the proposed rule by removing loan officers, credit committee members, and supervisory committee members from the list of FICU officials that must be covered by the succession plans. In addition, non-substantive changes have been made to the wording used in the list of covered officials for purposes of clarity. The final rule also

streamlines the required contents of the succession plans and no longer requires that deviations from approved succession plans be documented in the FICU board’s meeting minutes. Further, to help ensure that FICUs have the necessary time to develop their succession plans, the Board is delaying the effective date of the final rule until January 1, 2026.

DATES: This final rule is effective on January 1, 2026.

FOR FURTHER INFORMATION CONTACT:

Office of Examination and Insurance: John Berry, Policy Officer, at (703) 664–3909 or at 1775 Duke Street, Alexandria, VA 22314. *Office of General Counsel:* Ariel Pereira, Senior Attorney, Office of General Counsel, at (703) 548–2778 or at the above address.

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I. Background

At its July 18, 2024, meeting, the Board approved a proposed rule to address succession planning at FICUs. The proposed rule was published in the **Federal Register** on July 25, 2024, and provided for a 60-day public comment period.¹ The proposal followed publication of the Board’s earlier 2022 proposed rule on the same topic.² The July 25, 2024, proposed rule was based on that earlier proposed rule but included several changes that the Board believed would further strengthen succession planning efforts for both consumer federal credit unions (FCUs) and consumer federally insured, state-

¹ 89 FR 60329 (July 25, 2024).

² 87 FR 6078 (Feb. 3, 2022).

chartered credit unions (FISCUs), which collectively are referred to as FICUs.

Under the July 25, 2024, proposed rule a FICU board of directors would have been required to establish a written succession plan that addresses specified positions and contains certain information. In addition, the board of directors would have been required to review the succession plan in accordance with an established schedule, but no less than annually. The proposed rule would also have required that newly appointed members of the board of directors have a working familiarity with the FICU's succession plan no later than six months after appointment. Interested readers are referred to the preamble of the proposed rule for additional details regarding the proposed regulatory amendments.

Two ongoing factors highlighted the need for rulemaking on succession planning. The long-running trend of consolidation across all depository institutions has remained relatively constant across all economic cycles for more than three decades. Voluntary mergers can be used to create economies of scale to offer more or better products and services to FICU members. However, the Board is also aware of numerous instances in recent years where FICUs merged because of a lack of succession planning. More emphasis on succession planning would help reduce the number of such mergers.

Another reason for a heightened focus on succession planning are the ongoing retirements of the "Baby Boomer" generation (individuals born between 1946 and 1964). According to some sources, approximately 10 percent of credit union chief executive officers were expected to retire between 2019 and 2021.³ Succession planning is critical to the continued operation of those credit unions with board members and executives that are part of this retirement wave.

Given the importance of the topic, the NCUA has taken several steps to strengthen current succession planning efforts of FICUs. For example, in March 2022 the NCUA issued Letter to Credit Unions 22–CU–05, *CAMELS Rating System*, which provides that "succession planning for key management positions" is a key factor considered when assessing the Management CAMELS component rating of a credit union.⁴ Letter to Credit

Unions 23–CU–01 included succession planning as one of the NCUA's supervisory priorities for 2023.⁵ The July 25, 2024, proposed rule was designed to build upon these prior NCUA efforts.

This final rule follows publication of the July 25, 2024, proposed rule and takes into consideration the public comments received on the proposed rule. In this final rule, the Board has incorporated the following amendments to the July 25, 2024, proposal:

1. In response to public comments, the final rule provides that a board must review its succession plan no less than every 24 months, as opposed to the annual review that would have been required under the proposed rule.

2. Also in response to public comments, the Board has revised the proposed rule by removing loan officers, credit committee members, and supervisory committee members from the list of FICU officials who must be covered by the succession plans.

3. In addition, non-substantive changes have been made to the wording used in the list of covered officials for purposes of clarity. Specifically, the proposed rule listed "management officials" (as defined in the model FICU bylaws) and the "senior executive officers" identified in 12 CFR 701.14(b)(2). Given the potential overlap between these two categories of officials, the final rule merges their listing in a single paragraph of the regulation. The final rule also simplifies the regulatory text by cross referencing to § 701.14(b)(2), rather than listing the senior executive officers.

4. The final rule also streamlines the required contents of the succession plans. Specifically, the rule no longer specifies that a succession plan must address unexpected or temporary vacancies in covered positions. Although the Board encourages a FICU to consider these types of vacancies in its plan, it believes FICUs, and not the NCUA, are best positioned to determine how much detail is necessary to address the required plan elements.

5. The final rule no longer requires that deviations from approved

succession plans be documented in the FICU board's meeting minutes.

6. The final rule also makes a few technical, non-substantive, edits for clarity and precision of language.

The final rule otherwise adopts the proposed regulatory requirements. FICUs are reminded that succession plans should include an estimate of the budgetary impacts of executing the succession plan, including costs associated with new hires, such as any hiring of recruitment firms and any increased compensation packages for new hires. Credit unions are not required to have an exact figure for any such anticipated costs, but at a minimum should provide an estimate to allow for better planning.

To help ensure that FICUs have the necessary time to develop their succession plans, the Board is delaying the effective date of the final rule until January 1, 2026. This rule will be reapproved three years after its effective date for a term of the Board's choosing.

II. Discussion of Public Comments

The comment period on the proposed rule closed on September 23, 2024. The NCUA received 187 public comments on the proposal. Comments were received from individual FICUs, state and regional credit union organizations, credit union trade organizations, credit union consulting services providers, and individuals. Approximately 116 of the comments were form letters with nearly identical wording. The issues raised in the form letters were similar to those made in many of the other comment letters. This section of the preamble summarizes the significant issues raised by the commenters and the Board's responses to these comments.

A. The Comments, Generally

The majority of commenters, while acknowledging the importance of succession planning and agreeing with the intent of the proposed rule, raised concerns about the need for succession planning regulations, as well as some of the specifics of the proposed regulatory amendments.

As discussed in greater detail in the following paragraphs, the large majority of the commenters questioned the need for succession planning regulations. Some of these commenters objected that the NCUA was overstepping its regulatory authority by issuing regulations on internal management matters best left to credit union discretion. Other commenters wrote that the NCUA already has tools capable of addressing succession planning, or that the topic could be better addressed through non-regulatory guidance. These

³ *CUToday.info*, *CUNA ACUC Coverage: What's Happening in Executive Compensation* (June 19, 2019), <https://www.cutoday.info/Fresh-Today/CUNA-ACUC-Coverage-What-s-Happening-in-Executive-Compensation>.

⁴ NCUA, *Letter to Credit Unions 22–CU–05, CAMELS Rating System* (March 2022), <https://>

ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/camels-rating-system. CAMELS is the acronym for the rating system used by the NCUA to assess a FICU's performance and risk profile derived from the six critical elements of a FICU's operations: Capital adequacy, Asset quality, Management, Earnings, Liquidity, and Sensitivity to Market Risk.

⁵ NCUA, *Letter to Credit Unions 23–CU–01, NCUA's 2023 Supervisory Priorities* (January 2023), <https://ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/ncuas-2023-supervisory-priorities>.

commenters also noted that the other federal banking regulatory agencies have elected to address succession planning through guidance. Commenters also objected to the inclusion of FISCUs and noted potential conflicts with state requirements.

A majority of the commenters also questioned the data cited in the preamble of the proposed rule as justification for the rulemaking. These commenters objected that the data was stale, and that more recent data did not seem to support the need for succession planning regulations to prevent FICU consolidations. The commenters also wrote that the NCUA had underestimated the time and resources required for complying with the proposed requirements, and that the rule would impose an undue compliance burden. Many commenters wrote that the burden of complying with the rule would actually increase the number of consolidations. Still others wrote that the NCUA's goal of reducing FICU consolidations was misguided.

With regard to the specific amendments, many commenters objected to the list of officials covered by the succession plans, writing that it was overly inclusive for the stated purposes of the rulemaking. Other commenters were concerned about the possibility that succession plans might be publicly posted, potentially raising privacy or age-discrimination issues. Some commenters wrote that requiring boards to review their succession plans at least annually was unnecessarily prescriptive. Commenters also expressed concerns about the proposed board education requirements and requested clarification of other provisions.

B. Comments Regarding Alternatives to Rulemaking

Comment: Guidance is more appropriate than rulemaking. The majority of commenters urged the Board to consider issuing guidance regarding succession planning as an alternative to rulemaking. While generally agreeing that succession planning is an important element of a FICU's overall strategic planning process, the commenters wrote that a rule would only add to growing regulatory burden imposed on FICUs. The commenters noted that the issuance of guidance is consistent with the approach taken by the other federal banking regulatory agencies. The commenters wrote that the banking industry faces consolidation trends similar to those of credit unions. Nonetheless, the other banking agencies have opted to issue guidance regarding

succession planning instead of undertaking rulemaking.

NCUA Response. The Board continues to believe that rulemaking on succession planning is appropriate and necessary. While guidance can be helpful in describing sound practices or clarifying existing requirements, the lack of a regulation means there is no requirement that FICUs implement a formal, written succession plan. As a result, the NCUA lacks a full complement of regulatory tools to help address deficiencies in a FICU's succession planning process. The absence of specific regulations on this topic also means there are no requirements as to what constitutes an acceptable succession plan. A regulation is therefore necessary to establish a clearly articulated, consistent, and enforceable set of succession planning standards.

Comment: Succession planning is already addressed under CAMELS. Several commenters wrote that the rule is redundant since succession planning is part of every examination under the CAMELS rating system. The commenters noted that the CAMELS "Management" component already considers succession planning for "key management positions." The commenters wrote that this is consistent with the practice of the other federal banking regulatory agencies, which require their examiners to conduct a high-level assessment of banks' succession planning in their rating of the capability and performance of management. The commenters noted that the examination process is the ideal time to discuss with a board of directors any weaknesses that exist in this area.

NCUA Response. The NCUA does assess succession planning as part of the CAMELS Management component. However, as supervisory guidance, the Letter to Credit Unions that established CAMELS does not provide the NCUA with the authority necessary to fully address any inadequacies in a FICU's succession planning practices and procedures. Letter to Credit Unions 23-CU-01 establishing the 2023 supervisory priorities acknowledges these limitations. For example, the letter makes clear that NCUA examiners are precluded from evaluating "any formal or informal succession plans developed by credit unions beyond what would normally be considered in assigning the Management component of the CAMELS rating."⁶ Moreover, examiners may "not issue an *Examiner's Finding* or *Document of Resolution* if the credit union has not conducted succession

planning, or the planning is not adequate, unless the credit union is in violation of its own policy for conducting succession planning or administering any such plan(s)."⁷ Accordingly, the NCUA continues to believe that rulemaking is necessary to establish clear, consistent, and enforceable succession planning standards.

Comment: Succession plan requirements are duplicative of disaster program guidelines. Several commenters noted that under the NCUA guidelines codified in 12 CFR part 749, appendix B, all FICUs are encouraged to develop a program to prepare for a catastrophic act. As a part of this planning and program development, FICUs distinguish the roles of the FICU's leadership and the board of directors, as well as backup personnel for various roles. The commenters wrote that the succession plan requirements are in many ways duplicative of the disaster guidelines and therefore unnecessarily add regulatory compliance burden.

NCUA Response. The Board acknowledges that, as a result of other planning and documentation efforts, many FICUs may already have data and information that is useful to completing their succession plans. FICUs are encouraged to use such existing information, where appropriate, in preparing their succession plans. Further, the preamble to the July 25, 2024, proposed rule notes that the catastrophic act guidelines may address several elements that are also relevant to succession planning. These suggested elements include a "business impact analysis to evaluate potential threats," the determination of "critical systems and necessary resources," and the identification of the "[p]ersons with authority to enact the plan."⁸

However, the Board does not agree that these codified guidelines are a suitable alternative to this final rule. For one thing, the guidelines are non-regulatory in nature and therefore do not establish the enforceable standards that, as discussed in the preceding responses, the Board has determined are necessary for succession planning. Further, the guidelines are broader in scope than, and only tangentially related to, succession planning. The guidelines are intended to ensure the continued operations of a FICU in response to an external, unforeseen, and hopefully infrequent event, whereas succession planning is meant to address the ongoing retention and recruitment

⁷ *Id.*

⁸ 89 FR 60329, at 60334.

⁶ *Id.*

cycle institutions face, including for critical positions and those that have significant influence and impact on a FICU's operations. The guidelines are therefore not an adequate substitute for regulations that specifically address FICU succession planning practices.

Comment: The Call Report offers an alternative means of implementing succession planning. Several commenters wrote that the NCUA could determine the existence of a succession plan at FICUs by asking the question on the 5300 Call Report. Because Call Reports must be submitted quarterly, the NCUA will always have up-to-date information on a FICU's succession plan. The Call Report is a way for FICUs to report to the NCUA a big picture of what is going on at their credit union and to document any potential risk areas.

NCUA Response. While the suggestion made by the commenters could potentially serve as a means of notifying the NCUA whether a FICU has adopted a succession plan, it fails to ensure that FICUs adopt plans and would not address the quality of those plans. The final rule will clearly communicate the NCUA's expectations regarding succession planning and establish enforceable standards for determining the sufficiency of the plans. Accordingly, the Board has not revised the proposed rule in response to these comments.

C. Comments Regarding Data and the Justification for Rulemaking

Comment: The NCUA relied on outdated or limited data to justify the proposed rule. The majority of commenters objected to the data cited in the preamble as justification for the rulemaking. Among other data, the preamble cites to a 2014 NCUA analysis that found that poor succession planning was either a primary or secondary reason for almost a third (32 percent) of FICU consolidations.⁹ The commenters objected to the fact that the analysis dates from over a decade before the publication of this proposed rule and includes the years immediately following the 2007–2008 global financial crisis, which they said was likely a compounding factor in FICU consolidations. Several of the commenters pointed to a more recent NCUA analysis of mergers between 2017 and 2021, which found that an “inability to obtain officials” was the primary cause for under 3 percent of

mergers.¹⁰ Other commenters wrote that, based on NCUA data, of the 149 mergers occurring during the second half of 2023 and first half of 2024, only 11 cited the inability to obtain officials as the reason for the merger.

The commenters also objected to the preamble language stating that the 2014 findings had been corroborated by industry participants.¹¹ The commenters wrote that the article includes information on only 10 mergers with only a few of the credit unions citing a lack of succession planning as a factor in the merger.

NCUA Response. As an initial matter, and as noted in the preamble to the proposed rule, the Board's justification for issuing this final rule is based not only on the data but also on the Board's finding that “the need for succession planning as a sound governance practice [is] equally compelling.”¹² The Board found “that a compelling safety and soundness case exists for rulemaking in this area,” because the failure to adequately plan for changes in leadership can jeopardize the continued viability of a FICU and disrupt safe and sound operations upon the departure of key personnel.¹³ The safety and soundness rationale for this rulemaking remains even if the concerns raised by the commenters were valid. However, the commenters' categorization of the data cited in the preamble is incorrect.

The fact that some of the mergers included in the NCUA's 2014 analysis occurred during the global financial crisis in no way diminishes the validity of the study. Indeed, the analysis acknowledges that the FICU's weak financial condition was the primary or secondary cause for 78 percent of the consolidations, the largest cause for mergers during the ten-year period under review (2003 to 2012). The fact that during that same period the lack of adequate succession planning was still cited as a primary or secondary cause for 32 percent of mergers only serves to underscore the need for rulemaking in this area.

Neither does the Board believe that the NCUA's more recent analysis of mergers between 2017 and 2021 undermines the earlier study. The 2014 study specifically analyzed succession planning, while the more recent study looked at “inability to obtain officials.” While this inability could be partially due to the lack of a succession plan, it might also encompass other factors

detering potential candidates, such as the FICU's inability to offer a competitive compensation package, reputational and operational obstacles to hiring, or geographic undesirability. A succession plan is critical to addressing such factors, but it is not a guarantee, especially when the FICU is faced with a sudden or unexpected leadership vacancy. The more recent study's utility to inform this rulemaking is thus limited by the fact that it does not distinguish between those mergers occurring because of a lack of succession planning and those that happened despite the FICU's best efforts in this regard.

The Board also rejects the objections raised by the commenters regarding the news articles cited in support of the proposition that the merger “data has been corroborated by industry participants.” The commenters object to the number of mergers discussed in the articles. However, the footnote citation was included simply to illustrate the credit union industry's general recognition that a failure to plan for succession is a contributing factor in consolidations. The footnote was included to complement the data and rationale set forth in the main text of the preamble rather than as an independent data source for the rulemaking.

Comment: The proposed rule will have the unintended consequence of increasing the number of consolidations. Many commenters wrote that, contrary to the proposed rule's stated goal of mitigating the effects of industry consolidation, it would actually lead to an increased number of mergers. The majority of these commenters focused on the additional regulatory burden of complying with the proposed rule, especially on smaller FICUs. The commenters wrote the additional time and resources required to comply with the proposed rule might lead smaller FICUs to conclude that a merger with a larger institution is the most sustainable path forward. One commenter wrote that the succession planning process might force smaller FICUs to confront challenging realities about their future prospects, such as their limited internal talent pools and the inability to offer competitive salaries or advancement opportunities. The commenters also expressed concerns that the preamble language noting that smaller FICUs might benefit from the assistance of larger FICUs in developing and implementing their succession plans could inadvertently result in mergers.¹⁴

⁹ 89 FR 60329, at 60330, footnote 16 citing to: NCUA, *Truth in Mergers: A Guide for Merging Credit Unions*, page 9, <https://ncua.gov/files/publications/Truth-In-Mergers.pdf>.

¹⁰ <https://ncua.gov/regulation-supervision/manuals-guides/lessons-learned-mergers>.

¹¹ 89 FR 60329, at 60330.

¹² 89 FR 60329, at 60332.

¹³ 89 FR 60329, at 60330.

¹⁴ 89 FR 60329, at 60334.

NCUA Response. The Board disagrees with the commenters that implementation of this final rule will increase the number of FICU consolidations. In the 2014 analysis of mergers discussed previously, FICUs did not identify regulatory compliance burden as a cause of mergers. The closest analogue among the listed causes—“recordkeeping burden”—was cited by only two percent of FICUs as either a primary or secondary cause for consolidation. In the more recent NCUA analysis for mergers occurring between 2017 and 2021, regulatory burden was not included among the 11 listed causes for mergers (the term “recordkeeping burden” also did not appear). The NCUA is not aware of other data that supports the claims made by the commenters, and such data was not offered in the comments.

The Board also notes that it has taken several steps to ease the burden imposed on FICUs by the new requirements. For example, the NCUA has posted a video series on succession planning on the internet.¹⁵ In addition, the Board has developed a sample template for a succession plan that may be appropriate for some smaller FICUs, though all FICUs may benefit from it. The Board has also revised the proposed rule by removing loan officers, credit committee members, and supervisory committee members from the list of FICU officials who must be covered by succession plans. This should further minimize burden by enabling FICUs to develop more appropriately tailored succession plans that better reflect their unique circumstances. Further, the Board is delaying effectiveness of the final rule until January 1, 2026, which should also decrease burden by providing FICUs with additional time to make any operational changes or resource allocations necessary for development of the succession plans.

As noted by the commenters, the preamble to the proposed rule discussed that smaller FICUs may also benefit from seeking the assistance of larger and more sophisticated FICUs in developing and implementing their succession plans. For example, a larger FICU may provide technical expertise in the drafting of the plan or may detail personnel to temporarily fill a critical vacancy in a smaller credit union until such time as it is permanently filled. The Board recognizes the concerns raised by the commenters that such strategic partnerships between a larger and smaller FICU may sometimes lead

to a merger. However, that is an individual decision that must be made by the FICUs involved, based on their specific facts and circumstances.

Comment: The goal of preventing consolidations is misplaced. Several commenters objected to the preamble language citing increased consolidations as a driving factor for the rule. The commenters wrote that the NCUA has historically been agnostic on the appropriateness of a merger for a particular FICU, leaving the decision to the FICU’s management and membership. One commenter noted that there are situations where a smaller FICU may propose a merger as a key component of its succession plan. The commenters wrote that in some instances a merger may be the best approach for a FICU and its members. The commenters wrote that the decision to merge should therefore be left to the FICU.

NCUA Response. One of the Board’s stated goals in undertaking this rulemaking is to reduce the number of unplanned or forced mergers resulting from a FICU’s failure to adequately plan for changes in leadership. However, the Board agrees with the commenters that voluntary mergers can be used by FICUs to achieve various objectives, including creating economies of scale to offer more or better products and services to members. The reasons for voluntarily merging vary by FICU. For example, mergers may be a strategic decision as part of the continuing credit union’s growth strategy, while the merging credit union’s management may be seeking to expand services for the members. This final rule does not change the Board’s longstanding position that, to the extent any such decision meets the applicable statutory and regulatory requirements, the determination of whether a merger is appropriate is best left to the particular FICU’s management and membership.

D. Comments Regarding Regulatory Burden

Comment: The NCUA underestimated the regulatory burden imposed by succession planning. Many commenters wrote that the proposed rule underestimated the amount of time FICUs would be required to spend ensuring compliance with the succession plan requirements. The Paperwork Reduction Act (PRA) statement contained in the proposed rule estimated about 10 hours per year per FICU.¹⁶ The commenters wrote that

this estimate failed to adequately account for all of the time and cost that would be incurred to understand the regulatory requirements and formulate strategies for filling vacancies. The commenters also objected that the estimate did not sufficiently consider the resources required to regularly audit and update the plans, including examiner consultations. One commenter pointed to a proposed rule issued by another federal banking regulatory agency addressing succession planning and noted that agency estimated 40 annual hours for plan development and 20 hours for annual reviews.¹⁷

NCUA Response. The information provided in the proposed rule represents the NCUA’s best estimate of the information collection burden associated with the succession planning requirements. As with all PRA collections of information, the estimates of the associated burden may change over time as the agency and regulated entities gain experience with implementation. Under the PRA regulations, Office of Management and Budget (OMB) approval of an agency collection of information is subject to periodic renewal through a notice and comment process.¹⁸ The Board is committed to ensuring the accuracy of its PRA burden estimates, and the information collections established by this final rule are subject to such process.

The estimate noted by the commenters that was provided in the proposed rule issued by another federal banking agency does not provide a useful comparison. Under its own terms, that rulemaking applies solely to covered institutions with total consolidated assets of \$10 billion or more. According to the most recent quarterly data available to the NCUA, there were only 21 FICUs in this asset category as of the second quarter in 2024.¹⁹ These institutions are far larger than most FICUs, and their succession plans would necessarily reflect their

regulations issued by the Office of Management and Budget are located at 5 CFR part 1320.

¹⁷ See, Federal Deposit Insurance Corporation, Guidelines Establishing Standards for Corporate Governance and Risk Management for Covered Institutions with Total Consolidated Assets of \$10 Billion or More, 88 FR 70391 (Oct. 11, 2023) (to be codified at 12 CFR parts 308, 364). <https://www.federalregister.gov/documents/2023/10/11/2023-22421/guidelines-establishing-standards-for-corporate-governance-and-risk-management-for-covered>.

¹⁸ 5 CFR 1320.10. Under § 1320.10(b), OMB will not approve a collection of information for a period longer than three years.

¹⁹ NCUA, Financial Trends in Federally Insured Credit Unions 2024 Q2, page iii, available at: <https://ncua.gov/files/publications/analysis/quarterly-data-summary-2024-Q2.pdf>.

¹⁵ NCUA, *Succession Planning* (2021), https://ncua.csod.com/LMS/catalog/Welcome.aspx?tab_page_id=67&tab_id=221000382.

¹⁶ 89 FR 60329, at 60335. The PRA is codified at 44 U.S.C. 3501–3520, and the implementing

size and operational complexity. In contrast, the vast majority of FICUs would have more streamlined succession plans. Further, and as noted in a preceding response, the NCUA has made available several resources to ease the burden imposed by this final rule, including an optional plan template. The estimated information collection burden reflects the availability of these resources.

Comment: The proposed rule will unduly increase regulatory burden, especially on smaller FICUs. Several commenters wrote that FICU resources are already under strain and the proposed rule would only serve to add to the cumulative regulatory burden faced by FICUs. The commenters wrote that, given the complexity of the business environment over the past several years and the pressures on the industry's business model in general, the NCUA should tread lightly in adding to the list of requirements. The commenters expressing these concerns were particularly focused on the regulatory burden imposed on smaller FICUs that lack the resources and staff available to larger institutions.

NCUA Response: The Board is mindful of the regulatory burden imposed by its regulations and is committed to providing assistance and resources to help FICUs comply with their regulatory obligations. The NCUA currently offers training and other resources to aid FICUs in developing their succession plans. As noted, the NCUA has posted a video series on succession planning on the internet.²⁰ FICUs with a low-income designation may be able to apply for technical assistance grants to support succession planning or offset training costs through the Community Development Revolving Loan Fund. As also previously discussed, FICUs may use already existing information in preparing their plans. FICUs are encouraged to make use of these and other available resources in complying with the proposed rule. The Board has also narrowed the list of FICU officials that must be covered by the plans, enabling FICUs to develop succession plans that better reflect their unique circumstances. Further, the Board is delaying the effective date of the final rule until January 1, 2026, which will provide FICUs with additional time to develop their succession plans.

The Board is especially mindful of the burden imposed on smaller FICUs, as they may lack the resources or expertise to develop succession plans. Accordingly, smaller FICUs may

especially benefit from the existing resources identified above. The NCUA's Small Credit Union and Minority Depository Institution Support Program is another available resource through which FICUs with less than \$100 million in total assets and minority depository institutions of any size may seek assistance in a variety of areas, including succession planning. In addition, the Board again notes that it has developed a sample template for a succession plan that may be appropriate for smaller FICUs, though all FICUs may benefit from it. FISCUs electing to use the template should consult applicable state requirements to ensure their succession plans are consistent with any such requirements.

Comment: Classification of the rule as "major" under the Congressional Review Act. One comment expressed concern that the NCUA might not classify the rule as "major" for purposes of the Congressional Review Act (CRA).²¹ A rule that is "major" under the CRA may take effect no earlier than 60 calendar days after the Congress receives the statutorily prescribed rule report from the agency or the rule is published in the **Federal Register**, whichever is later. The commenter was concerned that not classifying the rule as "major" would underestimate the true impact of the succession planning requirements, particularly on smaller FICUs.

NCUA Response. The NCUA acknowledges its obligations under the CRA. As required by the CRA, the NCUA has submitted this final rule to OMB for it to determine if the final rule is a "major rule." The NCUA also will file appropriate reports with Congress and the Government Accountability Office (GAO) so this rule may be reviewed.

The CRA defines a major rule as one that has resulted in or is likely to result in (A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. The CRA vests the ultimate decision as to whether this final rule qualifies as "major" with OMB. However, the Board does not

believe that this final rule meets the definition of a "major rule" under the CRA.

While the final rule may impose some additional costs on FICUs, it is unlikely that these costs would rise to the \$100 million required under the CRA definition of a "major rule." The Board also believes that several factors mitigate the potential costs imposed on FICUs. For example, the Board is providing a sample template for a simple succession plan that may be appropriate for some FICUs. Many FICUs have already adopted succession plans, and these existing plans should already address at least some of the elements required by the final rule, thereby minimizing the cost of complying with the new requirements. As previously noted, the NCUA also offers training and other resources to aid credit unions in developing their succession plans. FICUs are also encouraged to use already existing information in preparing their plans, such as the data used to develop the recommended program to prepare for a catastrophic act. These resources should further reduce the costs of preparing succession plans.

Neither does the Board believe that the final rule meets the second and third prongs of the CRA "major rule" definition. The final rule imposes new reporting requirements that will not directly impact consumer costs for the financial products offered by FICUs. Nor are these reporting requirements likely to drive up costs for the credit union industry, governments, or geographic regions. The effects of the new requirements are also unlikely to significantly affect employment, competition, investment, or innovation, as contemplated under the CRA.

E. Comments Raising General Objections to Rule

Comment: The proposed rule constitutes regulatory overreach. Several commenters wrote that, while it is the NCUA's responsibility to supervise credit unions so as to protect the safety and soundness of the credit union system, the proposed rule oversteps the agency's regulatory authority. The commenters wrote that succession planning is appropriately the fiduciary responsibility of a FICU's board of directors as only an individual FICU can determine the appropriate timing and extent of succession planning needed to preserve the health of the FICU and its members. The commenters worried that the rule could lead to an unintended consequence where NCUA examiners, rather than focusing on the outcomes and effectiveness of a succession plan,

²¹ 5 U.S.C. 801–808. The CRA was included as part of the Small Business Regulatory Enforcement Fairness Act, Public Law 104–121 (March 29, 1996).

²⁰ *Supra*, note 15.

might use their supervisory authority to impose their own views on how succession planning should be managed. The commenters wrote that such a scenario could lead to a significant administrative workload, diverting attention and resources away from serving members.

NCUA Response. The Board continues to believe that NCUA rulemaking on succession planning is both appropriate and consistent with the agency's statutory authority. While the Board agrees that succession planning is a responsibility of the FICU's board of directors, it also finds that a compelling safety and soundness case exists for rulemaking in this area. The failure of FICUs to adequately plan for succession poses a risk not only to individual FICUs and their member-owners, but to the credit union system as a whole and to the Share Insurance Fund. Without adequate planning, key operations could be impacted during management transitions or leadership vacuums, such as recordkeeping, lending and other member services, liquidity management, cybersecurity, compliance with laws and regulations, and other critical responsibilities.

The proposed regulatory changes are designed to mitigate this risk and are consistent with the Board's statutory duty to ensure a safe and sound system of cooperative credit for its member-owners, as the proposed rule explained. Under the FCU Act, the NCUA is the chartering and supervisory authority for FCUs and the federal supervisory authority for FICUs.²² The FCU Act grants the NCUA broad authority to issue regulations governing both FCUs and all FICUs. Section 120 of the FCU Act is a general grant of regulatory authority and authorizes the Board to prescribe rules and regulations for the administration of the FCU Act.²³ Section 207 of the FCU Act is a specific grant of authority over share insurance coverage, conservatorships, and liquidations.²⁴ Section 209 of the FCU Act is a plenary grant of regulatory authority to the Board to issue rules and regulations necessary or appropriate to carry out its role as share insurer for all FICUs.²⁵ Moreover, the NCUA has statutory authority to determine whether FICUs are operated in an unsafe or unsound manner and terminate a FICU's insurance if a FICU is not operated in a safe and sound manner.²⁶ This final rule will help to

identify or prevent unsafe or unsound practices. Accordingly, the FCU Act grants the Board broad rulemaking authority to ensure that the credit union industry and the Share Insurance Fund remain safe and sound and service to members is maintained in compliance with applicable laws and regulations.

In assessing compliance with this rule, the NCUA will focus on whether the FICU has developed a succession plan that addresses the elements required by the final rule and is consistent with the FICU's size and complexity. The Board emphasizes that FICUs, not the NCUA, are best positioned to assess various risks and opportunities related to succession planning. A FICU will need to make its own determinations as to how much detail is necessary to address the required plan elements and whether additional factors, besides those required by this final rule, should be considered in its succession planning process. The NCUA does not intend to micromanage a FICU's succession planning process and may issue guidance, as it deems necessary, to clarify a FICU's discretion in developing its succession plans and further assist FICU succession planning efforts.

Comment: A "one-size fits all" approach is inappropriate. Several commenters objected to the broad application of the proposed rule to all FICUs, regardless of their size and operational complexity. The commenters wrote that individual FICUs have unique challenges and governance structures. The commenters wrote that uniform requirements might limit the ability of a FICU to design a plan that best aligns with its strategic objectives and long-term viability. Some of these commenters focused on the potential impacts of uniform requirements on smaller FICUs that may not have the resources to meet the detailed requirements. The commenters wrote that the diversity among FICUs—ranging from small, community focused institutions to larger, complex organizations—requires flexibility in succession planning that a rigid regulatory mandate may not accommodate.

NCUA Response. The Board agrees a uniform approach to succession planning would fail to account for the diversity among FICUs. The final rule accommodates such differences. For example, in response to public comment, the Board has revised the proposed rule by narrowing the list of FICU officials that must be covered by the succession plans, thereby enabling FICUs to develop more appropriately tailored plans that better reflect their

unique circumstances. So long as succession plans address the elements required by the final rule, FICUs may adjust their plans to reflect operational differences, varying governance structures, and other unique circumstances. FICUs may include within the scope of their plans "other personnel the board of directors deems critical given the [FICU's] size, complexity, or risk of operations. This includes new positions that may be required due to planned changes in operations, supervisory landscape, or corporate structure."²⁷

As the preamble to the proposed rule noted, the expectation is for a FICU to develop a succession plan that is consistent with its size and complexity. Therefore, smaller FICUs are more likely to have a simple succession plan that only addresses a few key leadership positions. Larger and more sophisticated FICUs are expected to have more detailed plans. For example, smaller FICUs may have fewer board members, or have fewer staff that would qualify for the positions listed in the proposed rule for inclusion in the succession plan. Likewise, smaller FICUs are likely to have less expansive employee recruitment, development, and retention strategies.

F. Comments Regarding the Inclusion of FISCUs

Comment: Inclusion of FISCUs is inappropriate. Several commenters objected to the inclusion of FISCUs within the scope of the proposed regulatory requirements. Some of the commenters wrote that the inclusion of FISCUs signals to the states that their regulatory agencies are not equipped to ensure that FISCUs are adequately positioned for the future. These commenters wrote that the assumption is contrary to data that demonstrates state charters have fewer failures, more growth, and a history of strong management performance. The commenters urged the NCUA to narrow the applicability of the rule to exclude FISCUs as was the case in the Board's 2022 proposal.

NCUA Response. As discussed above, the Board finds that compelling safety and soundness reasons exist for undertaking rulemaking on succession planning. The failure of FICUs—whether federal or state-chartered—to adequately plan for succession poses an undue risk to the credit union system and to the Share Insurance Fund. The inclusion of FISCUs within the scope of the final rule is consistent with the

²² 12 U.S.C. 1752–1775.

²³ 12 U.S.C. 1766(a).

²⁴ 12 U.S.C. 1787(b)(1).

²⁵ 12 U.S.C. 1789(a)(11).

²⁶ 12 U.S.C. 1786.

²⁷ Proposed § 701.4(e)(2)(vi), finalized as § 701.4(e)(2)(iii).

Board's statutory authority to ensure a safe and sound system of cooperative credit for its member-owners. Under the FCU Act, the NCUA is the chartering and supervisory authority for FCUs and the federal supervisory authority for FICUs.²⁸ The FCU Act also grants the NCUA broad authority to issue regulations governing all FICUs.

The Board emphasizes that, contrary to the assertion made by the commenters, this final rule does not reflect a statement on the efficacy of state efforts to address succession planning. Specifically, the final rule provides that for FISCUs in states that have established succession planning requirements, the NCUA will defer to such requirements to the extent no conflict exists between the final rule and the state requirements.²⁹

Comment: The FISCO carveout is confusing. Several commenters, while supportive of the proposed rule's carveout for FISCUs in states where succession planning is addressed, found the wording of the provision confusing. The preamble of the proposed rule stated that "to the extent that a FISCO is subject to a state statutory or regulatory requirement that conflicts with the proposed rule, the NCUA will defer to the state requirement."³⁰ The commenters wrote that this wording implies that if a state rule addresses succession planning, FISCUs in that state would be exempt from the proposed rule. However, the regulatory text of the proposed rule at § 741.228 provides that a FISCO must adhere to the succession planning requirements "to the extent these regulatory provisions do not conflict with an applicable state requirement." According to the commenters, this language implies only a partial exemption from specific conflicting provisions. These commenters wrote that while a state may not have a specific statutory or regulatory requirement addressing succession planning, it may use definitions or have issued guidance that differs from that of the NCUA proposed rule.

In addition, one commenter wrote that neither the preamble nor the proposed regulatory text uses the word "exempt" to describe the applicability of the rule to a FISCO in a state that addresses succession planning. Instead, the preamble uses defer, and the regulatory text is silent. The commenter recommended that, absent a total exclusion of FISCUs from the scope of the rule, the Board should provide a

simplified exemption provision that exempts FISCUs in a state upon notice from the state regulator to the NCUA regional director that the state supervises succession planning by rule, guidance, or through the examination process. The commenter wrote that this approach would reduce confusion, ease administration, and presents no greater risk of material loss to the Share Insurance Fund.

NCUA Response. The Board has not revised the rule in response to these comments. Contrary to the assertions made by the commenters, there is no conflict between the preamble language and the regulatory text. Both provide that the NCUA's deferral is contingent on a lack of conflict between the rule and the state requirement.³¹ Nowhere does the preamble indicate, as the commenter suggests, that the deferral provision is intended as a complete exemption for FISCUs from the regulatory requirements. Further, as the commenter writes, the deferral only applies to legally enforceable state requirements, such as statutes, regulations, or other issuances that are binding under state law. The deferral does not apply to other issuances in the form of guidance, which may be set forth in policy statements, handbooks, letters, or similar issuances. While these guidance documents may represent supervisory expectations, such as for purposes of determining a credit union's CAMELS and risk ratings, FISCUs are not required to comply with such guidance because it is by definition non-binding. The Board has also not elected to adopt the alternate process suggested by the commenter, because it continues to believe that whether deferral applies is best addressed on a case-by-case basis during the examination process.

Comment: The NCUA should consolidate the regulation applicable to FISCUs. One commenter was concerned regarding the structure of 12 CFR part 741, which identifies the regulatory requirements applicable to FISCUs by cross-referencing regulatory provisions for FCUs codified elsewhere in title 12 of the Code of Federal Regulations. The commenter wrote that, while this might seem like a minor detail, it results in confusion and inefficiency for many FISCUs as they sift through FCU rules to determine what may apply to them. The commenter wrote that there is no compelling argument against consolidating FISCO regulations in a single location.

NCUA Response. The suggestion made by the commenter is outside the scope of the rulemaking. Accordingly,

the rule has not been revised in response to the comment. However, the NCUA remains committed to working with all FICUs to ensure the clarity of their regulatory obligations.

G. Comments Raising Potential Privacy and Discrimination Concerns

Comment: Concerns regarding expected retirement and vacancy date requirements. The proposed rule would require that a succession plan identify the anticipated vacancy date for each of the covered positions, "such as the incumbent's retirement eligibility date or announced departure date."³² Several commenters objected to this provision, writing that it was unduly burdensome and could potentially raise privacy and age discrimination concerns. The commenters wrote that the shift from employee pensions based on years of service to defined contribution plans have dramatically altered the concept of retirement and made it difficult to estimate when an individual will retire. Other commenters wrote that many FICU management officials operate under employment agreements that may be renewed or extended. Requiring that FICUs publish such dates could lead to charges of age discrimination or be used by management to force an employee out who has no intention of retiring.

NCUA Response. As an initial matter, the Board notes that it is not requiring that FICUs make their succession plans public, nor does the Board intend to do so. Succession plans will be reviewed by examiners and will be treated as confidential supervisory documents, as with other supervisory matters.

The provision is intended solely as a planning aid. In the case of elected officials, such date is clearly the expiration of the incumbent's term. However, the expected vacancy date for non-elected officials can be less clear. The final rule does not require the FICU use a specific date, but suggests some possible proxies, including the individual's anticipated retirement date or announced departure date. A credit union can also note that a retirement or departure date is unknown. The decision of what to reflect for the date is at the FICU's discretion.

The Board emphasizes that inclusion of any known or estimated retirement or departure date is not intended to create a requirement that an individual will retire or otherwise vacate a position on a specific date. The Board, therefore, understands that these dates may evolve. Nevertheless, the inclusion of a specific or approximate date will

²⁸ 12 U.S.C. 1752–1775.

²⁹ § 741.228.

³⁰ 89 FR 60329, at 60332.

³¹ 89 FR 60329, at 60332; proposed § 741.228.

³² Proposed § 701.4(e)(3)(i).

promote conversations within the FICU and allow for better planning in advance of a transition, thus accomplishing the purpose of the final rule. Further, the FICU should update the dates as necessary to reflect changes in an individual's circumstances or plans.

Comment: Concerns regarding public posting of succession plans. The preamble to the proposed rule provided that "succession plans should provide sufficient detail and use language that is reasonably understandable to the FICU's member-owners in describing its strategies for filling vacancies and for recruiting, developing, and retaining employees."³³ The preamble further provided that succession plans should be "clearly and concisely written, use everyday language to the extent possible, and avoid ambiguous phrasing open to differing interpretations."³⁴ Several commenters wrote that this language implies the succession plans will be publicly available, which raises privacy concerns. The commenters wrote that the succession plans may include retirement information for senior credit union management, which should not be made public. Another commenter wrote that succession plans often reflect a FICU's strategy for maintaining viability in a competitive market. The public posting of plans would enable other financial institutions to access the information for competitive advantage or potential merger opportunities.

NCUA Response. The Board again emphasizes that there is no requirement that succession plans be posted or otherwise made available to the public. Neither does the final rule supersede existing laws or FICU procedures governing the public dissemination of similar governance documents. The public availability of the succession plans should be treated similarly to such documents. The preamble language cited by the commenters was intended solely to emphasize the importance of clarity in drafting, especially in those circumstances where the plan, or portions thereof, may be made available to member-owners.

H. Comments Regarding Specific Rule Provisions

Comment: The scope of covered FICU officials should be narrowed. Many commenters recommended that the NCUA narrow the scope of the positions covered by the succession plans. The commenters wrote that the proposed list was overly prescriptive and would impose an undue burden to administer.

Almost all of these commenters agreed the scope should be limited to those officials most directly responsible for ensuring the FICU's continuity of operations but differed on the specific positions this would include. Some commenters suggested inclusion of the members of the board, the members of the supervisory and credit committees, and key management officials, including the chief executive officer. Other commenters suggested the scope be limited to the chief executive officer and chief financial officer (or equivalent), because the boards of directors are not involved in the FICU's day-to-day operations. Still others suggested that the rule not include a specific list at all, but that FICUs should instead be provided with the flexibility to determine which critical positions should be included in a succession plan based on the specific risks associated with unanticipated or extended vacancies.

Despite their differing recommendations, almost all the commenters writing on this topic suggested that loan officers and assistant managers be excluded from the list. Several of these commenters wrote that larger FICUs may have hundreds of loan officers involved in the daily review of loans. The commenters wrote that, given the decentralized lending structure of many large FICUs, there is likely minimal risk to the ability to serve members if a loan officer vacancy occurs. The commenters wrote the risk is even less for assistant management officials, who are not crucial to a FICU's continuity of operations.

NCUA Response. In response to these comments, the Board has removed loan officers, credit committee members, and supervisory committee members from the list of FICU officials that must be covered by the succession plans. During development of the July 25, 2024, proposed rule, the Board relied on the language of the FCU Act, the model FCU bylaws, and the definition of "senior executive officer" in 12 CFR 701.14 as a guide in identifying the list of officials that should be covered by the succession plans.³⁵ As it did in the

preamble to the proposed rule, the Board emphasizes that succession plans are intended to cover senior leadership positions responsible for the oversight of the FICU or its day-to-day management.³⁶ Upon consideration of the comments and the issues involved, the Board recognizes that loan officers and members of credit and supervisory committees may not always meet these criteria depending on the size and structure of a particular FICU. The change will enable FICUs to develop more appropriately tailored succession plans that better reflect their unique circumstances.

As noted in a preceding response, FICUs may include within the scope of their plans "other personnel the board of directors deems critical given the [FICU's] size, complexity, or risk of operations."³⁷ FICUs should use the flexibility provided by this provision to assess whether the inclusion of loan officers and members of the supervisory and credit committees is appropriate given the institution's characteristics. For example, a smaller FICU with few loan officers may deem the position critical given the impact a departure would have on the institution's operations. In contrast, a larger FICU that employs many loan officers may determine its operations would not be impacted by the loss of any specific individual and choose to not include this position in their plan.

Comment: The annual plan review requirement is excessive. Several commenters objected to the requirement that a FICU board review the succession plan "no less than annually."³⁸ The commenters wrote that this requirement is burdensome and excessive. The commenters wrote that succession plans are not a dynamic and ever-evolving document and, therefore, should only be reviewed as needed. One of the commenters recommended that FICUs be provided the flexibility to review the plans once every 24 months. Another commenter suggested a review period of every three years.

NCUA Response. Upon reconsideration, the Board agrees that the annual review of plans is unnecessary. The final rule now requires FICUs to review and update the plan as necessary but at least once every 24 months. The Board believes this change provides FICUs with additional flexibility while still accomplishing the

vice president, or any assistant treasurer/manager) and the chief financial officer (controller).

³⁶ 89 FR 60329, at 60333.

³⁷ Proposed § 701.4(e)(2)(vi), finalized as § 701.4(e)(2)(iii).

³⁸ Proposed § 701.4(e)(4)(ii).

³³ 89 FR 60329, at 60333.

³⁴ *Id.*

³⁵ Specifically, section 111 of the FCU Act provides that "[t]he management of a Federal credit union shall be by a board of directors, a supervisory committee, and where the bylaws so provide, a credit committee" (12 U.S.C. 1761). The model FCU bylaws codified in Appendix A of 12 CFR part 701 expand the list of senior FCU officials to include management officials, assistant management officials, and loan officers. The NCUA regulation at 12 CFR 701.14 defines the term "senior executive officer" to include the FICU's chief executive officer (typically this individual holds the title of president or treasurer/manager), any assistant chief executive officer (for example, any assistant president, any

goal of the rulemaking of ensuring that succession plans are regularly reviewed and kept current.

Comment: Education requirements for FICU board members. Several commenters objected to the proposed regulatory language requiring that directors have a “working familiarity” with the FICU’s succession plan no later than six months after appointment.³⁹ The commenters wrote that the focus of newly appointed directors should be on gaining familiarity with items such as the FICU’s operations, the products and services being offered, and applicable legal authorities. In contrast, a minority of commenters supported the requirement, writing that it is appropriate for boards to maintain a working knowledge of the latest developments in all of the areas of risk confronted by the FICU.

NCUA Response. The Board has not revised the rule in response to these comments. The Board continues to believe that succession planning is one of the most vital responsibilities of a FICU’s board of directors. Succession planning is a critical component of a FICU’s overall strategic plan. It helps ensure that the appropriate personnel are available to execute the FICU’s strategic plan and mission. A board’s failure to plan for vacancies in elected and appointed positions, as well as the transition of its management, could come with high costs. The FICU runs the risk of creating a leadership vacuum, disrupting operations, and potentially jeopardizing the FICU’s ability to adequately manage liquidity risk, address cybersecurity threats, or ensure continued compliance with consumer protection, Bank Secrecy Act, and other critical responsibilities. Accordingly, and as recognized by the commenters writing in support of the requirement, succession planning merits inclusion among the items new board members must become familiar with.

Comment: The “working familiarity” requirement is vague. Several commenters were concerned about a perceived lack of clarity with the proposed “working familiarity” language. The commenters wrote that, unlike the Board’s 2022 proposal, the proposed rule did not include language stating that training is not mandated to meet this requirement. The commenters wrote that it is unclear what steps a board of directors would be expected to take to achieve a “working familiarity.” The commenters were concerned this perceived ambiguity would leave the door open for differing practices among FICUs regarding training, as well as for

different interpretations of the requirement between FICUs and examiners. They wrote that this could lead to inconsistencies in the examination process and urged the NCUA to clarify the meaning of the provision.

NCUA Response. The Board has not revised the rule in response to these comments. The Board notes that the “working familiarity” language is not new but comes from existing § 701.4(b)(3). This existing regulation requires new credit union board members to gain a “working familiarity with basic finance and accounting practices” within six months of election or appointment. The final rule does not revise this language but adds succession planning to the list of items that directors must have a working familiarity with no later than six months after appointment. The final rule does not mandate the contents of training to meet this requirement. A FICU may incorporate succession planning into whatever materials it currently uses to comply with the education requirement.

Comment: Deviations from succession plan. Several commenters wrote about potential deviations from the succession plan due to unforeseen circumstances. The commenters wrote that requiring documentation of such changes is overly prescriptive and sometimes not feasible given rapidly changing circumstances. Another commenter asked for additional clarity on the steps a FICU should take if it is unable to adhere to its succession plan, writing that the proposed rule lacked sufficient detail.

NCUA Response. As provided in the preamble to the proposed rule, the Board recognizes that circumstances might necessitate deviations from the succession plan in filling specific vacancies. The final rule accommodates such exigencies. In the event exigent circumstances require a substantial deviation from the board approved plan, management and/or the FICU board has the flexibility to do what it deems necessary at the time, consistent with their fiduciary duties and legal responsibilities. To further emphasize this flexibility, the final rule no longer requires that such deviations be documented in the board’s meeting minutes. However, a substantial deviation from the approved plan should be reported to the board as soon as practicable. Credit unions, not the NCUA, are best positioned to assess various risks and exigent circumstances. The agency does not intend to micromanage deviations from succession plans made in response to exigent circumstances. Further, FICU

boards have flexibility in determining how to calculate the required 24-month review period. A FICU may determine that the review of a succession plan necessitated by a change to address an exigent circumstance satisfies the required review, therefore restarting the 24-month review cycle.

I. Other Comments

Comment: Exemption for high performing FICUs. One commenter suggested that the Board include an exemption for FICUs of all asset sizes with a CAMELS composite rating of 1 or 2. The commenter wrote that bond requirements for FICUs vary by CAMELS rating, with a greater bond being required for CAMELS 3, 4, and 5 rated FICUs due to the increased risk to the Share Insurance Fund. The commenter wrote that this logic should extend to succession planning as well. The commenter wrote that, at minimum, the final rule should establish such an exemption for FISCUs with a CAMELS composite rating of 1 or 2 because the NCUA is not the primary federal regulator for FISCUs. The commenter wrote that, given the lower risk to the Share Insurance Fund, the NCUA does not have as much standing to issue regulations covering FISCUs “when it is not necessary, but only a best practice.”

NCUA Response. The suggestion made by the commenter is outside the scope of the proposed rule. The Board did not propose or seek public comment on a class-based exemption of this type. Accordingly, the Board has not revised the rule in response to this comment. As discussed, the Board believes that having clearly articulated, consistent, and enforceable succession planning requirements will benefit all FICUs, irrespective of asset size and CAMELS rating. Moreover, the establishment of a succession plan in advance of a FICU potentially becoming a composite CAMELS code 3, 4, or 5 will allow the FICU’s leadership to remain focused on the most pressing problems that led to the downgrade.

Comment: Additional resources are necessary to aid compliance. Several commenters wrote that FICUs would require additional resources to comply with the succession plan requirements. While the majority of these commenters focused on the challenges faced by smaller FICUs, others wrote that all FICUs, irrespective of size, would require assistance. The commenters suggested the NCUA develop a broad range of resources to assist all FICUs in developing succession planning. One commenter recommended that the NCUA work with state supervisory authorities to develop recruitment

³⁹ Proposed § 701.4(b)(3)(ii).

strategies and resources to assist FICUs in developing and implementing their succession plans.

NCUA Response. As discussed, the NCUA makes available several resources to aid FICU succession planning efforts, including online training. The Board has also developed a sample template for a succession plan that may be appropriate for some FICUs. Smaller FICUs with less than \$100 million in total assets and minority depository institutions of all sizes may also be eligible for assistance in a variety of areas, including succession planning, through the agency's Small Credit Union and Minority Depository Institution Support Program. FICUs with a low-income designation may be able to apply for technical assistance grants to support succession planning or offset training costs through the Community Development Revolving Loan Fund.

Comment: Additional clarity required regarding examination expectations. Several commenters wrote that the proposed rule was unclear about the potential impact on a FICU if an examiner determines a succession plan to be inadequate. The commenters urged the NCUA to clarify the expectations of the examination program to ensure consistency in evaluations of FICU regulatory compliance. The commenters also suggested that the final rule should identify a reasonable timeline for remediation should a FICU's succession plan be deemed inadequate.

NCUA Response. The expectation is for a FICU to develop a succession plan that meets the regulatory requirements and is consistent with the FICU's size and complexity. Potential examination actions due to inadequate succession plans and possible remediation timelines are outside the scope of this rulemaking. As is current practice, examiners will use discretion and judgment when working with FICUs to remedy a potential negative finding before issuing documents of resolution or other negative findings. The NCUA may, in its discretion, issue guidance on the topic of succession planning as it deems necessary.

III. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act⁴⁰ generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on

a substantial number of small entities. If the agency makes such a certification, it shall publish the certification at the time of publication of either the proposed rule or the final rule, along with a statement providing the factual basis for such certification.⁴¹ For purposes of this analysis, the NCUA considers small credit unions to be those having under \$100 million in assets.⁴² The Board fully considered the potential economic impacts of the regulatory amendments on small credit unions.

The final rule requires that a FICU board of directors establish, and comply with, a written succession plan that addresses certain specified positions and contains specified elements. In addition, the board of directors will be required to review the succession plan no less than every 24 months. These requirements may impose some cost on FICUs. However, the NCUA believes several factors mitigate the potential costs, especially for small FICUs with assets of less than \$100 million.

First, a FICU is expected to develop a succession plan that is consistent with its size and complexity. Therefore, small FICUs may have a simple succession plan that is less costly to prepare than would be the case for larger and more complex FICUs. Further, in recognition that smaller FICUs may lack the resources or expertise to develop succession plans, the Board is providing a sample template for a simple succession plan that may be appropriate for these FICUs. The Board is also aware that many FICUs, including small FICUs, have already adopted succession plans. Many of these existing plans should already address, either partially or in their entirety, the elements that would be required by the proposed rule. This could minimize the burden of complying with the new requirements.

In response to comments, the Board has narrowed the list of FICU officials that must be covered by the succession plans. This should further minimize burden by enabling FICUs to develop more tailored succession plans that reflect their unique circumstances. Further, the Board is delaying the effective date of the final rule until January 1, 2026, which will provide additional time to make any operational changes or resource allocations necessary for development of the succession plans.

The NCUA also offers training and other resources to aid credit unions in developing their succession plans. For example, the NCUA has posted a video

series on succession planning on the internet. The NCUA's Small Credit Union and Minority Depository Institution Support Program is an available succession planning resource for FICUs with less than \$100 million in total assets and minority depository institutions of any size. Smaller FICUs are also encouraged to seek assistance from larger or more sophisticated FICUs in the development of the required succession plans.⁴³ FICUs may also use already existing information in preparing their plans, such as the data used to develop the recommended program to prepare for a catastrophic act. These resources should further reduce the costs of preparing the succession plans.

Accordingly, the NCUA certifies the final rule will not have a significant economic impact on a substantial number of small credit unions.

B. Small Business Regulatory Enforcement Fairness Act/ Congressional Review Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)⁴⁴ generally provides for congressional review of agency rules. A reporting requirement is triggered in instances where the NCUA issues a final rule as defined by section 551 of the Administrative Procedure Act.⁴⁵ An agency rule, in addition to being subject to congressional oversight, may also be subject to a delayed effective date if the rule is a "major rule." The NCUA does not believe this rule is a "major rule" within the meaning of the relevant sections of SBREFA.

As required by SBREFA, the NCUA has submitted this final rule to OMB for it to determine if the final rule is a "major rule" for purposes of SBREFA. The NCUA also will file appropriate reports with Congress and the GAO so this rule may be reviewed.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemaking in which an agency creates a new or amends existing information collection requirements.⁴⁶ For purposes of the PRA, an information collection requirement may take the form of a reporting, recordkeeping, or a third-party disclosure requirement. The NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection

⁴³ *Supra*, note 15.

⁴⁴ Public Law 104–121, 110 Stat. 147 (1996).

⁴⁵ 5 U.S.C. 551.

⁴⁶ 44 U.S.C. 3501–3520; 5 CFR part 1320.

⁴¹ 5 U.S.C. 605(b).

⁴² 80 FR 57512 (Sept. 24, 2015).

⁴⁰ 5 U.S.C. 601 *et seq.*

unless it displays a valid OMB control number.

The final rule establishes new information collections in the form of succession policies and plans. The NCUA estimates a total annual burden of 46,750 hours as follows:

Estimated PRA Burden

- *OMB Control Number:* 3133–NEW.
- *Title of Information Collection:* Succession Planning.
- *Estimated number of respondents:* 4,499.
- *Estimated number of responses per respondent:* 1.
- *Estimated total annual responses:* 4,499.
- *Estimated total annual burden hours per response:* 10.
- *Estimated total annual burden hours:* 44,990.

The NCUA addressed comments on the proposed PRA burden estimate under section II. Discussion of Public Comments. In accordance with the PRA, the information collection requirements included in this final rule have been submitted to OMB for approval under control number 3133–NEW.

D. Executive Order 13132 on Federalism

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. The NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. This final rule applies to FCUs and to FISCUs. By law, FISCUs are already subject to numerous provisions of NCUA's rules, based on the agency's role as the insurer of member share accounts and the significant interest NCUA has in the safety and soundness of their operations. The rulemaking may, therefore, have an occasional direct effect on the states, the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

E. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.⁴⁷ The regulatory requirements are exclusively concerned with succession planning policies of FICUs for replacing vacancies among board members and

other key management officials. While the final rule is intended to maintain access to quality credit union services by reducing unplanned or forced consolidations, the potential positive effect on family well-being, including financial well-being is, at most, indirect.

List of Subjects

12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 741

Bank deposit insurance, Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board, this 17th day of December 2024.

Melane Conyers-Ausbrooks,
Secretary of the Board.

For the reasons stated in the preamble, the NCUA Board amends 12 CFR parts 701 and 741, as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNION

- 1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1785, 1786, 1787, 1788, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

- 2. Amend § 701.4 by:
 - a. Revising paragraph (b)(3).
 - b. Adding paragraph (e).

The addition and revision to read as follows:

§ 701.4 General authorities and duties of Federal credit union directors.

* * * * *

(b) * * *

(3) At the time of election or appointment, or within a reasonable time thereafter, not to exceed six months, have at least a working familiarity with, and to ask, as appropriate, substantive questions of management and the internal and external auditors of:

(i) Basic finance and accounting practices, including the ability to read and understand the Federal credit union's balance sheet and income statement; and

(ii) The Federal credit union's succession plan established pursuant to paragraph (e) of this section.

* * * * *

(e) *Succession planning requirements.*

(1) *General.* A federal credit union must

establish a written succession plan as provided in this paragraph that is approved by the board of directors and consistent with the credit union's size and complexity. In evaluating whether a succession plan meets the requirements of this paragraph, the NCUA will consider the size of the federal credit union, as well as the complexity and risk of its operations.

(2) *Covered positions.* The succession plan shall, at a minimum, cover the following positions, or their equivalent if the federal credit union has adopted different position titles:

(i) Members of the board of directors;

(ii) Management officials and assistant management officials, as those terms are defined in Appendix A, if provided for in the federal credit union's bylaws, and, to the extent not already covered, the senior executive officers identified in § 701.14(b)(2); and

(iii) Any other personnel the board of directors deems critical given the federal credit union's size, complexity, or risk of operations. This includes new positions that may be required due to planned changes in operations, supervisory landscape, or corporate structure.

(3) *Contents of succession plan.* The succession plan must, at minimum, contain the following information regarding each of the positions covered under paragraph (e)(2) of this section:

(i) The title for each covered position and the expiration of the incumbent's term (if serving in a term-limited capacity) or other anticipated vacancy date if known (such as the incumbent's retirement eligibility date or announced departure date).

(ii) The federal credit union's plan for permanently filling vacancies for each of the positions.

(iii) The federal credit union's strategy for recruiting candidates with the potential to assume each of the positions. The strategy must consider how the selection and diversity of skills among the employees covered by the succession plan collectively and individually promotes the safe and sound operation of the federal credit union.

(4) *Board responsibilities.* The board of directors must:

(i) Approve a written succession plan that meets the requirements of paragraphs (e)(2) and (e)(3) of this section; and

(ii) Review, and update as necessary, the succession plan in accordance with a schedule established by the board of directors but no less than every 24 months.

⁴⁷ Public Law 105–277, 112 Stat. 2681 (1998).

PART 741—REQUIREMENTS FOR INSURANCE

■ 3. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

■ 4. Add § 741.228 to read as follows:

§ 741.228 Succession planning.

Any credit union that is insured pursuant to Title II of the Act must adhere to the requirements in § 701.4(b)(3) and (e) of this chapter, to the extent these regulatory provisions do not conflict with an applicable state requirement.

[FR Doc. 2024–30449 Filed 12–23–24; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA–2024–2087; **Airspace**
Docket No. 23–ANM–22]

RIN 2120–AA66

Establishment of Class E Airspace; Dubois, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface at Dubois Airport, Dubois, WY, in support of the airport's transition from visual flight rules (VFR) to instrument flight rules (IFR) operations.

DATES: Effective date 0901 UTC, February 20, 2025. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

FAA Order JO 7400.11J, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation

Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Drasin, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S. 216th Street, Des Moines, WA 98198; telephone (206) 231–2248.

SUPPLEMENTARY INFORMATION:**Authority for This Rulemaking**

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

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2024–2087 in the **Federal Register** (89 FR 71863; September 4, 2024), proposing to establish Class E airspace at Dubois Airport, Dubois, WY. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One person submitted two similar comments in support of the airspace action.

Incorporation by Reference

Class E5 airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11J, dated July 31, 2024, and effective September 15, 2024. FAA Order JO 7400.11J is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This action amends 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above the surface at Dubois Airport, Dubois, WY, in support of the airport's forthcoming transition from VFR to IFR operations.

This airspace extends 8.2 miles southeast and 4.5 miles north and northwest of the airport. The configuration is designed to contain departing and missed approach IFR operations until reaching 1,200 feet above the surface and arriving IFR operations below 1,500 feet.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11], Airspace Designations and Reporting Points, dated July 31, 2024, and effective September 15, 2024, is amended as follows:

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

* * * * *

ANM WY E5 Dubois, WY [New]

Dubois Municipal Airport, WY
(Lat. 43°32'55" N, long. 109°41'27" W)

That airspace extending upward from 700 feet above the surface within 1.9 miles on either side of the 117° bearing extending from the airport to 8.2 miles southeast, and within 4.8 miles northeast and 1.9 miles southwest of the 297° bearing extending from the airport to 4.5 miles northwest.

* * * * *

Issued in Des Moines, Washington, on December 17, 2024.

B.G. Chew,

*Group Manager, Operations Support Group,
Western Service Center.*

[FR Doc. 2024–30623 Filed 12–23–24; 8:45 am]

BILLING CODE 4910–13–P

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1304

RIN 3316–AA25

Floating Cabins

AGENCY: Tennessee Valley Authority.

ACTION: Final rule.

SUMMARY: The Tennessee Valley Authority (TVA) is publishing a final rule to amend its regulations that govern floating cabins located on the Tennessee River System.

DATES: This final rule is effective January 27, 2025.

FOR FURTHER INFORMATION CONTACT:

David B. Harrell, 865–632–1327, dbharrell@tva.gov, Mail address: Tennessee Valley Authority, Attn: Floating Cabins, 400 West Summit Hill Drive, WT 11A–K, Knoxville, TN 37902.

SUPPLEMENTARY INFORMATION:

Legal Authority

This final rule is promulgated under the authority of the TVA Act, as amended, 16 U.S.C. 831 *et seq.* and OMB Circular No. A–25. Under Section 26a of the TVA Act, no obstructions affecting navigation, flood control, or

public lands or reservations shall be constructed, operated, or maintained across, along, or in the Tennessee River System without TVA's approval. TVA has long considered nonnavigable structures such as floating cabins to be obstructions that require its approval. In addition, Section 9b of the TVA Act (16 U.S.C. 831h–3) provides that TVA may require floating cabins to be maintained by the owner to reasonable health, safety, and environmental standards.

Background

TVA is a multi-purpose federal agency that has been charged by Congress with promoting the wise use and conservation of the resources of the Tennessee Valley region, including the Tennessee River System. In carrying out this mission, TVA operates a system of dams and reservoirs on the Tennessee River and its tributaries for the purposes of navigation, flood control, and power production. Consistent with those purposes, TVA uses the system to improve water quality and water supply and to provide a wide range of public benefits including recreation.

To promote the unified development and regulation of the Tennessee River System, Congress directed TVA to approve obstructions across, along, or in the river system under Section 26a of the TVA Act. “Obstruction” is a broad term that includes, by way of example, boat docks, piers, boathouses, buoys, floats, boat launching ramps, fills, water intakes, devices for discharging effluents, bridges, aerial cables, culverts, pipelines, fish attractors, shoreline stabilization projects, channel excavations, and floating cabins. TVA also owns, as agent for the United States, much of the shoreland and inundated land along and under its reservoir system.

Since 1971, TVA has used its Section 26a authority to prohibit the mooring on the Tennessee River System of new floating cabins (formerly nonnavigable houseboats) that are designed and used primarily for habitation and not for water transportation. In particular, TVA amended its regulations in 1971 to prohibit the mooring or anchoring of new nonnavigable houseboats except for those in existence before November 21, 1971. Since 1971, TVA has made minor changes to its regulations affecting nonnavigable houseboats, including in 1978 when TVA prohibited mooring of nonnavigable houseboats on the Tennessee River System except for those in existence on or before February 15, 1978. Effective October 1, 2018, TVA updated its regulations to change the terminology to floating cabins (rather than nonnavigable houseboats) and

prohibit new floating cabins that did not exist on the Tennessee River System on or before December 16, 2016.

Despite over 40 years of regulation related to floating cabins, the number of floating cabins on the Tennessee River System continued to increase. In determining what action to take with respect to floating cabins, TVA prepared an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act. This EIS assessed the environmental and socioeconomic impacts of different policies to address the proliferation of floating cabins on the Tennessee River System. TVA released a draft of this EIS for public comment in June 2015 and held four public meetings and a webinar to provide information about its analyses and to facilitate public involvement. The final EIS and associated documents can be found at <https://www.tva.com/floatingcabins>.

After considering the comments received during the EIS process and the analyses of impacts, TVA identified as its preferred policy one that establishes standards to ensure safer mooring, electrical connections, and protection of water quality. Under the preferred policy, the mooring of new floating cabins would be prohibited on the Tennessee River System. The preferred policy would have required all existing floating cabins, including nonnavigable houseboats, to be removed from the Tennessee River System by January 1, 2036, and be subject to a regulatory program in the interim. On May 5, 2016, the TVA Board of Directors adopted the preferred policy, except the Board extended the removal date to May 5, 2046.

On December 16, 2016, Congress enacted the Water Infrastructure Improvements for the Nation Act of 2016 (WIIN Act). Section 5003 related to floating cabins and amended the TVA Act to include Section 9b (16 U.S.C. 831h–3). This new section of the TVA Act provides that TVA may approve and allow the use of floating cabins on waters under the jurisdiction of TVA as of December 16, 2016, if the floating cabin is maintained to reasonable health, safety, and environmental standards as required by the TVA Board of Directors and if the owner pays a compliance fee if assessed by TVA. The WIIN Act stipulates that TVA may not require the removal of a floating cabin that was located on the Tennessee River System as of December 16, 2016: (1) for a period of 15 years if it was granted a permit by TVA before enactment, or (2) for a period of 5 years if it was not granted a permit by TVA before enactment. It further stipulates that TVA

may establish regulations to prevent the construction of new floating cabins.

Previous Floating Cabins Amendments to TVA's Section 26a Regulations

TVA published "Phase I" rule amendments for floating cabins that became effective on October 1, 2018. These amendments clarified the types of structures that TVA will regulate as a floating cabin and prohibited new floating cabins from mooring on the Tennessee River System after December 16, 2016. TVA estimates that approximately 2,200 floating cabins were moored on the Tennessee River System on December 16, 2016.

TVA published "Phase II" rule amendments for floating cabins that became effective on October 12, 2021. These amendments included health, safety, environmental, and permitting standards that apply to all floating cabins and a deadline by which floating cabin owners were to apply to TVA for a Section 26a permit. A diverse stakeholder group composed of 18 members advised TVA on the development and drafting of these standards. Owners of floating cabins were given until October 1, 2024, to comply with the standards in TVA's regulations and submit a complete permit application that certifies compliance and includes the payment of a Section 26a permit application fee. The permit application submission date of October 1, 2024, gave owners approximately three years from the effective date of the new standards to bring structures into compliance.

Final Rule

The final rule for floating cabins applies to all existing floating cabins, including those formerly referred to as nonnavigable houseboats originally permitted on or before February 15, 1978. All floating cabins and attached structures must comply with the standards in TVA's regulations and submit a complete Section 26a permit application that certifies compliance and includes the payment of a permit application fee by October 1, 2029. TVA will not require floating cabin owners to pay the initial permit application fee if they possess a permit in their name issued before December 16, 2016, and the structure is compliant with the terms of the permit, constructed in accordance with the permit (same dimensions, attached structures such as docks, and utility connections), and moored at the permitted location.

TVA's Section 26a regulations previously required floating cabins to comply with the standards and apply for a new permit by October 1, 2024.

This final rule extends that time until October 1, 2029. TVA has encouraged floating cabin owners to bring floating cabins into compliance and then apply for a permit without delay. TVA may deny an initial application for a floating cabin if it is submitted after the deadline of October 1, 2029.

Upon submission of the application, owners of floating cabins may remain in place until TVA acts on the application. If TVA approves the application, TVA will issue a Section 26a permit to the owner. If TVA denies the application, the owner must remove the structure in accordance with Section 9b of the TVA Act and 18 CFR 1304.406.

Rebuilding

This final rule also clarifies language on rebuilding floating cabins. Any alterations to the dimensions or approved plans for an existing floating cabin (monolithic frame or attached structure) are deemed a structural modification and require written approval from TVA.

Electrical

Floating cabins can pose a threat to public safety due to unsafe electrical systems. TVA is aware that floating cabins are currently obtaining electricity from the shore via underwater cables, through onboard portable generators, and by other methods. When the final Phase II rule on floating cabins was published in 2021, TVA was not aware of any local, state, or federal entity that monitored the construction of floating cabins and enforced building codes. However, after working with multiple state agencies, it became clear that state and local entities have the ability and expertise to regulate and inspect electrical requirements for floating cabins within their jurisdiction. Separate standards in TVA's Section 26a regulations have potential to create confusion for floating cabin owners about applicable requirements.

This final rule does not change the requirement that floating cabin owners comply with all applicable federal, state, and local laws and regulations regarding electrical wiring and equipment. If a floating cabin is documented to be in violation of any federal, state, or local electrical standard or regulation by the respective regulatory agency, TVA may revoke the permit and require removal of the floating cabin from the Tennessee River System if the violation is not corrected as specified by the relevant regulatory agency in accordance with the agency's requirements. The final rule removes the separate electrical standards for floating cabins from the Section 26a

regulations and removes the requirement that floating cabin owners submit a certification of compliance to TVA every even-numbered year. This appropriately recognizes that state and local agencies are best equipped to adopt and enforce electrical standards for floating cabins while reinforcing that compliance with those other agency standards is a condition of the Section 26a permit. This final rule also clarifies that applicants must provide documentation, upon TVA's request, that demonstrates the floating cabin is in compliance with applicable wastewater and electric standards. In the event that a floating cabin owner fails to provide satisfactory evidence of compliance upon request, TVA may revoke the Section 26a permit and require removal of the floating cabin from the reservoir.

Other Changes to Section 26a Regulations

In addition to the changes affecting floating cabins listed above, this final rule provides other minor amendments to the Section 26a regulations. These include minor edits for clarity and consistency in the regulations. This includes a clarification that TVA's issuance of a Section 26a permit for any proposed facility or obstruction does not mean the proposed facility or obstruction has been deemed safe by TVA. TVA is also clarifying that TVA may proceed with the review of a Section 26a application absent the submission of some of the application materials identified in 18 CFR 1304.2.

Comments on the Proposed Rule and TVA's Responses

TVA published the proposed rule for public review and comment in the **Federal Register** on August 29, 2024 (89 FR 70145). TVA received six comments during the public review period, all via email, from six individuals. Only three of the comments provided input on the proposed rule. The other three comments posed questions about individual floating cabins. The following discussion describes a summary of the comments received and provides TVA's response to the comments. TVA appreciates the perspectives, interests, and concerns expressed by all commenters. After careful consideration of all comments received, TVA is finalizing the rule as proposed.

1. Comment Related to Wastewater

Comment: One commenter stated that graywater discharge was not included in the regulations and referenced rumors

about only the discharge of untreated sewage being prohibited.

TVA Response: Discharges of blackwater and graywater are regulated by the EPA and the state agencies that are responsible for issuing National Pollutant Discharge Elimination System permits for facilities that discharge sewage or other wastewater. Pursuant to Section 401 of the Clean Water Act, if a structure or activity for which federal approval is sought may result in any discharge into navigable waters of the United States, then the applicant must also request certification from the relevant state certifying agency when applying for a Section 26a permit. If the certifying agency denies certification on appropriate grounds, TVA will not be able to issue the Section 26a permit. If the certifying agency grants certification with appropriate conditions, those conditions are required to be incorporated in the Section 26a permit. If the conditions of that certification are violated or TVA is notified of an unresolved violation by one of these regulatory agencies, TVA is authorized to revoke the Section 26a permit and require removal of the floating cabin in compliance with the WIIN Act.

2. Comment Related to the Sunset Period in the TVA Board Policy, WIIN Act, and Flotation Deadline

Comment: One commenter expressed concern about the extension as it relates to the original TVA Board of Directors (Board) Policy sunset date of May 15, 2046, the section of the WIIN Act that addresses removal of floating cabins, and the December 31, 2031, deadline to remove unencased flotation. There appears to be confusion around these deadlines.

TVA Response: There are several different dates that are relevant to maintaining floating cabins on the Tennessee River System based on the TVA Act and TVA's Section 26a regulations. On May 5, 2016, the TVA Board adopted a policy that would have required all existing floating cabins to be removed from the Tennessee River System by May 5, 2046 (sunset period).

On December 16, 2016, Congress enacted the Water Infrastructure Improvements for the Nation Act of 2016 (WIIN Act), which related to floating cabins and amended the TVA Act to include Section 9b. This new section of the TVA Act removed the 30-year sunset period and provided that floating cabins that were located on waters under the jurisdiction of TVA as of December 16, 2016, may remain if the floating cabin is maintained to reasonable health, safety, and environmental standards as required by

TVA. The WIIN Act further stipulated that TVA may not require the removal of a floating cabin that was located on the Tennessee River System as of December 16, 2016: (1) for a period of 15 years if it was granted a permit by TVA before the WIIN Act's enactment, or (2) for a period of five years if it was not granted a permit by TVA before the WIIN Act's enactment.

TVA's Section 26a regulations include a deadline of December 31, 2031, when all unencased flotation must be removed and replaced with flotation commercially manufactured for marine use and consistent with standards defined in the regulations. This requirement applies to all water-use facilities permitted by TVA, including floating cabins.

This final rule requires floating cabin owners to comply with the regulations and apply for a permit no later than October 1, 2029. Any permit issued will be contingent upon compliance with the flotation rule by December 31, 2031. The Board sunset period no longer applies. The WIIN Act removal date for floating cabins that were not granted a permit before the WIIN Act has already passed; TVA may not require the removal of previously permitted floating cabins until December 16, 2031.

3. Comments in Support of the Final Rule

Comment: Two commenters expressed general support for the final rule amendments, particularly the extension of the compliance and application deadline.

TVA Response: TVA acknowledges these comments and agrees with the need for the extension and to avoid confusion around electrical requirements.

4. Questions About Floating Cabins

Comment: Three commenters posed questions about the proposal, including questions on individual floating cabins and the corresponding deadlines for electrical standards.

TVA Response: Questions about individual floating cabins and compliance may be directed to TVA at fh@tva.gov.

Administrative Requirements

A. Unfunded Mandates Reform Act, National Environmental Policy Act, and Various Executive Orders Including E.O. 12866, Regulatory Planning and Review; E.O. 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 13045, Protection of Children From Environmental Health Risks; E.O. 13132, Federalism; E.O. 13175, Consultation and Coordination With Indian Tribal Governments; E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, and Use; E.O. 12988, Civil Justice Reform Act; and E.O. 14094, Modernizing Regulatory Review

In determining what action to take with respect to floating cabins, TVA prepared an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act. This EIS assessed the environmental and socioeconomic impacts of different policies to address the proliferation of floating cabins on the Tennessee River System. TVA released a draft of this EIS for public comment in June 2015 and held four public meetings and a webinar to provide information about its analyses and to facilitate public involvement. The final EIS and associated documents can be found at <https://www.tva.com/floatingcabins>.

This final rule contains no federal mandates for state, local, or tribal government or for the private sector. TVA has determined it will not have a significant annual effect of \$200 million or more or result in expenditures of \$200 million in any one year by state, local, or tribal governments or by the private sector. This final rule will not have a substantial direct effect on the States or Indian tribes, on the relationship between the Federal Government and the States or Indian tribes, or on the distribution of power and responsibilities between the Federal Government and States or Indian tribes. Nor will this final rule have concerns for environmental health or safety risks that may disproportionately affect children, have significant effect on the supply, distribution, or use of energy, or disproportionately impact low-income or minority populations. Unified development and regulation of the Tennessee River System through an approval process for obstructions across, along, or in the river system and management of United States-owned land entrusted to TVA are federal functions for which TVA is responsible under the TVA Act, as amended. In general, this final rule updates TVA's regulations relating to the standards that

floating cabins will be required to meet in order to remain on the Tennessee River System. Absent a request for these services for a Section 26a permit, no entity or individual would be forced to pay a charge. None of the charges would be applied retroactively. TVA will continue to appropriately review specific requests in accordance with applicable laws, regulations, and Executive Orders.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605, TVA is required to prepare a regulatory flexibility analysis unless the head of the agency certifies that the proposal will not have a significant economic impact on a substantial number of small entities. TVA's Chief Executive Officer has certified that this rule will not have a significant economic impact on a substantial number of small entities. The statute defines "small entity" as a "small business," "small organization" (further defined as a "not-for-profit enterprise"), or a "small governmental jurisdiction." Most floating cabins are owned by individuals and not businesses, not-for-profit enterprises, or small governmental jurisdictions, and therefore relatively few "small entities" will be affected by TVA's proposal. Even if the final rule tangentially impacts marinas that accommodate floating cabins, a relatively small number of marinas will be impacted. Accordingly, this rule will not have a significant impact on a substantial number of small entities; no regulatory flexibility analysis is required; and TVA's Chief Executive Officer has made the requisite certification.

C. Paperwork Reduction Act

Title of Information Collection:
Section 26a Permit Application.

OMB Approval Number: 3316–0060.

This rule contains information collection requirements for registration and permitting of floating cabins, which were approved by the Office of Management and Budget (OMB) on July 31, 2024.

List of Subjects in 18 CFR Part 1304

Administrative practice and procedure, Natural resources, Navigation (water), Rivers, Water pollution control.

For the reasons set out in the preamble, the Tennessee Valley Authority amends 18 CFR part 1304 as follows:

PART 1304—APPROVAL OF CONSTRUCTION IN THE TENNESSEE RIVER SYSTEM AND REGULATION OF STRUCTURES AND OTHER ALTERATIONS

■ 1. The authority citation for 18 CFR Part 1304 continues to read as follows:

Authority: 16 U.S.C. 831–831ee.

■ 2. Amend § 1304.2 by:

■ a. Revising the first sentence of paragraph (b);

■ b. Adding a sentence at the end of paragraph (c); and

■ c. Adding paragraph (e).

The revision and additions read as follows:

§ 1304.2 Application.

* * * * *

(b) Applications shall be submitted on TVA's online application system or addressed to the Tennessee Valley Authority, at the appropriate location as listed on the application and on TVA's website. * * *

(c) * * * TVA, in its sole discretion, may proceed with the review of an application in the absence of some materials listed in this section.

* * * * *

(e) TVA's issuance of a permit does not mean that TVA has determined a facility or obstruction is safe for any purpose or that TVA has any duty to make such a determination. In issuing a permit, TVA assumes no liability to the applicant or to any third party for any damages to property or personal injuries arising out of or in any way connected with applicant's construction, operation, or maintenance of the permitted facility.

■ 3. Amend § 1304.100 by:

■ a. Revising the seventh sentence; and

■ b. Adding a sentence after the seventh sentence.

The revision and addition read as follows:

§ 1304.100 Scope and intent.

* * * Existing floating cabins may remain moored on the Tennessee River System provided they remain in compliance with the rules in this part and obtain a section 26a permit from TVA issued after October 12, 2021. Existing floating cabins that do not apply for a permit by the deadline in this part or do not remain in compliance with the rules in this part are subject to the removal provisions of this part and section 9b of the TVA Act. * * *

■ 4. Amend § 1304.101 by:

■ a. Revising paragraph (c);

■ b. Revising paragraph (h)(2) introductory text;

■ c. Revising paragraph (h)(3); and

■ d. Revising paragraph (i)(3).

The revisions read as follows:

§ 1304.101 Floating cabins.

* * * * *

(c) All floating cabins shall comply with the rules contained in this part and make application for a section 26a permit by October 1, 2029. TVA may, at its sole discretion, deny an initial application for a floating cabin submitted after this date. Unpermitted structures are subject to the removal provisions of this part and section 9b of the TVA Act.

* * * * *

(h) * * *

(2) Any alterations to the dimensions or approved plans for an existing floating cabin (monolithic frame or attached structure) shall be deemed a structural modification and shall require prior written approval from TVA. All expansions in length, width, or height are prohibited, except under the following circumstances if approved in writing in advance by TVA. Structural modifications to attached structures are subject to § 1304.101(i).

* * * * *

(3) Owners must submit an application to TVA sixty (60) days in advance of proposed rebuilding of an entire or significant portion of a floating cabin (monolithic frame or attached structures). The owner shall not begin construction until prior written acknowledgment from TVA is received. Plans for removal of the existing floating cabin or portions to be rebuilt shall be acknowledged in writing by TVA before removal occurs, and the removal shall be at the owner's expense before construction of the rebuild may begin. The owner shall provide evidence of approval from the marina operator to rebuild within the approved harbor limits of a commercial marina. TVA may require a new permit for the proposed rebuilding. Construction of the rebuilt floating cabin must be completed within 18 months. The rebuilt monolithic frame of the floating cabin shall match the exact configuration and dimensions (length, width, and height) of both the total monolithic frame and the enclosed and open space as approved by TVA; attached structures are subject to § 1304.101(i). The footprint of the attached structures shall not be incorporated into the footprint of the monolithic frame of the floating cabin.

* * * * *

(i) * * *

(3) Attached structures shall not exceed 14 feet in height from the lowest floor level, shall not be enclosed, shall

not be connected to the monolithic frame by a single roofline, and shall comply with § 1304.204(p).

* * * * *

- 5. Amend § 1304.103 by:
- a. Revising paragraph (a);
- b. Revising paragraph (d); and
- c. Removing paragraph (e).

The revisions read as follows:

§ 1304.103 Health, safety, and environmental standards.

(a) *Wastewater.* Floating cabins shall comply with § 1304.2(d) with regard to discharges into navigable waters of the United States. All discharges, sewage, and wastewater, and the pumping, collection, storage, transport, and treatment of sewage and wastewater shall be managed in accordance with all applicable federal, state, and local laws and regulations (satisfactory evidence of compliance to be provided to TVA upon request). Upon receipt of documentation that a floating cabin is in violation of any federal, state, or local discharge or water quality regulation by the respective regulatory agency or upon failure to provide satisfactory evidence of compliance at TVA's request, TVA is authorized to revoke the permit and require removal of the floating cabin from the Tennessee River System if the violation is not corrected as specified by the regulatory agency in accordance with the agency's requirements or if satisfactory evidence of compliance is not provided to TVA.

* * * * *

(d) *Electrical.* Floating cabins shall comply with all applicable federal, state, and local laws and regulations regarding electrical wiring and equipment (satisfactory evidence of compliance to be provided to TVA upon request). Upon receipt of documentation that a floating cabin is in violation of any federal, state, or local electrical standard or regulation by the respective regulatory agency or upon failure to provide satisfactory evidence of compliance at TVA's request, TVA is authorized to revoke the permit and require removal of the floating cabin from the Tennessee River System if the violation is not corrected as specified by the regulatory agency in accordance with the agency's requirements or if satisfactory evidence of compliance is not provided to TVA. Floating cabins shall comply with § 1304.209(c)(2).

Michael McCall,
Vice President, Environment and Sustainability.

[FR Doc. 2024-30420 Filed 12-23-24; 8:45 am]

BILLING CODE 8120-08-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2024-1078]

RIN 1625-AA87

Security Zone; Corpus Christi Ship Channel, Corpus Christi, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving security zone for navigable waters within a 500-yard radius of certain vessels carrying cargo requiring an elevated level of security in the Corpus Christi Ship Channel. The temporary security zone is needed to protect the vessels, the cargo, and the surrounding waterway from terrorist acts, sabotage, or other subversive acts, accidents, or events of a similar nature. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Corpus Christi or a designated representative.

DATES: For the purposes of enforcement, actual notice will be used from December 20, 2024, until December 26, 2024. This rule is effective without actual notice from December 26, 2024 until December 27, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2024-1078 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 rule, call or email Lieutenant Tim Cardenas, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361-939-5130, email Timothy.J.Cardenas@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port, Sector Corpus Christi
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 under the authority in 5

U.S.C. 553(b)(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 it is impracticable. The Coast Guard was notified of these vessels' transit and cargo on December 12, 2024. There is insufficient time to publish an NPRM before this operation because the security zone must be established by December 20, 2024, to ensure security of the vessels and the surrounding area and there is insufficient time to provide a reasonable comment period and to consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because quick action is needed to provide for the security of this vessel and its surroundings while it is in transit.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this security zone regulation under the authority in 46 U.S.C. 70051 and 70124. The Captain of the Port, Sector Corpus Christi (COTP) has determined that potential hazards are associated with the transit of the Motor Vessel (M/V) ARC INDEPENDENCE. There is a security concern within a 500-yard radius of the vessel when it's loaded and transiting while loaded. This rule is needed to provide for the safety and security of the vessel, its cargo, and the surrounding waterway from terrorist acts, sabotage, or other subversive acts, accidents, or other events of a similar nature while the vessel is transiting within Corpus Christi, TX.

IV. Discussion of the Rule

The Coast Guard is establishing a 500-yard radius, temporary, moving security zone around M/V ARC INDEPENDENCE. Other mariners and vessels will be able to identify the security zone because the M/V ARC INDEPENDENCE's name is clearly marked on its stern, and port and starboard sides. The zone for the vessel will be effective from December 20, 2024, through December 27, 2024, and will be enforced when the vessel is loaded and transiting the Corpus Christi Ship Channel. The security zone will be

enforced to protect the vessel, its cargo, and the surrounding waterways from terrorist acts, sabotage, or other subversive acts, accidents, or other events of a similar nature while the vessel is traveling within the Corpus Christi Ship Channel.

No vessel or person will be permitted to enter the security zone without obtaining permission from the COTP or a designated representative. 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, USCG Sector Corpus Christi (COTP) in the enforcement of the security zone. Persons or vessels desiring to enter or pass through each zone must request permission from the COTP or a designated representative on VHF–FM channel 16 or by telephone at 361–939–0450. If permission is granted, all persons and vessels must comply with the instructions of the COTP or designated representative. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners and Marine Safety Information Bulletins (MSIBs) as appropriate for the enforcement times and dates for the security zone.

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, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule is not subject to review by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, duration, and location of the security zone. This rule will impact a small, designated area of 500-yards around the moving vessel in the Corpus Christi Ship Channel as the vessel transits the channel over a period of approximately four hours or less. Most vessels will be able to move

around the security zone and therefore the impediment to the movement of other vessels will be minimal. Moreover, the rule allows other 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 temporary security 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 contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

This rule 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. 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 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 moving security zone lasting for the duration of time that the M/V ARC INDEPENDENCE is within the Corpus Christi Ship Channel while loaded with cargo. It will prohibit entry within a 500-yard radius of the M/V ARC INDEPENDENCE while the vessel is

transiting loaded within Corpus Christi Ship Channel. It is categorically excluded from further review under L60(a) in 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 contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

- 2. Add § 165.T08-1078 to read as follows:

§ 165.T08-1078 Security Zones; Corpus Christi Ship Channel. Corpus Christi, TX.

(a) *Location.* The following area is a moving security zone: All navigable waters encompassing a 500-yard radius around the M/V ARC INDEPENDENCE while the vessel loaded with cargo and is in the Corpus Christi Ship Channel.

(b) *Enforcement period.* This section will be enforced during the times the ship is loaded and underway.

(c) *Regulations.* (1) Under the general security zone regulations in subpart D of this part, you may not enter the security zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative. A designated representative is 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, USCG Sector Corpus

Christi (COTP) in the enforcement of the security zone.

(2) Persons or vessels desiring to enter or pass through the zone must request permission from the COTP Sector Corpus Christi on VHF-FM channel 16 or by telephone at 361-939-0450.

(3) If permission is granted, all persons and vessels must comply with all lawful orders and directions of the COTP or the COTP's designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs) and Marine Safety Information Bulletins (MSIBs) of the enforcement times and dates for this security zone.

Dated: December 17, 2024.

T.H. Bertheau,

Captain, U.S. Coast Guard, Captain of the Port, Sector Corpus Christi.

[FR Doc. 2024-30547 Filed 12-23-24; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2020-0385; FRL-12224-02-R5]

Determination of Attainment by the Attainment Date; Michigan; St. Clair 2010 Sulfur Dioxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is making a final determination that the St. Clair, MI sulfur dioxide (SO₂) nonattainment area attained the 2010 SO₂ national ambient air quality standard (NAAQS) by the date of September 12, 2021, addressing EPA's obligation under the Clean Air Act (CAA) to determine whether the area attained the 2010 SO₂ NAAQS attainment date. EPA proposed this action on September 26, 2024, and received no comments.

DATES: This final rule is effective on January 27, 2025.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2020-0385. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information

whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through <https://www.regulations.gov> or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Alexis Bender, at (312) 886-9497, bender.alexis@epa.gov before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT:

Alexis Bender, Air and Radiation Division (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-9497, bender.alexis@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

I. Background

On September 26, 2024 (89 FR 78837), EPA proposed to determine that the St. Clair, MI SO₂ nonattainment area attained the 2010 SO₂ NAAQS by the attainment date of September 12, 2021. This determination is based on annual SO₂ emissions data, modeled data, and certified ambient air quality data from EPA's December 7, 2021, Clean Data Determination for St. Clair, based on 2017 to 2019 data, as well as publicly available additional supporting 2020 data. A detailed explanation of the CAA requirements and EPA's reasons for proposing approval were provided in the notice of proposed rulemaking (NPRM) and will not be restated here. The public comment period for this proposed rule ended on October 28, 2024. EPA received no comments on the proposal.

II. Final Determination

EPA is making a determination that the St. Clair nonattainment area attained the 2010 SO₂ NAAQS by the relevant attainment date of September 12, 2021. The determination of attainment by the attainment date does not constitute a redesignation of the St. Clair, MI nonattainment area to attainment of the 2010 SO₂ NAAQS under section 107(d)(3) of the CAA. The St. Clair area will remain designated nonattainment for the 2010 SO₂ NAAQS until such time as EPA approves a redesignation request and accompanying 10-year

maintenance plan, and EPA determines that the area meets the requirements of CAA section 107(d)(3) and provides for maintenance as required by CAA section 175A.

This final action will address EPA's obligation under CAA section 179(c) to determine if the St. Clair Area attained the 2010 SO₂ NAAQS by the attainment date of September 12, 2021.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review, and Executive Order 14094: Modernizing Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Order 14094 (88 FR 21879, April 11, 2023).

B. Paperwork Reduction Act (PRA)

This rule does not impose an information collection burden under the provisions of the PRA of 1995 (44 U.S.C. 3501 *et seq.*). This action does not contain any information collection activities and serves only to make a final determination that the St. Clair, Michigan nonattainment area attained the 2010 SO₂ NAAQS by the September 12, 2021, attainment date.

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 determination of attainment by attainment date action of attaining the 2010 SO₂ NAAQS will not impose any requirements on small entities or will not create any new requirements beyond what is mandated by the CAA.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The division of responsibility between the Federal government and the states for purposes

of implementing the NAAQS is established under the CAA.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." This action does not have Tribal implications as specified in Executive Order 13175. This action does not apply on any Indian reservation land, any other area where EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on communities with

environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements E.O. 12898 and defines EJ as, among other things, the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, or Tribal affiliation, or disability in agency decision-making and other Federal activities that affect human health and the environment."

EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898/14096 of achieving EJ for communities with EJ concerns.

K. Congressional Review Act

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 24, 2025. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur dioxide.

Dated: December 18, 2024.

Debra Shore,
Regional Administrator, Region 5.

For the reasons stated in the preamble, title 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.1170, the table in paragraph (e) is amended by adding an entry for “2010 Sulfur Dioxide Determination of Attainment by the Attainment Date” before the entry for “Determination of

failure to attain the 2010 SO₂ standard” to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA Approval date	Comments
2010 Sulfur Dioxide Determination of Attainment by the Attainment Date.	St. Clair County (part).	.....	12/26/2024, [INSERT FIRST PAGE OF Federal Register CITATION].	.....
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *

* * * * *

[FR Doc. 2024–30583 Filed 12–23–24; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA–R09–OAR–2024–0563; FRL–12442–03–R9]

Determination To Defer Sanctions; California; Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: The Environmental Protection Agency (EPA) is making an interim final determination that the California Air Resources Board (CARB) has submitted a rule and other materials on behalf of the Mojave Desert Air Quality Management District (MDAQMD) that corrects deficiencies in its Clean Air Act (CAA or “Act”) State Implementation Plan (SIP) concerning reasonably available control technology (RACT) ozone nonattainment requirements for controlling emissions of oxides of nitrogen (NO_x) from industrial, institutional, and commercial boilers, steam generators, and process heaters. This determination is based on a proposed approval, published elsewhere in this issue of the **Federal Register**, of MDAQMD Rule 1157, which regulates

this source category. The effect of this interim final determination is that the imposition of sanctions that were triggered by a previous limited disapproval by the EPA in 2023 is now deferred. If the EPA finalizes its approval of MDAQMD’s submission, relief from these sanctions will become permanent.

DATES: This interim final determination is effective December 26, 2024. However, comments will be accepted on or before January 27, 2025.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2024–0563 at <https://www.regulations.gov>. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For

additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: La Kenya Evans-Hopper, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; phone: (415) 972–3245; email evanshopper.lakenya@epa.gov.

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

Table of Contents

- I. Background
- II. The EPA’s Evaluation and Action
- III. Statutory and Executive Order Reviews

I. Background

On June 16, 2023, the EPA issued a final rule (88 FR 39366, the “2023 final rule”) promulgating a limited approval and limited disapproval for the MDAQMD rule listed in Table 1, which was submitted by the California Air Resources Board (CARB) to the EPA for inclusion into the California SIP.

TABLE 1—DISTRICT RULE WITH PREVIOUS EPA ACTION

Rule No.	Rule title	Amended	Submitted	EPA action in 2023
1157	Boilers and Process Heaters	01/22/2018	05/23/2018	Limited Approval and Limited Disapproval.

Areas classified as “Moderate” or above nonattainment for an ozone standard must implement RACT for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source of NO_x (see CAA section 182(b)(2), (f)). The MDAQMD contains parts of the West Mojave Desert ozone nonattainment area, which is classified as “Severe” nonattainment for the 1997, 2008, and 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS), as well as part of the Southeast Desert Modified Air Quality Management Area, which is classified as “Severe” nonattainment for the 1979 1-hour ozone NAAQS (see 40 CFR 81.305).

In the 2023 final rule, we determined that although the MDAQMD rule

strengthened the SIP and was largely consistent with the requirements of the CAA, the submitted rule included a deficiency that precluded our full approval of the rule into the SIP. The MDAQMD’s previously submitted Rule 1157 stated, “[n]o compliance determination shall be established based on data obtained from compliance testing, including integrated sampling methods, during a start-up period or shut-down period.” This provision prohibits the use of data gathered during periods of startup and shutdown from being used for determining compliance with the applicable limit.

The EPA found that the provision was not consistent with the EPA’s SSM policy and Credible Evidence Rule because it forbids the use of credible evidence (compliance testing data

generated during startup and shutdown periods) in establishing violations of the applicable emissions limit. In addition, the previously submitted Rule 1157 removed the definitions of “start-up period” and “shut-down period,” making the scope of this provision unclear.

Pursuant to section 179 of the CAA and our regulations at 40 CFR part 52, the disapproval action on Rule 1157 under title I, part D started a sanctions clock for imposition of offset sanctions 18 months after the action’s effective date of July 17, 2023, and highway sanctions six months later.

On September 25, 2023, the MDAQMD revised Rule 1157, and on January 10, 2024, CARB submitted it to the EPA for approval into the California SIP, as shown in Table 2 below.

TABLE 2—SUBMITTED RULE

Local agency	Rule No.	Rule title	Amended	Submitted
MDAQMD	1157	Boilers and Process Heaters	09/25/23	01/10/24

On July 10, 2024, the submittal for MDAQMD Rule 1157 was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 appendix V.

The revised MDAQMD Rule 1157 in Table 2 of this document is intended to address the disapproval issues in our June 16, 2023 final rule. In the Proposed Rules section of this **Federal Register**, we have proposed approval of the revised MDAQMD Rule 1157. Based on the proposed action approving Rule 1157 into the California SIP, we are also making this interim final determination, effective on publication, to defer imposition of the offset sanctions and highway sanctions that were triggered by our 2023 final rule on Rule 1157, because we believe that the submittal corrects the deficiencies that triggered such sanctions.

The EPA is providing the public with an opportunity to comment on this deferral of sanctions. If comments are submitted that change our assessment described in this interim final determination and the proposed approval of MDAQMD Rule 1157, we would take final action to lift this deferral of sanctions under 40 CFR 52.31. If no comments are submitted that change our assessment, then all sanctions and any sanction clocks triggered by our June 16, 2023 final rule would be permanently terminated on the effective date of our final approval of Rule 1157.

II. The EPA’s Evaluation and Action

We are making an interim final determination to defer CAA section 179 sanctions associated with our limited disapproval action on June 16, 2023, of MDAQMD Rule 1157 with respect to the requirements of part D of title I of the CAA. This determination is based on our concurrent proposal to fully approve MDAQMD Rule 1157 which resolves the deficiencies that triggered sanctions under section 179 of the CAA.

Because the EPA has preliminarily determined that MDAQMD Rule 1157, amended on September 25, 2023, addresses the limited disapproval issues under part D of title I of the CAA identified in our 2023 final rule and the amended rule is now fully approvable, relief from sanctions should be provided as quickly as possible. Therefore, the EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action, the EPA is providing the public with a chance to comment on the EPA’s determination after the effective date, and the EPA will consider any comments received in determining whether to reverse such action.

The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. The EPA has reviewed the State’s submittal and, through its

proposed action, is indicating that it is more likely than not that the State has submitted a revision to the SIP that corrects deficiencies under part D of the Act that were the basis for the action that started the sanctions clocks. Therefore, it is not in the public interest to impose sanctions. The EPA believes that it is necessary to use the interim final rulemaking process to defer sanctions while the EPA completes its rulemaking process on the approvability of the State’s submittal. Moreover, with respect to the effective date of this action, the EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action defers sanctions and imposes no additional requirements. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it proposes to approve a State program;

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation’s Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements Executive Order 12898 and defines EJ as, among other things, “the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment.”

The State did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Order

12898 of achieving EJ for communities with EJ concerns.

This action is subject to the Congressional Review Act (CRA), and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this action as discussed in section II of this preamble, including the basis for that finding.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 24, 2025. Filing a petition for reconsideration by the EPA Administrator of this action does not affect the finality of this action for the purpose of judicial review, nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: December 13, 2024.

Martha Guzman Aceves,
Regional Administrator, Region IX.

[FR Doc. 2024–30409 Filed 12–23–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 73

Select Agent: Modified Junín Virus Vaccine Strain

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notification of determination.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), has determined that a previously excluded attenuated

strain, Junín virus vaccine strain Candid No.1, has key attenuating mutations in the glycoprotein envelope at GP1 T168A and GP2 F427I. Revertants at either of these positions have increased pathogenicity and virulence. Therefore, Junín virus vaccine strain Candid No. 1 containing GP1 168T and/or GP2 427F is a select agent and is subject to the select agent and toxin regulations.

DATES: This determination is applicable as of May 3, 2024.

FOR FURTHER INFORMATION CONTACT:

Daniel A. Singer, MD, MPH, FACP, Acting Director, Division of Regulatory Science and Compliance, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H21–4, Atlanta, Georgia 30329, Telephone: (404) 718–2000.

SUPPLEMENTARY INFORMATION: Junín virus is a negative sense, double stranded RNA virus and is the causative agent of Argentine hemorrhagic fever. Junín virus causes chronic infection in *Calomys musculus*, the Drylands vesper mouse. Humans can become infected upon exposure to infected animals or infected animals’ waste. Human-to-human spread is rare but can occur upon contact with an infected person’s bodily fluids.

In accordance with the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Bioterrorism Response Act), HHS regulates biological agents and toxins that have the potential to pose a severe threat to public health and safety (42 U.S.C. 262a(a)(1)). The list of HHS select agents and toxins is provided in the HHS select agent and toxin regulations (42 CFR part 73) and Junín virus, a South American hemorrhagic fever virus, is included as a select agent (42 CFR 73.3(b)).

The HHS select agent and toxin regulations established a process by which an attenuated strain of a select biological agent that does not have the potential to pose a severe threat to public health and safety may be excluded from the requirements of the select agent and toxin regulations (42 CFR 73.3(e)). On February 7, 2003, Junín virus vaccine strain Candid No.1 was excluded from the regulations as it does not pose a significant threat to public health and safety (McKee KT Jr, Oro JG, Kuehne AI, Spisso JA, Mahlandt BG. “Candid No. 1 Argentine hemorrhagic fever vaccine protects against lethal Junín virus challenge in rhesus macaques” *Intervirology*. 1992; 34(3):154–63). This exclusion was granted based on the historically safe use of this strain as a vaccine against Argentine hemorrhagic fever for

agricultural workers at risk of occupational exposure in Argentina.

As set forth under 42 CFR 73.3(e)(2), if an excluded attenuated strain is subjected to any manipulation that restores or enhances its virulence, the resulting select agent will be subject to the requirements of the regulations. CDC's Intragovernmental Select Agents and Toxins Technical Advisory Committee (ISATTAC), which comprises federal government subject-matter experts from HHS, the U.S. Department of Agriculture, the Department of Homeland Security, the Environmental Protection Agency, and the Department of Defense, reviewed the data published in the study, "Restoration of virulence in the attenuated Candid No.1 vaccine virus requires reversion at both positions 168 and 427 in the envelope glycoprotein GPC" (published in the *Journal of Virology* [<https://doi.org/10.1128/jvi.00112-24>] on March 20, 2024). The ISATTAC concluded that the modified strains (Candid No.1 containing GP1 168T and/or GP2 427F) showed an increased virulence compared to the parental excluded Candid No.1 strain when injected into guinea pigs and huTfR1 mice. CDC concurred with the ISATTAC's assessment and, on May 3, 2024, CDC determined that given the restoration of virulence, Junin virus vaccine strain Candid No.1 containing GP1 168T and/or GP2 427F is a select agent and is subject to the select agent and toxin regulations in accordance with 42 CFR 73.3(e)(2).

Dated: December 18, 2024.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2024-30568 Filed 12-23-24; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2800

[PO #4820000251]

RIN 1004-AE78

Rights-of-Way, Leasing, and Operations for Renewable Energy; Technical Corrections

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule; technical corrections.

SUMMARY: The Bureau of Land Management (BLM) is making technical corrections to regulations that published

in the **Federal Register** on May 1, 2024 (final rule).

DATES: Effective on December 26, 2024.

FOR FURTHER INFORMATION CONTACT:

Jayne Lopez, Interagency Coordination Liaison, by phone at (520) 235-4581, or by email at energy@blm.gov for information relating to the BLM Renewable Energy programs and information about the final rule. Please use "RIN 1004-AE78" in the subject line.

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: BLM published FR Doc. 2024-08099, beginning on page 35634 in the **Federal Register** of May 1, 2024.

Subsequently, BLM published a correction to the final rule on June 28, 2024 (89 FR 53869), correcting its instructions for 43 CFRs 2801.5 to clarify the addition of the term "Megawatt hour (MWh) rate" instead of revising the term "Megawatt hour (MWh) rate." However, the instructions were not updated to remove the conflicting term "Megawatt rate," which is no longer necessary with the changes in the final rule. This correcting amendment removes the term "Megawatt rate" from § 2801.5(b).

Section 2803.10 of the final rule did not include the change to the title adding the words "or lease" as intended with the publication of the final rule. This correcting amendment revises the section title to read as, "Who may hold a grant or lease?"

Section 2804.12 in the final rule did not include the title to paragraph (j) intended for reader clarity. This correcting amendment revises paragraph (j) adding the intended title, "Complete applications:" to the paragraph.

In the final rule, § 2806.51(a) was not updated consistent with the changes of the final rule and incorrectly left regulatory text that directed readers to sections of the rule that are specific to the 2016 rule and are now incorrect and inaccurate and no longer able to be implemented. This correcting amendment revises paragraph (a) to retain the first sentence of paragraph (a) with slight revisions using the terminology of the final rule. The second and third sentences of paragraph (a) direct readers to the standard rate adjustment method and the scheduled

rate adjustment method which are no longer available and were removed with the final rule.

In the final rule, instruction 28 specified § 2806.52(a) through (c) were being revised without correctly identifying the removal of § 2806.52(d). Section 2806.52(d) includes regulatory citations specific to the 2016 final rule that are now incorrect and inaccurate and no longer able to be implemented. This correcting amendment removes § 2806.52(d).

BLM also corrects § 2809.15(d)(2) by removing the colon at the end of the paragraph and adding a semicolon in its place.

Sections 2807.17 and 2807.20 of the final rule did not include the intended addition "or lease" in the titles. These section titles are revised to include the missing text to now read as, "§ 2807.17 Under what conditions may BLM suspend or terminate my grant or lease?" and "§ 2807.20 When must I amend my application, seek an amendment of my grant or lease, or obtain a new grant or lease?"

Sections 2809.13 and 2809.17 of the final rule did not include the intended section title revisions to change "offers" to read as "processes," consistent with the changes in the regulatory text. These correcting amendments change the titles to read as "§ 2809.13 How will the BLM conduct competitive processes?" and "§ 2809.17 Will the BLM ever reject bids or re-conduct a competitive process?"

In the final rule, the title to § 2809.18 was intended to include the addition to the section title "solar and wind energy development," consistent with the new definition of "solar and wind energy development" added to the final rule. The section now reads as, "What terms and conditions apply to a solar and wind energy development lease?" Additionally, the regulatory reference in paragraph (a) should direct readers to § 2805.11(c), not 2805.11(b), for the term of a solar and wind energy development lease. Paragraph (a) is revised, correcting the regulatory reference to read as § 2805.11(c).

List of Subjects in 43 CFR Part 2800

Electric power, Highways and roads, Penalties, Public lands and rights-of-way, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, the BLM corrects 43 CFR part 2800 by making the following technical corrections:

PART 2800—RIGHTS-OF-WAY UNDER THE FEDERAL LAND POLICY AND MANAGEMENT ACT

■ 1. The authority citation for part 2800 continues to read as follows:

Authority: 43 U.S.C. 1733, 1740, 1763, 1764, and 3003.

§ 2801.5 [Amended]

■ 2. Amend § 2801.5 in paragraph (b) by removing the term “Megawatt rate”.

■ 3. Amend § 2803.10 by revising the heading to read as follows:

§ 2803.10 Who may hold a grant or lease?

* * * * *

■ 4. Amend § 2804.12 by revising paragraph (j) to read as follows:

§ 2804.12 What must I do when submitting my application?

* * * * *

(j) Complete applications: Your application will not be complete until you have met or addressed the requirements of this section to the satisfaction of the BLM. The BLM will notify you in writing when your application is complete.

■ 5. Amend § 2806.51 by revising paragraph (a) to read as follows:

§ 2806.51 Grant and lease rate adjustments.

(a) The BLM will adjust your acreage rent and capacity fee for the term of your right-of-way as described in these regulations.

* * * * *

§ 2806.52 [Amended]

■ 6. Amend § 2806.52 by removing paragraph (d).

■ 7. Amend § 2807.17 by revising the heading to read as follows:

§ 2807.17 Under what conditions may BLM suspend or terminate my grant or lease?

* * * * *

■ 8. Amend § 2807.20 by revising the heading to read as follows:

§ 2807.20 When must I amend my application, seek an amendment of my grant or lease, or obtain a new grant or lease?

* * * * *

■ 9. Amend § 2809.13 by revising the heading to read as follows:

§ 2809.13 How will the BLM conduct competitive processes?

* * * * *

■ 10. Amend § 2809.15 by revising paragraph (d)(2) to read as follows:

§ 2809.15 How will the BLM select the successful bidder?

* * * * *

(d) * * *

(2) By the close of official business hours on the day on which the BLM conducts the competitive process or such other time as the BLM may have specified in the offer notices, submit for each parcel;

* * * * *

■ 11. Amend § 2809.17 by revising the heading to read as follows:

§ 2809.17 Will the BLM ever reject bids or re-conduct a competitive process?

* * * * *

■ 12. Amend § 2809.18 by revising the heading and paragraph (a) to read as follows:

§ 2809.18 What terms and conditions apply to a solar and wind energy development lease?

* * * * *

(a) *Site Control.* A lease provides site control to the leaseholder. The term of your lease will be consistent with § 2805.11(c) and will terminate on December 31 of the final year of the lease term. You may submit an application for renewal under § 2805.14(g). A leaseholder may not construct any facilities on the right-of-way until the BLM issues a notice to proceed or other written form of approval to begin surface disturbing activities.

* * * * *

Signing Authority

This action by the Principal Deputy Assistant Secretary is taken pursuant to an existing delegation of authority.

Steven H. Feldgus,

Principal Deputy Assistant Secretary, Land and Minerals Management.

[FR Doc. 2024–30400 Filed 12–23–24; 8:45 am]

BILLING CODE 4331–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Administration for Children and Families****45 CFR Part 412**

[Docket #2024–27626]

RIN 0970–AD10

Investigations of Child Abuse and Neglect Rule; Correction

AGENCY: Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS).

ACTION: Interim final rule; correction.

SUMMARY: ORR is correcting an interim rule (IFR) that was published in the **Federal Register** on November 27, 2024 with an effective date of December 27, 2024. The Investigations of Child Abuse and Neglect IFR provides standards and processes for ORR to apply when it conducts investigations into allegations of child abuse and neglect that occur in certain care provider facilities funded by ORR to provide residential and other services for unaccompanied children; describes a process for appeal and review of substantiated allegations; and establishes an ORR Central Registry to list individuals with certain findings of child abuse and neglect that have been substantiated and sustained after exhausting the appeal and review process.

DATES: Effective December 27, 2024.

FOR FURTHER INFORMATION CONTACT:

Toby Biswas, Director of Policy, Unaccompanied Children Bureau, Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services, Washington, DC, (202) 205–4440 or UCPolicy-RegulatoryAffairs@acf.hhs.gov.

SUPPLEMENTARY INFORMATION: In the interim final rule published November 27, 2024, there were two technical errors that are now identified and corrected in this document. The provisions in this correction document are effective as if they had been included in the document published November 27, 2024. Accordingly, the following corrections are effective December 27, 2024.

In FR Doc. 2024–27626, appearing on page 93498 in the **Federal Register** of November 27, 2024, the following corrections are made:

Corrections to the Preamble

1. On page 93498, in the third column, the text “*Instructions:* To submit your comments online, go to <https://www.regulations.gov> and insert ‘XXXX–XXXX–XXXX’ in the ‘Search’ box.” is corrected to read “*Instructions:* To submit your comments online, go to <https://www.regulations.gov> and insert ‘ACF–2024–0014’ in the ‘Search’ box.”

2. On page 93498, in the third column, the text “*Docket:* To view posted comments, as well as documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov> and insert ‘XXXX–XXXX–XXXX’ in the ‘Search’ box.” is corrected to read “*Docket:* To view posted comments, as well as documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov> and insert ‘ACF–2024–0014’ in the ‘Search’ box.”

www.regulations.gov and insert ‘ACF–2024–0014’ in the ‘Search’ box.”

3. On page 93512, in the first column, in the first sentence of the first full paragraph, “At § 412.102(c), ORR is establishing a process for substantiated perpetrators at Tier I or Tier II to appeal of ORR’s disposition” is corrected to read “At § 412.102(c), ORR is establishing a process for substantiated perpetrators at Tier I or Tier II to appeal ORR’s disposition.”

4. On page 93512, in the third column, in the first full paragraph, “The ALJ will issue a written decision upholding, modifying, or reversing the ORR’s disposition.” is corrected to read “The ALJ will issue a written decision upholding, modifying, or reversing ORR’s disposition.”

5. On page 93512, in the third column, the text “Under § 412.102(e)(1), a substantiated perpetrator at Tier I or Tier II may request review of the ALJ’s decision within 30 days of receipt of the ALJ’s decision, by filing a request for review with Office of the Assistant Secretary for ACF.” is corrected to read “Under § 412.102(e)(1), a substantiated perpetrator at Tier I or Tier II may request review of the ALJ’s decision within 30 days of receipt of the ALJ’s decision, by filing a request for review with the Office of the Assistant Secretary for ACF.”

6. On page 93513, in the first full sentence of the first column, the text “Under § 412.102(e)(2), the Assistant Secretary has discretion, within 30 days after receiving a timely request for review of an ALJ’s decision under § 412.102(e)(1), to review the ALJ’s decision and to dismiss a request for review based on untimeliness or other procedural defects, or to affirm, modify, or reverse the ALJ’s decision with regard to dismissal or ORR’s disposition of the allegation.” is corrected to read “Under § 412.102(e)(2), the Assistant Secretary has discretion, within 30 days after receiving a timely request for review of an ALJ’s decision under § 412.102(e)(1), to review the ALJ’s decision to dismiss a request for review based on untimeliness or other procedural defects, and to affirm, modify, or reverse the ALJ’s decision with regard to dismissal or ORR’s disposition of the allegation.”

7. On page 93517, in the first column, the List of Subjects in corrected to read:

“List of Subjects in 45 CFR Part 412

Administrative practice and procedure, Aliens, Child welfare, Reporting and recordkeeping requirements, Unaccompanied children.”

Corrections to the Regulatory Text

PART 412—[Amended]

■ 1. On page 93517, in the first column, add the authority citation for part 412 following the table of contents for the part to read as follows:

“Authority: 6 U.S.C. 279.”

■ 2. On page 93520, in the second column, in § 412.101, paragraph (c) is corrected to read as follows:

§ 412.101 [Corrected]

* * * * *

(c) *Disciplinary sanctions.* Care provider facilities must implement appropriate disciplinary or remedial measures where they or ORR find that care provider facility staff, contractors or sub-grantees of the care provider facility, or care provider facility volunteers engaged in conduct that does not rise to the level of a Tier I substantiated allegation, as defined at § 412.001, but nevertheless raises child welfare concerns.

* * * * *

■ 3. On page 93521, in § 412.102:

■ a. In the first column, paragraph (d)(1) is corrected;

■ b. In the second column, paragraphs (d)(7) and (8) are corrected; and

■ c. In the third column, paragraphs (e)(1) and (6) are corrected.

The corrections read as follows:

§ 412.102 [Corrected]

* * * * *

(d) * * *

(1) When a substantiated perpetrator at Tier I or Tier II appeals ORR’s disposition to an ALJ pursuant to paragraph (c)(1)(i) of this section, ORR must transmit to the ALJ all of the evidence upon which the disposition was based.

* * * * *

(7) The ALJ shall conduct a fair and impartial hearing and de novo review to determine whether the substantiated perpetrator met their burden of establishing that, considering the totality of the evidence, there is not a preponderance of the evidence to support the substantiated allegation. The ALJ may either dismiss the case for untimeliness, withdrawal of the appeal, abandonment of the appeal, or because the individual does not have the right to appeal or because of other procedural defects, or will issue a written decision to uphold, modify, or reverse ORR’s disposition.

(8) The ALJ shall serve a copy of the decision upon the parties and the Assistant Secretary for ACF. The ALJ’s decision shall provide the sustained

perpetrator at Tier I or Tier II and their attorney, if any, with instructions for requesting review by the Assistant Secretary for ACF. The ALJ also shall provide a copy of the decision to the alleged victim and the alleged victim’s parent(s), legal guardian(s) (as appropriate), or sponsor(s). The complete record upon which the decision is based shall be made available to the Assistant Secretary

* * * * *

(e) * * *

(1) A substantiated perpetrator at Tier I or Tier II may request a review of the ALJ’s decision within 30 days of receipt of the ALJ’s decision, by filing a request for review with the Office of the Assistant Secretary for ACF.

* * * * *

(6) The Office of the Assistant Secretary for ACF shall serve a copy of the final decision upon the parties involved. The Office of the Assistant Secretary for ACF also shall provide a copy of the final decision issued by the Assistant Secretary, based on review of the ALJ’s decision under this paragraph (e), to the alleged victim and the alleged victim’s parent(s), legal guardian(s) (as appropriate), or sponsor(s).

* * * * *

Elizabeth J. Gramling,

Executive Secretary, Department of Health and Human Services.

[FR Doc. 2024–30755 Filed 12–23–24; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2023–0033; FXES1113090FEDR–256–FF09E22000]

RIN 1018–BH98

Endangered and Threatened Wildlife and Plants; Emergency Listing of the Blue Tree Monitor as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Temporary rule; emergency action.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), exercise our authority pursuant to the Endangered Species Act of 1973, as amended (Act), to emergency list the blue tree monitor (*Varanus macraei*), a lizard species from Indonesia, as an endangered species. Due to overcollection for the international pet trade and

deforestation, there is a significant risk to the well-being of the species. We find that the emergency listing is necessary in order to provide the protective measures afforded by the Act to the blue tree monitor. This emergency action (emergency rule) provides Federal protection pursuant to the Act for a period of 240 days. A proposed rule to list the blue tree monitor is published concurrently with this emergency rule in the Proposed Rules section of this issue of the **Federal Register**.

DATES: This temporary rule is effective December 26, 2024 through August 25, 2025.

ADDRESSES: This temporary rule, the species status assessment report and other materials related to this temporary rule, and the proposed rule published concurrently with this temporary rule are available on the internet at <https://www.regulations.gov> under Docket No. FWS-HQ-ES-2023-0033.

FOR FURTHER INFORMATION CONTACT:

Rachel London, Manager, Branch of Delisting and Foreign Species, Ecological Services Program, U.S. Fish and Wildlife Service, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041-3803; telephone 703-358-2171.

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:

Previous Federal Actions

On April 15, 2022, we received a petition from the Center for Biological Diversity requesting that the blue tree monitor be listed as an endangered or threatened species and that the petition be considered on an emergency basis. The Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), does not provide a process to petition for emergency listing; therefore, we evaluated the petition to determine if it presented substantial scientific or commercial information indicating that the petitioned action may be warranted. On August 17, 2023, we published in the **Federal Register** (88 FR 55991) a 90-day finding that the petition presented substantial scientific and commercial information indicating that the petitioned action may be warranted.

Supporting Documents

A species status assessment (SSA) team prepared an SSA report, which is

currently under peer review, for the blue tree monitor. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review in listing and recovery actions under the Act (<https://www.fws.gov/sites/default/files/documents/peer-review-policy-directors-memo-2016-08-22.pdf>), we will solicit independent scientific review of the information contained in the blue tree monitor SSA report concurrent with the open comment period identified in the proposed rule that is published concurrently with this emergency action (emergency rule) and found in the Proposed Rules section of this issue of the **Federal Register**. The SSA report and other materials related to this emergency rule, including the proposed rule, can be found at <https://www.regulations.gov> under Docket No. FWS-HQ-ES-2023-0033. We note that, because we were already conducting a status review of the species, we had completed an SSA report prior to publishing this emergency listing rule. Therefore, we discretionarily incorporate information from the SSA report here, recognizing emergency listing rules do not require this level of detail and analysis.

Species Information

A thorough review of the taxonomy, life history, and ecology of the blue tree monitor is presented in the SSA report (Service 2024, entire).

The blue tree monitor (*Varanus macraei*) is a species of monitor lizard that was first described in 2001 (Böhme and Jacobs 2001, entire), and genetic testing confirms it is a distinct species (Ziegler et al. 2007, p. 16) that occupies the *V. prasinus* species complex (subgenus *Hapturosaurus*; Bucklitsch et al. 2016, pp. 37–38). The blue tree monitor has sharp claws, a long prehensile tail, and smooth and unkeeled neck scales, and it is distinguished from other tree monitor species by a unique blue spotted pattern throughout its body (Böhme and Jacobs 2001, pp. 7–9; Auliya and Koch 2020, p. 72). Adults average a snout vent length of 31 centimeters (cm) (12.2 inches (in)) and total length of 88 cm (34.6 in)

(Arida et al. 2021, p. 115; Del Canto 2013, p. 19; Ziegler et al. 2009, p. 123).

The blue tree monitor is a narrow-ranging endemic (highly local and known to exist only in their place of origin), and is native to the island of Batanta, within the Raja Ampat Islands of Papua, Indonesia (Böhme and Jacobs 2004, p. 214). The species is rarely encountered on Batanta, so there is little detail available on its life-history and habitat requirements (Philipp and Philipp 2007, p. 867; Auliya and Koch 2020, p. 72). The blue tree monitor is diurnal and arboreal (Böhme and Jacobs 2004, p. 214; Del Canto 2013, p. 19; Ziegler et al. 2009, p. 122), primarily feeds on invertebrates (Auliya and Koch 2020, p. 72; Del Canto 2013, p. 20), and occupies low-lying forested habitats with an ambient humidity that ranges from 65 to 100 percent (Del Canto 2013, p. 19; Sprackland 2011, unpaginated).

No quantitative population information exists for the species (Bennett 2015, p. 50), though there is evidence of declines in the wild population on Batanta as a result of overcollection for the pet trade (Arida et al. 2021, pp. 113–114; Del Canto 2013, p. 19). Blue tree monitors are valuable on the international pet market, and collecting and selling them is a source of income for local residents on Batanta (Arida et al. 2021, pp. 112–115). Blue tree monitors have been overcollected to the point that the species is now undetectable or extirpated from multiple localities on eastern Batanta (Del Canto 2013, p. 19; Arida et al. 2021, pp. 112–114), and lizard hunters report they are finding fewer specimens during week-long hunting sessions than they were historically and now must travel to more remote areas of the island to collect the species (Arida et al. 2021, pp. 114–116). Monitor lizards have a high mortality rate along the trade route and in captivity (Natusch and Lyons 2012, p. 2902; Mendyk 2015, p. 3), and many individuals are injured or die before they are exported from Indonesia (Natusch and Lyons 2012, p. 2902). Thus, the number of individuals in trade reported by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Trade Database are likely a fraction of those that are taken from the wild.

According to the CITES Trade Database, between 2003 and 2022, a total of 5,502 individual blue tree monitors were exported from Indonesia for commercial purposes (Service 2024, p. 11). The Service's Law Enforcement Management Information System (LEMIS) recorded the importation of 1,584 live blue tree monitors into the

United States between March 2004 and August 2024 (Service 2024, p. 11). During this period, the declared value per individual blue tree monitor has nearly doubled, which is likely a reflection of the increasing rarity of the species, and the increasing demand for the species driving further pressure on the species in the wild (Service 2024, p. 9). In 2023, LEMIS recorded the importation of 153 individual blue tree monitors, the highest annual importation on record, and a clear signal that the trade of blue tree monitors is continuing at a likely unsustainable level (Service 2024, p. 11). Because reptile collectors often desire to keep rare and brightly colored species in their collection (Altherr and Lameter 2020, p. 6), the demand for blue tree monitors on the international pet market will likely continue to remain high. Overcollection for the pet trade is known to cause extirpations in newly described reptile species (Stuart et al. 2006, p. 1137). Overcollection represents an immediate threat to the blue tree monitor's viability because unsustainable exploitation will likely lead to the species becoming a rarer and more valuable commodity on the pet market, thus a more appealing target for collection, and may ultimately drive the wild population into an extinction vortex (Janssen and Krishnasamy 2018, pp. 2–3). Furthermore, much of the blue tree monitor's limited habitat has already been lost due to deforestation (Webb 2005, p. 25; Newman and Valentinus 2005, p. 19; Takeuchi 2003, p. 105), and the species' viability is further threatened by a projected increase in extreme weather events resulting from climate change (Kurniadi et al. 2024, p. 160; Christensen et al. 2007, p. 879; Lee et al. 2023, p. 12; Ahmad et al. 2019, p. 2).

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we determined that the blue tree monitor population has been reduced across its range, due to the loss of its limited habitat and overcollection for the international pet trade. Because the blue tree monitor exists in a single population that is endemic to a small island that is threatened by historical and current habitat loss, it is at increased risk of extirpation due to stochastic and catastrophic events, leaving the species immediately susceptible to extinction. The blue tree monitor currently maintains insufficient resiliency, redundancy, and representation for its continued existence to be secure. Thus, after assessing the best scientific and

commercial data available, we determine that the blue tree monitor is in danger of extinction throughout all of its range.

For further discussion of the blue tree monitor's biological background information and biological status, previous Federal actions concerning the species, our threats analysis for the species, conservation efforts and regulatory mechanisms affecting the species, our determination of the species' status under the Act, and conservation measures available to listed and proposed species under the Act, consult the proposed rule to list the blue tree monitor as an endangered species that is published in this issue of the **Federal Register**. The information contained in the proposed rule supports, and provides further detail on, the rationale for this temporary rule (emergency action) to list the blue tree monitor as an endangered species under the Act.

Reasons for Emergency Determination

Under section 4(b)(7) of the Act and regulations at 50 CFR 424.20, we may emergency list a species if the threats to the species constitute an emergency posing a significant risk to its wellbeing. An emergency listing will take effect immediately upon publication in the **Federal Register**, and it expires 240 days following publication in the **Federal Register** unless, during this 240-day period, we list the species following the normal listing procedures. In accordance with the Act, if at any time after we publish this emergency rule, we determine that substantial evidence does not exist to warrant such a rule, we will withdraw it.

We conclude that emergency listing the blue tree monitor as an endangered species is warranted. In making this determination, we have carefully assessed the best scientific and commercial data available regarding the past, present, and future threats faced by the blue tree monitor. As discussed above, and in the proposed rule published concurrently with this rule, ongoing and recently increasing overcollection for the pet trade, combined with habitat loss, poses a significant and imminent threat to the blue tree monitor, such that continued unsustainable exploitation may soon lead to the extirpation of the species. Significant and possibly irreversible negative impacts to the species may occur before listing could become effective following completion of the usually required rulemaking procedures for listing a species. We, therefore, conclude that the current circumstances constitute an emergency.

By emergency listing the blue tree monitor as an endangered species, the protections of the Act (through sections 7, 9, and 10) and recognition that will immediately become available to the species will increase the likelihood that it can be saved from extinction. Published concurrently in the Proposed Rules section of this issue of the **Federal Register** (see also Docket No. FWS–HQ–ES–2023–0033 in <https://www.regulations.gov>), we are proposing to list the blue tree monitor (*Varanus macraei*) as an endangered species due to the imminent risk of extinction resulting from habitat loss and overcollection for the pet trade. For the reasons discussed in the preamble of that proposed rule, we propose in that document to make this emergency listing permanent.

Available Conservation Measures

The purposes of the Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in the Act. Under the Act, a number of steps are available to advance the conservation of species listed as endangered or threatened species. As explained further below, these conservation measures include: (1) recognition, (2) recovery actions, (3) requirements for Federal protection, (4) financial assistance for conservation programs, and (5) prohibitions against certain activities.

Recognition through listing results in public awareness, as well as in conservation by Federal, State, Tribal, and local agencies, foreign governments, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species.

Section 7 of the Act is titled, “Interagency Cooperation,” and it mandates all Federal action agencies to use their existing authorities to further the conservation purposes of the Act and to ensure that their actions are not likely to jeopardize the continued existence of listed species or adversely modify critical habitat. Regulations implementing section 7 are codified at 50 CFR part 402.

Section 7(a)(2) states that each Federal action agency shall, in consultation with the Secretary, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in

the destruction or adverse modification of designated critical habitat.

A Federal “action” that is subject to the consultation provisions of section 7(a)(2) of the Act is defined in our implementing regulations at 50 CFR 402.02 as all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas. With respect to the blue tree monitor, no known actions will require consultation under section 7(a)(2) of the Act. Given the regulatory definition of “action,” which clarifies that it applies to activities or programs “in the United States or upon the high seas,” the blue tree monitor is unlikely to be the subject of section 7 consultations, because the entire life cycle of this species occurs in terrestrial areas outside of the United States and the species is unlikely to be affected by U.S. Federal actions. Additionally, no critical habitat will be designated for this species because, under 50 CFR 424.12(g), we will not designate critical habitat within foreign countries or in other areas outside of the jurisdiction of the United States.

Section 8(a) of the Act (16 U.S.C. 1537(a)) authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered or threatened species in foreign countries. Sections 8(b) and 8(c) of the Act (16 U.S.C. 1537(b) and (c)) authorize the Secretary to encourage conservation programs for foreign listed species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, and the Service’s implementing regulations codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or to cause to be committed any of the following acts with regard to any endangered wildlife: (1) import into, or export from, the United States; (2) take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct) within the United States, within the territorial sea of the United States, or on the high seas; (3) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such wildlife that has been taken illegally; (4) deliver, receive, carry, transport, or ship

in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity; or (5) sell or offer for sale in interstate or foreign commerce. Certain exceptions to these prohibitions apply to employees or agents of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits for endangered wildlife are codified at 50 CFR 17.22, and general Service permitting regulations are codified at 50 CFR part 13. With regard to endangered wildlife, a permit may be issued: for scientific purposes, for enhancing the propagation or survival of the species, or for take incidental to otherwise lawful activities. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

The Service may also register persons subject to the jurisdiction of the United States through its captive-bred wildlife (CBW) program if certain established requirements are met under the CBW regulations (see 50 CFR 17.21(g)). Through a CBW registration, the Service may allow a registrant to conduct certain otherwise prohibited activities under certain circumstances to enhance the propagation or survival of the affected species, including take; export or re-import; delivery, receipt, carriage, transport, or shipment in interstate or foreign commerce in the course of a commercial activity; or sale or offer for sale in interstate or foreign commerce. A CBW registration may authorize interstate purchase and sale only between entities that both hold a registration for the taxon concerned. The CBW program is available for species having a natural geographic distribution not including any part of the United States and other species that the Service Director has determined to be eligible by regulation. The individual specimens must have been born in captivity in the United States.

The provisions in section 9(b)(1) of the Act (16 U.S.C. 1538(b)(1)) provide a limited exemption from certain otherwise prohibited activities regarding wildlife specimens held in captivity or in a controlled environment on the pre-Act date (for species first listed after the enactment of the Endangered Species Act, the pre-Act date is the date of publication in the **Federal Register** of the final regulation adding such species to the List of Endangered and Threatened Wildlife for the first time),

provided that such holding and any subsequent holding or use of the wildlife was not in the course of a commercial activity (commonly referred to as “pre-Act” specimens) (96 Stat. 1426–27 (1982); H.R. Rep. No. 97–835, 97th Cong., 2nd Sess., at 35 (1982) (Conf. Rep.); S. Rep. No. 97–418, 97th Cong., 2nd Sess., at 24–25 (1982)). Specifically, section 9(b)(1) of the Act states that the prohibitions of sections 9(a)(1)(A) and 9(a)(1)(G) shall not apply to any fish or wildlife which was held in captivity or in a controlled environment on (A) December 28, 1973, or (B) the date of the publication in the **Federal Register** of a final regulation adding such fish or wildlife to any list of species published pursuant to section 4(c) of the Act (as relevant to listed wildlife, the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h)) that such holding and any subsequent holding or use of the fish or wildlife was not in the course of a commercial activity.

Therefore, for pre-Act wildlife, there is a limited exemption from the prohibitions associated with: (1) import into, or export from, the United States of any endangered wildlife, or (2) violation of regulations pertaining to endangered or threatened wildlife. Other prohibitions of section 9—including those at section 9(a)(1)(B)–(F), regarding take of endangered wildlife, possession and other acts with unlawfully taken wildlife, interstate or foreign commerce in endangered wildlife, and sale or offer for sale of endangered wildlife—continue to apply to activities with qualifying endangered pre-Act wildlife specimens. Specimens born after the pre-Act date and specimens taken from the wild after the pre-Act date do not qualify as “pre-Act” wildlife under the text of section 9(b)(1) of the Act. If a person engages in any commercial activity with a “pre-Act” specimen on or after the pre-Act date, the wildlife would immediately cease to qualify as pre-Act wildlife and become subject to the relevant prohibitions, because it has been held or used in the course of a commercial activity.

Additional requirements apply to activities with all blue tree monitors, separate from their listing or proposed listing as endangered species or threatened species. As a CITES-listed species, all international trade of any blue tree monitor by persons subject to the jurisdiction of the United States must also comply with CITES requirements pursuant to section 9, paragraphs (c) and (g), of the Act (16 U.S.C. 1538(c) and (g)) and to 50 CFR part 23. As “fish or wildlife” (16 U.S.C. 1532(8)), blue tree monitor imports and

exports must also meet applicable wildlife import/export requirements established under section 9, paragraphs (d), (e), and (f), of the Act (16 U.S.C. 1538(d), (e), and (f)); the Lacey Act Amendments of 1981 (16 U.S.C. 3371 *et seq.*); and 50 CFR part 14. Questions regarding whether specific activities with blue tree monitor would constitute a violation of section 9 of the Act should be directed to the Service's Division of Management Authority (managementauthority@fws.gov; 703–358–2104).

Required Determinations

*National Environmental Policy Act (42 U.S.C. 4321 *et seq.*)*

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the

Federal Register on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this rulemaking is available on the internet at <https://www.regulations.gov> and upon request from the Branch of Delisting and Foreign Species (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Branch of Delisting and Foreign Species.

List of Subjects in 50 CFR Part 17

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

Signing Authority

Martha Williams, Director of the U.S. Fish and Wildlife Service, approved this action on December 3, 2024. Acting Director Steve Guertin approved these packages December 15, 2024. On December 16, 2024, the acting Director

authorized the undersigned to sign the document electronically and submit it to the Office of the Federal Register for publication as an official document of the U.S. Fish and Wildlife Service.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.11, in paragraph (h), amend the List of Endangered and Threatened Wildlife by adding an entry for “Monitor, blue tree” in alphabetical order under REPTILES to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
Reptiles				
*	*	*	*	*
Monitor, blue tree	<i>Varanus macraei</i>	Wherever found	E	89 [Insert Federal Register Page Where Document Begins], 12/26/2024.
*	*	*	*	*

Madonna Baucum,

Regulations and Policy Chief, Division of Policy, Economics, Risk Management, and Analytics of the Joint Administrative Operations, U.S. Fish and Wildlife Service.
[FR Doc. 2024–30375 Filed 12–23–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 240514–0137; RTID 0648–XE258]

Fisheries Off West Coast States; Modification of the West Coast Salmon Fisheries; Inseason Actions #4–16

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

ACTION: Inseason modification of 2024 management measures.

SUMMARY: NMFS announces 13 inseason actions for the 2024–2025 ocean salmon fishing season. These inseason actions

modify the recreational and commercial salmon troll fisheries in the area from the U.S./Canada border to Humbug Mountain, OR.

DATES: The effective dates for these inseason actions are set out in this document under the heading “Inseason Actions” and the actions remain in effect until superseded or modified.

FOR FURTHER INFORMATION CONTACT:

Anna Heeter, (971) 361–8895, Anna.Heeter@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The annual management measures for the 2024 and early 2025 ocean salmon fisheries (89 FR 44553, May 21, 2024) govern the commercial and recreational fisheries in the area from the U.S./Canada border to the U.S./Mexico border, effective from 0001 hours Pacific

Daylight Time (PDT), May 16, 2024, until the effective date of the 2025 management measures, as published in the **Federal Register**. NMFS is authorized to implement inseason management actions to modify fishing seasons and quotas as necessary to provide fishing opportunity while meeting management objectives for the affected species (50 CFR 660.409). Inseason actions in the salmon fishery may be taken directly by NMFS (50 CFR 660.409(a)—Fixed inseason management provisions) or upon consultation with the Chairman of the Pacific Fishery Management Council (Council), and the appropriate State Directors (50 CFR 660.409(b)—Flexible inseason management provisions).

Management of the salmon fisheries is divided into two geographic areas: north of Cape Falcon (NOF) (U.S./Canada border to Cape Falcon, OR), and south of Cape Falcon (SOF) (Cape Falcon, OR, to the U.S./Mexico border). The actions described in this document affect the NOF commercial salmon troll fisheries, NOF recreational fisheries, and SOF recreational fisheries, as set out under the heading “Inseason Actions” below.

Consultation with the Council Chairperson on these inseason actions occurred on June 27, 2024, July 10, 2024, July 31, 2024, August 8, 2024, August 15, 2024, August 19, 2024, August 21, 2024, August 28, 2024, August 29, 2024, and September 11, 2024. These consultations included representatives from NMFS, Washington Department of Fish and Wildlife, Oregon Department of Fish and Wildlife, and California Department of Fish and Wildlife. Representatives from the Salmon Advisory Subpanel and Salmon Technical Team were also present. A Council representative was present on June 27, 2024, July 10, 2024, July 31, 2024, August 8, 2024, August 15, 2024, August 19, 2024, August 21, 2024, August 28, 2024, August 29, 2024, and September 11, 2024.

These inseason actions were announced on NMFS’ telephone hotline and U.S. Coast Guard radio broadcast on the date of the consultations (50 CFR 660.411(a)(2)).

Inseason Actions

Inseason Action #4

Description of the action: Inseason action #4 modifies the NOF ocean salmon troll commercial fishery from the U.S./Canada border to Cape Falcon, OR.

Effective dates: Inseason action #4 takes effect for the following areas and dates, and remains in effect until superseded.

- Effective 12:01 a.m., Monday, July 1, 2024, for the commercial salmon troll fishery, the landing and possession limit for the entire area between the U.S./Canada border and Cape Falcon, OR will be modified from 70 Chinook salmon and 100 coho salmon per vessel to 40 Chinook salmon and 100 coho salmon per vessel for the open period July 1–10.

- Effective 12:01 a.m., Thursday, July 11, 2024, for the commercial salmon troll fishery, the landing and possession limit for the entire area between the U.S./Canada border and Cape Falcon, OR will be modified from 120 Chinook salmon and 100 coho salmon per vessel per landing week to 40 Chinook salmon and 100 coho salmon per vessel per landing week.

Reason and authorization for the action: Inseason action #4 is necessary to preserve the season length and allow access to the Chinook salmon and coho salmon quota. The reductions in Chinook landing limits are intended to slow catch to maximize season length and ensure that the conservation objectives outlined in the Fishery Management Plan (FMP) and Endangered Species Act (ESA) are met. After reviewing current and historical catch and effort data as well as weather forecasts, it was determined that reducing the landing and possession limit for the allocated period of time will allow for greater fishing opportunity throughout the month of July while remaining within the quota.

The NMFS West Coast Regional Administrator (RA) considered the 2024 abundance forecasts for Chinook salmon stocks, the timing of the actions relative to the length of the season and the remaining Chinook commercial troll quota, and determined that this inseason action is necessary to meet management and conservations goals for the 2024–2025 management measures. This inseason action modified quotas and/or fishing seasons as authorized under 50 CFR 660.409(b)(1)(i).

Inseason Action #5

Description of the action: Inseason action #5 modifies the Chinook salmon quota for the July–September NOF commercial salmon troll fishery to 13,800 Chinook salmon from 16,400 Chinook salmon.

Effective dates: Inseason action #5 takes effect on July 11, 2024, at 12:01 a.m. and remains in effect until superseded.

Reason and authorization for the action: Inseason action #5 is necessary to offset the overage from the May–June Chinook salmon quota and ensure conservation objectives would not be

exceeded. The July–September quota was reduced from 16,400 to 13,800. This change kept the fishery as a whole impact-neutral to the Oregon Coast Coho stock which was the most constraining stock for the fishery and was within the overall quota set preseason.

The RA considered the landings of Chinook salmon in the NOF commercial salmon fishery, fishery effort occurring to date, quotas set preseason, and the Salmon Technical Team’s (STT’s) calculations for the impact-neutral quota adjustment. The RA determined that this inseason action is necessary to meet management and conservations goals for the 2024–2025 management measures. This inseason action modified quotas and/or fishing seasons as authorized under 50 CFR 660.409(b)(1)(i).

Inseason Action #6

Description of the action: Inseason action #6 modifies the recreational fishery in the area between the U.S./Canada border and the Queets River (Neah Bay and La Push subareas). The daily bag limit in both subareas is modified from two salmon per day of which only one may be a Chinook to two salmon per day for all salmon, except no chum salmon beginning August 1. All coho salmon must be marked with a healed adipose fin clip. Chinook salmon minimum size is 24 inches (61 centimeters (cm)), and coho salmon minimum size is 16 inches (40.7 cm).

Effective dates: Inseason action #6 takes effect on July 13, 2024, at 12:01 a.m. and remains in effect until September 15, 2024.

Reason and authorization for the action: Inseason action #6 is necessary to provide greater fishing opportunity for the public to access the available Chinook salmon quota. Catch rates and effort declined since July 4, 2024, which allowed for an increase in the Chinook landing limit. Based on catch and effort data from previous weeks and historical catch, effort, and weather reports to refine projected effort, increasing the bag limit in the Neah Bay and La Push subareas would allow for greater access to the Chinook salmon quota while also ensuring the quota is not exceeded.

The RA considered the 2024 abundance forecasts for Chinook salmon stocks, the remaining quota, the timing of the action relative to the length of the season, the catch and effort to date, and determined that this inseason action is necessary to meet management and conservations goals for the 2024–2025 management measures including season length. This inseason action modifies

bag limits as authorized under 50 CFR 660.409(b)(1)(iii).

Inseason Action #7

Description of the action: Inseason action #7 modifies the commercial salmon fishery in the area between the U.S./Canada border and Cape Falcon. The landing and possession limit is modified from 25 Chinook salmon and 100 marked coho salmon per vessel per landing week to 20 Chinook salmon and 100 marked coho salmon per vessel per landing week (Thursday–Wednesday).

Effective dates: Inseason action #7 takes effect on August 1, 2024, at 12:01 a.m. and remains in effect until superseded.

Reason and authorization for the action: Inseason action #7 is necessary because higher catches and higher effort than anticipated at this point in the season have been reported. This modification will slow the catch to preserve season length, thereby ensuring the fishery retains as much economic activity possible while also meeting conservation objectives.

The RA considered the 2024 abundance forecasts for Chinook salmon stocks, the timing of the actions relative to the length of the season, the remaining quota, as well as catch and effort to date, and determined that this inseason action is necessary to meet management and conservations goals for the 2024–2025 management measures. This inseason action modifies quotas and/or fishing seasons as authorized under 50 CFR 660.409(b)(1)(i).

Inseason Action #8

Description of the action: Inseason action #8 modifies the NOF recreational salmon fishery. The area between Cape Falcon and Leadbetter Point (Columbia River subarea) is closed. Possession of coho salmon is illegal when retention is prohibited in the area.

Effective dates: Inseason action #8 takes effect on August 12, 2024, at 12:01 a.m. and remains in effect until superseded.

Reason and authorization for the action: Inseason action #8 was necessary to avoid exceeding the NOF recreational quota for coho salmon. Extensive analysis indicated that it was not possible to reallocate excess salmon quota from other recreational or commercial fisheries while also ensuring the fishery remains impact-neutral. The fishery was closed in order to ensure the quota was not exceeded and conservation objectives were met.

The RA considered the 2024 abundance forecasts for Chinook salmon stocks, the remaining quota, and the

timing of the actions relative to the length of the season, and determined that this inseason action is necessary to meet management and conservations goals for the 2024–2025 management measures. This inseason action modifies quotas and/or fishing seasons as authorized under 50 CFR 660.409(b)(1)(i).

Inseason Action #9

Description of the action: Inseason action #9 modifies the commercial fishery in the area between the U.S./Canada border and Cape Falcon.

Effective dates: Inseason action #9 takes effect for the following areas and dates, and remains in effect until superseded.

- Effective Thursday, August 15, 2024, at 6 p.m., the landing and possession limit for the North of Falcon commercial ocean salmon troll fishery is modified to 25 Chinook salmon and 100 marked coho salmon per vessel per landing week from 20 Chinook salmon and 100 marked coho salmon per vessel per landing week (Thursday–Wednesday).

- Effective Monday, August 19, 2024, at 12:01 a.m., the recreational salmon fishery in the area between Cape Falcon and Leadbetter Point (Columbia River subarea) is open to fishing for salmon. The daily limit will be two salmon, no more than one of which may be a Chinook salmon with a minimum size limit of 22 inches (55.8 cm). All coho must be marked with a healed adipose fin clip. The Columbia River Control Zone will remain closed.

Reason and authorization for the action: Inseason action #9 is necessary to sustain the length of the season and maximize access to the NOF commercial and recreational quota. In response to overall diminished effort and a larger portion of the quota remaining than anticipated in the NOF commercial troll fishery, the Chinook salmon landing and possession limit will be raised from 20 to 25 Chinook salmon per vessel per landing week. This will allow for greater access to the Chinook salmon quota. Also, there have been less coho salmon caught than projected in the recreational fishery in the Columbia River subarea, so opening the fishery allows access to the remaining recreational coho salmon quota.

The RA considered the 2024 abundance forecasts for Chinook salmon stocks, the timing of the actions relative to the length of the season, as well as catch and effort to date, and determined that this inseason action is necessary to meet management and conservations goals for the 2024–2025 management measures. This inseason action modifies

quotas and/or fishing seasons as authorized under 50 CFR 660.409(b)(1)(i).

Inseason Action #10

Description of the action: Inseason action #10 modifies the recreational fishery in the area North of Cape Falcon. The area between Cape Falcon and Leadbetter Point (Columbia River subarea) is closed. Possession of salmon on board a vessel will be prohibited in the Columbia River subarea.

Effective dates: Inseason action #10 takes effect on August 23, 2024, at 12:01 a.m. and remains in effect until superseded.

Reason and authorization for the action: Inseason action #10 is necessary in order to ensure that the NOF recreational coho salmon quota for the Columbia River subarea will not be exceeded. Using data from previous weeks as well as historic data on catch and effort rates in the Columbia River subarea, it was projected that fishing beyond August 23, 2024, would exceed the available coho salmon quota for this subarea.

The RA considered landings of Chinook and coho salmon stocks to date and projected catches in the recreational salmon fishery, fishery effort occurring to date and projected effort, quotas and guidelines set preseason, and the recreational coho salmon quota remaining. The RA determined that this inseason action is necessary to meet management and conservations goals for the 2024–2025 management measures. This inseason action modifies quotas and/or fishing seasons as authorized under 50 CFR 660.409(b)(1)(i).

Inseason Action #11

Description of the action: Inseason action #11 modifies the NOF recreational salmon fishery. The area between Cape Alava and the Queets River (La Push subarea) is closed. Possession of salmon on board a vessel will be prohibited in the La Push subarea.

Effective dates: Inseason action #11 takes effect on August 21, 2024, at 12:01 a.m. and remains in effect until superseded.

Reason and authorization for the action: Inseason action #11 is necessary to avoid exceeding the La Push subarea recreational quota for coho salmon. By reviewing catch and effort level data, and predicted weather conditions to assess anticipated effort, keeping the fishery open would result in an exceedance of the La Push subarea coho salmon quota.

The RA considered landings of Chinook and coho salmon stocks to date

and projected catches in the recreational salmon fishery, fishery effort occurring to date and projected effort, quotas and guidelines set preseason, and the recreational coho salmon quota remaining. The RA determined that this inseason action is necessary to meet management and conservation goals for the 2024–2025 management measures. This inseason action modifies quotas and/or fishing seasons as authorized under 50 CFR 660.409(b)(1)(i).

Inseason Action #12

Description of the action: Inseason action #12 modifies the NOF recreational salmon fishery. The area between the Queets River and Leadbetter Point (Westport subarea) is closed. Possession of salmon on board a vessel will be prohibited in the Westport subarea.

Effective dates: Inseason action #12 takes effect on August 25, 2024, at 12:01 a.m. and remains in effect until superseded.

Reason and authorization for the action: Inseason action #12 is necessary to avoid exceeding the area of NOF quota for coho salmon. By reviewing catch and effort level data, and predicted weather conditions to assess anticipated effort, it is projected that keeping the fishery open would result in an exceedance of the Westport subarea quota.

The RA considered landings of Chinook and coho salmon stocks to date and projected catches in the recreational salmon fishery, fishery effort occurring to date and projected effort quotas and guidelines set preseason, and the recreational coho salmon quota remaining. The RA determined that this inseason action is necessary to meet management and conservation goals for the 2024–2025 management measures. This inseason action modifies quotas and/or fishing seasons as authorized under 50 CFR 660.409(b)(1)(i).

Inseason Action #13

Description of the action: Inseason action #13 modifies the SOF recreational fishery from Cape Falcon to Humbug Mountain. This action increases the non-mark selective coho quota in the recreational fishery from Cape Falcon to Humbug Mountain from 25,000 to 30,700 through an impact-neutral rollover of 5,700 unused coho salmon from the Cape Falcon to the OR/CA border.

Effective dates: Inseason action #13 takes effect on September 1, 2024, at 12:01 a.m. and remains in effect until superseded.

Reason and authorization for the action: Authority for this impact-neutral

rollover of unutilized quota is specified in the 2024 ocean salmon regulations (89 FR 44553, May 21, 2024).

The STT calculated that an impact-neutral rollover of the unutilized coho salmon quota would add 5,700 coho salmon from the June–August mark-selective period to the September non-selective coho salmon fishery quota of 25,000 to an adjusted quota of 30,700 coho salmon.

The RA determined that this inseason action is necessary to meet management and conservation goals for the 2024–early 2025 management measures after considering the best available information on the 2024 abundance forecasts for coho salmon stocks, remaining quota, effects on coho conservation objectives and the other factors and considerations set forth in 50 CFR 660.409. This inseason action modified quotas and/or fishing seasons as authorized under 50 CFR 660.409(b)(1)(i).

Inseason Action #14

Description of the action: Inseason action #14 modifies the NOF recreational fishery from the U.S./Canada Border and Cape Alava (Neah Bay subarea). The area between the U.S./Canada Border and Cape Alava (Neah Bay subarea) is closed to fishing for salmon.

Effective dates: Inseason action #14 takes effect on September 3, 2024, at 12:01 a.m. and remains in effect until superseded.

Reason and authorization for the action: Inseason action #14 is necessary to avoid exceeding the Neah Bay subarea recreational quota for coho salmon. According to catch data, 96 percent of the coho quota had been used as of August 29, 2024. It is necessary to close the fishery in order to prevent an exceedance of the Neah Bay subarea quota.

The RA considered catch of Chinook and coho salmon stocks to date and projected catches in the recreational salmon fishery, fishery effort occurring to date and projected effort, quotas and guidelines set preseason, and the recreational coho salmon quota remaining. The RA determined that this inseason action is necessary to meet management and conservation goals for the 2024–2025 management measures. This inseason action modifies quotas and/or fishing seasons as authorized under 50 CFR 660.409(b)(1)(i).

Inseason Action #15

Description of the action: Inseason action #15 modifies the NOF recreational fishery between Queets River and Cape Falcon (Westport and

Columbia River subareas). The Westport and Columbia River subareas are open to fishing for salmon. The daily limit is two salmon, no more than one of which may be a Chinook. All coho must be marked with a healed adipose fin clip.

Effective dates: Inseason action #15 takes effect on September 4, 2024, at 12:01 a.m. and remains in effect until September 4, 2024, at 11:59 p.m.

Reason and authorization for the action: Inseason action #15 is necessary to allow for access to the remaining Chinook and coho salmon quota, which has not been fully used, while not exceeding the designated quota for the Westport and Columbia River subareas.

The RA considered catch of Chinook and coho salmon stocks to date and projected catches in the recreational salmon fishery, fishery effort occurring to date and projected effort, quotas and guidelines set preseason, and the recreational coho salmon quota remaining. The RA determined that this inseason action is necessary to meet management and conservation goals for the 2024–2025 management measures. This inseason action modifies quotas and/or fishing seasons as authorized under 50 CFR 660.409(b)(1)(i).

Inseason Action #16

Description of the action: Inseason action #16 modifies the SOF recreational salmon fishery. The area between Cape Falcon and Humbug Mountain is closed to retention of coho salmon. This area remains open for Chinook salmon retention with a daily bag limit of two salmon (24 inches (60.96 cm) minimum length).

Effective dates: Inseason action #16 takes effect on September 15, 2024, at 11:59 p.m. and remains in effect until superseded.

Reason and authorization for the action: Inseason action #16 is necessary to avoid exceeding the area of SOF quota for coho salmon. As of September 8, 2024, the estimated coho salmon catch was 17,789 fish out of an adjusted non-mark-selective coho salmon quota of 30,700 fish, or 58 percent of the quota. By reviewing catch and effort level data, and predicted weather conditions to assess anticipated effort, it is projected that keeping the fishery open would result in an exceedance of the SOF recreational quota.

The RA considered the catch of Chinook and coho salmon stocks to date and projected catches in the recreational salmon fishery, fishery effort occurring to date and projected effort, quotas and guidelines set preseason, and the recreational coho salmon quota remaining and determined that this inseason action was necessary to meet

management and conservations goals for the 2024–2025 management measures. This inseason action modifies recreational bag limits as authorized under 50 CFR 660.409(b)(1)(iii).

All other restrictions and regulations remain in effect as announced for the 2024 ocean salmon fisheries (89 FR 44553, May 21, 2024; 89 FR 61355, July 31, 2024).

The States and Tribes manage the fisheries in State waters adjacent to the areas of the U.S. exclusive economic zone (3–200 nautical miles; 5.6–370.4 kilometers) off the coasts of the States of Washington, Oregon, and California consistent with these Federal actions. As provided by the inseason notice procedures at 50 CFR 660.411, actual notice of the described regulatory actions was given, prior to the time the actions became effective, by telephone hotline numbers 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 kHz.

Classification

NMFS issues these actions pursuant to section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). These actions are authorized by 50 CFR 660.409, which was issued pursuant to section 304(b) of the MSA, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. Prior notice and opportunity for public comment on this action was impracticable because NMFS had insufficient time to provide for prior notice and the opportunity for public comment between the time Chinook salmon and coho salmon abundance, catch, and effort information were developed and fisheries impacts were calculated, and the time the fishery modifications had to be implemented in order to ensure that fisheries are managed based on the

best scientific information available and consistent with the conservation objectives. As previously noted, actual notice of the regulatory action was provided to fishers through telephone hotlines and radio notifications. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (88 FR 30235, May 11, 2023), the Pacific Salmon FMP, and regulations implementing the FMP under 50 CFR 660.409 and 660.411.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date, as a delay in effectiveness of this action would allow fishing at levels inconsistent with the goals of the FMP and the current management measures.

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

Dated: December 18, 2024.

Kelly Denit,

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

[FR Doc. 2024–30580 Filed 12–23–24; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 89, No. 247

Thursday, December 26, 2024

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 351 and 430

RIN 3206–AO06

Reduction in Force

AGENCY: Office of Personnel Management.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Office of Personnel Management is clarifying its withdrawal of a proposed rule published on December 17, 2020. The notice of proposed rulemaking, *inter alia*, proposed revising OPM's reduction-in-force regulations to prioritize performance over length of service when determining which employees will be retained in a RIF. OPM withdrew the proposed rule on March 12, 2021, but in an abundance of caution issues this clarification reiterating that the proposed rule is withdrawn.

DATES: OPM withdraws the proposed rule as of March 12, 2021, or no later than December 20, 2024.

ADDRESSES: The docket for this withdrawn rule is available at https://www.regulations.gov/document/OPM_FRDOC_0001-2024.

FOR FURTHER INFORMATION CONTACT: Latonia Page (202) 936–3459 or email: employ@opm.gov.

SUPPLEMENTARY INFORMATION: On December 17, 2020, the Office of Personnel Management (OPM) published a notice of proposed rulemaking (NPRM or proposed rule) titled "Reduction in Force," in the **Federal Register**. See 85 FR 81839. The NPRM proposed to revise OPM's reduction-in-force (RIF) regulations to prioritize performance over length of service when determining which employees will be retained in a RIF, in response to section 2(j) of Executive Order (E.O.) 13839 (May 25, 2018), titled "Promoting Accountability and Streamlining Removal Procedures Consistent with Merit Systems and

Principles." OPM also proposed modifying the order of retention, clarifying tenure group definitions, and modifying how credit for performance is computed.

In response to the NPRM, OPM received approximately 44 comments during the 30-day comment period which ended on January 19, 2021.

On January 22, 2021, President Biden issued an E.O. 14003 titled "Protecting the Federal Workforce," which, among other things, revoked E.O. 13839. See 86 FR 7231.

On March 12, 2021, OPM withdrew its NPRM from its regulatory agenda (see <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=3206-AO06>) for three independently sufficient reasons, among others: because E.O. 13839 was revoked, because the NPRM no longer reflected OPM's policy position, and because issuing such a rule was not a priority for OPM.

OPM believes its withdrawal on March 12, 2021, was valid and the agency, regulated entities, and the public have operated with that understanding. Nevertheless, in an abundance of caution, OPM hereby clarifies that the NPRM is withdrawn.

Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

[FR Doc. 2024–30883 Filed 12–20–24; 11:15 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–2665; Project Identifier AD–2024–00203–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2016–14–04, which applies to certain The Boeing Company Model 787–8

airplanes. AD 2016–14–04 requires replacing the potable waterline couplings above the forward and aft electronics equipment (EE) bays with new, improved couplings. AD 2016–14–04 also requires sealing the main cabin floor areas above the aft EE bay, installing drip shields and foam blocks, and rerouting the wire bundles near the drip shields above the equipment in the aft EE bay. Since the FAA issued AD 2016–14–04, it was determined that sealant, moisture barrier tape and tape dam requirements above the EE bays may not have been installed on production airplanes. This proposed AD continues to require the actions in AD 2016–14–04 and would require an inspection of seat tracks above the EE bays for missing, damaged, or deteriorated sealant, moisture barrier tape, or tape dams, as applicable, and applicable on-condition actions. This proposed AD also adds airplanes to the applicability. 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 February 10, 2025.

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](https://www.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](https://www.regulations.gov) under Docket No. FAA–2024–2665; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For the material identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS),

2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website myboeingfleet.com.

- You may view this material 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–2024–2665.

FOR FURTHER INFORMATION CONTACT:

Courtney Tuck, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3986; email: courtney.k.tuck@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 the **ADDRESSES** section. Include “Docket No. FAA–2024–2665; Project Identifier AD–2024–00203–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 Courtney Tuck, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3986; email: courtney.k.tuck@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 2016–14–04, Amendment 39–18585 (81 FR 44499, July 8, 2016) (AD 2016–14–04), for certain The Boeing Company Model 787–8 airplanes. AD 2016–14–04 was prompted by reports of water leakage from the potable water system due to improperly installed waterline couplings, and water leaking into the EE bays from above the floor in the main cabin, resulting in water on the equipment in the EE bays. AD 2016–14–04 requires replacing the potable waterline couplings above the forward and aft EE bays with new, improved couplings. AD 2016–14–04 also requires sealing the main cabin floor areas above the aft EE bay, installing drip shields and foam blocks, and rerouting the wire bundles near the drip shields above the equipment in the aft EE bay. The agency issued AD 2016–14–04 to prevent a water leak from an improperly installed potable water system coupling, or main cabin water source, which could cause the equipment in the EE bays to become wet, resulting in an electrical short and potential loss of system functions essential for safe flight.

Actions Since AD 2016–14–04 Was Issued

Since the FAA issued AD 2016–14–04, it was determined that sealant, moisture barrier tape and tape dam requirements above the EE bays may not have been installed on production airplanes. Missing moisture barrier tape, tape dams, and sealant at the end of exposed seat tracks above the forward and aft EE bays could allow water to leak onto equipment located in the EE bay(s) which could result in an electrical short and potential loss of several functions essential for safe flight.

FAA’s Determination

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

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 787–81205–SB530085–00 RB, Issue 001, dated March 6, 2024. This material specifies procedures for a detailed inspection of seat tracks located above the aft EE bays for missing, damaged, or deteriorated sealant, moisture barrier tape, or tape dams, as applicable, and applicable on-condition actions. On-condition actions include applying sealant, moisture barrier tape, and tape dams to each affected area.

The FAA also reviewed the following material:

- Boeing Alert Service Bulletin B787–81205–SB380009–00, Issue 003, dated April 28, 2017, which describes procedures for replacing the existing potable waterline couplings located above the forward and aft EE bays with new, improved couplings, doing a potable water system leak test and repairing any leaks found.

- Boeing Alert Service Bulletin B787–81205–SB530029–00, Issue 003, dated May 6, 2019, which describes procedures for applying sealant to the main cabin floor areas located above the aft EE bay.

- Boeing Alert Service Bulletin B787–81205–SB530031–00, Issue 003, dated April 24, 2017, which describes procedures for installing drip shields and foam blocks, and rerouting the wire bundles near the drip shields above the equipment in the aft EE bay.

This proposed AD would also require the following material, which the Director of the Federal Register approved for incorporation by reference as of August 12, 2016 (81 FR 44499, July 8, 2016):

- Boeing Alert Service Bulletin B787–81205–SB380009–00, Issue 002, dated December 9, 2015.

- Boeing Alert Service Bulletin B787–81205–SB530029–00, Issue 002, dated January 26, 2016.

- Boeing Alert Service Bulletin B787–81205–SB530031–00, Issue 002, dated March 16, 2016.

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.

Proposed AD Requirements in This NPRM

This proposed AD would retain all requirements of AD 2016–14–04. This proposed AD would add certain Model 787–8, 787–9, and 787–10 airplanes to the applicability. This proposed AD would also require accomplishing the

actions specified in the material already described, except for any differences identified as exceptions in the regulatory text of this proposed AD.

For information on the procedures and compliance times, see this material at *regulations.gov* under Docket No. FAA–2024–2665.

Clarification of Affected Airplanes

Paragraphs (g), (h)(1), and (h)(2) of AD 2016–14–04 specify doing actions in accordance with certain service information. However, the paragraphs apply to all airplanes identified in the applicability and did not limit the paragraphs to airplanes identified in the service information identified in each paragraph. Therefore, in paragraphs (g),

(h)(1), and (h)(2) of this AD, the FAA has clarified the affected airplanes for each paragraph.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 64 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2016–14–04.	Up to 174 work-hours × \$85 per hour = up to \$14,790 per inspection cycle.	\$37,926	Up to \$52,716	Up to \$3,373,824.
Inspection of floor seat track (new proposed action).	22 work-hours × \$85 per hour = \$1,870.	0	\$1,870	\$119,680.

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on

the results of the proposed inspection. The agency has no way of determining

the number of aircraft that might need this repair:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Applying sealant, moisture barrier tape, or tape dam ..	33 work-hours × \$85 per hour = \$2,805	\$350	\$3,155

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 (AD) 2016–14–04, Amendment 39–18585 (81 FR 44499, July 8, 2016), and
 - b. Adding the following new AD:

The Boeing Company: Docket No. FAA–2024–2665; Project Identifier AD–2024–00203–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by February 10, 2025.

(b) Affected ADs

This AD replaces AD 2016–14–04, Amendment 39–18585 (81 FR 44499, July 8, 2016) (AD 2016–14–04).

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) and (2) of this AD, certificated in any category.

(1) The Boeing Company Model 787–8, 787–9, and 787–10 airplanes as identified in Boeing Alert Requirements Bulletin 787–81205–SB530085–00 RB, Issue 001, dated March 6, 2024.

(2) The Boeing Company Model 787–8 airplanes, as identified in the service

information specified in paragraphs (c)(2)(i) through (iii) of this AD.

(i) Boeing Alert Service Bulletin B787–81205–SB380009–00, Issue 002, dated December 9, 2015.

(ii) Boeing Alert Service Bulletin B787–81205–SB530029–00, Issue 002, dated January 26, 2016.

(iii) Boeing Alert Service Bulletin B787–81205–SB530031–00, Issue 002, dated March 16, 2016.

(d) Subject

Air Transport Association (ATA) of America Code 38, water waste; 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of water leakage from the potable water system due to improperly installed waterline couplings, and water leaking into the electronics equipment (EE) bays from above the floor in the main cabin, resulting in water on the equipment in the EE bays. In addition, after AD 2016–14–04 was issued, it was determined that sealant, moisture barrier tape and tape dam requirements above the EE bays may not have been installed on production airplanes. A water leak from an improperly installed potable water system coupling, or main cabin water source, if not addressed, could cause the equipment in the EE bays to become wet, resulting in an electrical short and potential loss of system functions essential for safe flight.

(f) Compliance

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

(g) Retained Replacement of Potable Waterline Couplings, With Revised Service Information

This paragraph restates the requirements of paragraph (g) of AD 2016–14–04, with revised service information. For airplanes identified in Boeing Alert Service Bulletin B787–81205–SB380009–00, Issue 002, dated December 9, 2015: Within 24 months after August 12, 2016 (the effective date of AD 2016–14–04), replace the existing potable waterline couplings located above the forward and aft EE bays with new, improved couplings, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB380009–00, Issue 002, dated December 9, 2015; or Boeing Alert Service Bulletin B787–81205–SB380009–00, Issue 003, dated April 28, 2017. Before further flight after doing the replacement, do a potable water system leak test and repair any leaks found before further flight, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB380009–00, Issue 002, dated December 9, 2015; or Boeing Alert Service Bulletin B787–81205–SB380009–00, Issue 003, dated April 28, 2017. As of the effective date of this AD, only use Boeing Alert Service Bulletin B787–81205–SB380009–00, Issue 003, dated April 28, 2017, for the actions required by this paragraph.

(h) Retained Seal Floor Panels and Seat Tracks/Install Drip Shields and Reroute Wiring, With Revised Service Information

This paragraph restates the requirements of paragraph (h) of AD 2016–14–04, with revised service information. Within 60 months after August 12, 2016 (the effective date of AD 2016–14–04), do the actions specified in paragraphs (h)(1) and (2) of this AD, as applicable.

(1) For airplanes identified in Boeing Alert Service Bulletin B787–81205–SB530029–00, Issue 002, dated January 26, 2016: Apply sealant to the main cabin floor areas located above the aft EE bay, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB530029–00, Issue 002, dated January 26, 2016; or Boeing Alert Service Bulletin B787–81205–SB530029–00, Issue 003, dated May 6, 2019. As of the effective date of this AD, only use Boeing Alert Service Bulletin B787–81205–SB530029–00, Issue 003, dated May 6, 2019, for the actions required by this paragraph.

(2) For airplanes identified in Boeing Alert Service Bulletin B787–81205–SB530031–00, Issue 002, dated March 16, 2016: Install drip shields and foam blocks, and reroute the wire bundles above the equipment in the aft EE bay, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB530031–00, Issue 002, dated March 16, 2016; or Boeing Alert Service Bulletin B787–81205–SB530031–00, Issue 003, dated April 24, 2017, except as specified in paragraph (i) of this AD. As of the effective date of this AD, only use Boeing Alert Service Bulletin B787–81205–SB530031–00, Issue 003, dated April 24, 2017, for the actions required by this paragraph.

(i) Retained Exception to Certain Service Information, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2016–14–04, with no changes. Where Boeing Alert Service Bulletin B787–81205–SB530031–00, Issue 002, dated March 16, 2016, specifies “Group 6, Configuration 1” airplanes in reference to Task 29, the correct airplane group identification is “Group 7, Configuration 1” airplanes.

(j) New Required Actions

For airplanes identified in Boeing Alert Requirements Bulletin B787–81205–SB530085–00 RB, Issue 001, dated March 6, 2024: Except as specified by paragraph (k) of this AD, at the applicable times specified in the “Compliance” paragraph of Boeing Alert Requirements Bulletin B787–81205–SB530085–00 RB, Issue 001, dated March 6, 2024, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–SB530085–00 RB, Issue 001, dated March 6, 2024.

Note 1 to paragraph (j): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin B787–81205–SB530085–00, Issue 001, dated March 6, 2024, which is referred to in Boeing Alert Requirements Bulletin B787–81205–SB530085–00 RB, Issue 001, dated March 6, 2024.

(k) Exceptions to Requirements Bulletin Specifications

Where the Boeing Recommended Compliance Time columns of the tables in the “Compliance” paragraph of Boeing Alert Requirements Bulletin B787–81205–SB530085–00 RB, Issue 001, dated March 6, 2024, refer to the Issue 001 date of the Requirements Bulletin B787–81205–SB530085–00 RB, this AD requires using the effective date of this AD.

(l) Credit for Previous Actions

This paragraph provides credit for the corresponding actions specified in paragraphs (g) and (h) of this AD, if those actions were performed before August 12, 2016 (the effective date of AD 2016–14–04) using the applicable service information specified in paragraphs (l)(1) through (3) of this AD.

(1) Boeing Alert Service Bulletin B787–81205–SB380009–00, Issue 001, dated March 26, 2015.

(2) Boeing Alert Service Bulletin B787–81205–SB530029–00, Issue 001, dated March 26, 2015.

(3) Boeing Alert Service Bulletin B787–81205–SB530031–00, Issue 001, dated March 26, 2015.

(m) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520, Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (n)(1) of this AD. Information may be emailed to: AMOC@faa.gov.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, AIR–520, Continued Operational Safety Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 2016–14–04 are approved as AMOCs for the corresponding provisions of paragraphs (g) and (h) of this AD.

(5) For material that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (m)(5)(i) and (ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled “RC Exempt,” then the RC

requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

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

(n) Related Information

(1) For more information about this AD, contact Courtney Tuck, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206-231-3986; email: courtney.k.tuck@faa.gov.

(2) Material identified in this AD that is not incorporated by reference is available at the address specified in paragraph (o)(5) of this AD.

(o) Material Incorporated by Reference

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

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

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

(i) Boeing Alert Requirements Bulletin B787-81205-SB530085-00 RB, Issue 001, dated March 6, 2024.

(ii) Boeing Alert Service Bulletin B787-81205-SB380009-00, Issue 003, dated April 28, 2017.

(iii) Boeing Alert Service Bulletin B787-81205-SB530029-00, Issue 003, dated May 6, 2019.

(iv) Boeing Alert Service Bulletin B787-81205-SB530031-00, Issue 003, dated April 24, 2017.

(4) The following material was approved for IBR on August 12, 2016 (81 FR 44499, July 8, 2016).

(i) Boeing Alert Service Bulletin B787-81205-SB380009-00, Issue 002, dated December 9, 2015.

(ii) Boeing Alert Service Bulletin B787-81205-SB530029-00, Issue 002, dated January 26, 2016.

(iii) Boeing Alert Service Bulletin B787-81205-SB530031-00, Issue 002, dated March 16, 2016.

(5) For the material identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110-SK57, Seal Beach, CA 90740-5600; telephone 562-797-1717; website myboeingfleet.com.

(6) You may view this material 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 material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on December 16, 2024.

Suzanne Masterson,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2024-30669 Filed 12-23-24; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 141

[Docket No.: FAA-2024-2531]

Notice of Public Meeting, and Request for Comment on the Modernization of Pilot Schools.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of public meeting for proposed rulemaking; request for comment.

SUMMARY: The Federal Aviation Administration (FAA) announces a public meeting to solicit input on the modernization of pilot school regulations. This will be the first in a series of public meetings on this topic.

DATES: The FAA will hold the first public meeting (virtual only) on Thursday, March 6, 2025, from 10:00 a.m.–2:00 p.m., Eastern Time.

Written comments are requested no later than March 21, 2025.

ADDRESSES: Members of the public must register to attend the virtual public meeting. See website for registration link: https://www.faa.gov/about/office_org/headquarters_offices/avs/offices/afx/afx800/afx810/modernization_of_part-141_initiative.

Send comments identified by docket number FAA-2024-2531 using any of the following methods:

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

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

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

- **Fax:** Fax comments to Docket Operations at 202-493-2251.

Privacy: DOT solicits comments from the public to better inform its 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.govinfo.gov/content/pkg/FR-2008-01-17/pdf/E8-785.pdf>.

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

FOR FURTHER INFORMATION CONTACT: For questions concerning this action, contact Lyndsay Carlson with the Part 141 Modernization Initiative Team, Office of Safety Standards, General Aviation and Commercial Division, Training and Certification Group (AFS-810); email 9-AFS-Modernization-Part141-Comments@faa.gov. Phone: 202-267-1100.

SUPPLEMENTARY INFORMATION: Title 14 Code of Federal Regulations (14 CFR) part 141 prescribes the requirements for issuing pilot school air agency certificates, provisional pilot school air agency certificates, associated ratings, and the general operating rules applicable to a holder of a part 141 pilot school or provisional pilot school air agency certificate. Through a part 141 pilot school or provisional pilot school, a student may obtain equivalent levels of aeronautical experience in fewer hours than required by 14 CFR part 61. Part 141 schools are required to have FAA certification, and FAA oversight. Specifically, part 141 includes curricula standards for training and procedures to ensure a training course used by a school is adequate, appropriate, and is administered by qualified personnel including an experienced chief instructor who supervises instructors.

The process of licensing or certification of pilot schools in the United States is approaching 100 years of existence. Although the FAA has revised certain regulatory requirements pertaining to pilot schools during this time, part 141 still has many foundational ties to Civil Air Regulations (CAR) part 50, which was implemented in the 1940s. Regulations for pilot schools are typically promulgated to improve safety, reduce aircraft accidents, and embrace changes such as advances in technology and the need for data collection and analysis. Modernizing part 141 would address challenges pertaining to certification, certification management, examining

authority, and evolving technology and learning methods. The FAA's objective of modernizing part 141 is to increase safety and create a foundation for a more structured training environment to aid in the reduction of general aviation accidents and fatalities.

Therefore, part 141 must be analyzed to determine how it can evolve with the changing aviation industry. Over the course of the project, the FAA is seeking engagement from the flight training industry through participation in public meetings and submitted comments. Collaboration within the industry is encouraged to stimulate the innovation of a modern part 141 that will serve the needs of current and future pilot schools, as well as provide a robust and safe training environment that instills the necessary knowledge, skills, critical thinking, and aeronautical decision making in its pilots to create a safer national airspace system.

For more information about the Part 141 Modernization Initiative, visit https://www.faa.gov/about/office_org/headquarters_offices/avs/offices/afx/afx/afx800/afx810/modernization_of_part-141_initiative.

Public Meeting

The FAA will provide the project goals, overview, and plans to address the modernization of part 141 initiative at the introductory virtual public meeting on March 6, 2025. Throughout the project period, the FAA intends to have additional public meetings, which the FAA will announce in the **Federal Register**.

The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you require an alternative version of files provided or alternative accommodations, such as sign language, interpretation, or other ancillary aids, please contact the Part 141 Modernization Initiative Team, at 9-AFS-Modernization-Part141-Comments@faa.gov by February 20, 2025.

Comments Encouraged

The FAA encourages the public to submit comments to www.regulations.gov, Docket No. FAA-2024-2531. Comments that the FAA would find helpful include validated data and reports, unique discussion topics or scenarios, and/or feedback specific to modernizing part 141. The public is encouraged to provide feedback regarding innovative ideas; methods; solutions; products; and/or services that have, or could have, a significant impact on pilot school training. We encourage you to submit

comments electronically through the Federal E-Rulemaking Portal. If you submit your comments electronically, it is not necessary to also submit a hard copy.

The submission of public comments is encouraged but not required for meeting participation. The FAA will consider public feedback to determine the need for future considerations to the CFR; however, because such comments would be submitted outside of a notice-and-comment rulemaking, there is no requirement for the FAA to respond to submitted comments. The FAA will review comments that are post-marked, or submitted electronically, on or before the comment closing date of March 21, 2025. Comments made after the closing date may be reviewed as time and resources permit.

Additional information and resources, including future schedule details, will be provided on the project website as they become available. Specific questions regarding the project can be emailed to 9-AFS-Modernization-Part141-Comments@faa.gov.

Issued in Washington, DC, on December 13, 2024.

Everette C. Rochon, Jr.,

Manager, Training and Certification Group,
General Aviation and Commercial Division,
Office of Safety Standards, Flight Standards
Service.

[FR Doc. 2024-30250 Filed 12-23-24; 8:45 am]

BILLING CODE 4910-13-P

FEDERAL TRADE COMMISSION

16 CFR Part 461

RIN 3084-AB71

Trade Regulation Rule on Impersonation of Government and Businesses

AGENCY: Federal Trade Commission.

ACTION: Initial notice of informal hearing; final notice of informal hearing; list of Hearing Participants; requests for submissions from Hearing Participants.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") published a supplemental notice of proposed rulemaking ("SNPRM") in the **Federal Register** on March 1, 2024, titled "Trade Regulation Rule on Impersonation of Government and Businesses" ("Rule"), which requested additional public comment on whether the Commission should revise the title of the Rule, add a prohibition on the impersonation of individuals, and extend liability for violations of the Rule to parties who provide goods and

services with knowledge or reason to know that those goods or services will be used in impersonation schemes that violate the Rule. The SNPRM announced the opportunity for interested parties to present their positions orally at an informal hearing. Six commenters requested to participate at the informal hearing. The Commission has decided not to proceed with the SNPRM's proposed means and instrumentalities provision at this time. The purpose of the informal hearing will be to address issues relating to the proposed prohibition on impersonating individuals.

DATES:

Hearing date: The informal hearing will be conducted virtually on January 17, 2025, at 1 p.m. Eastern.

Participation deadline: If you are a Hearing Participant and would like to submit your oral presentation in writing or file a supplementary documentary submission, you must do so on or before January 9, 2025.

ADDRESSES: Hearing Participants may submit their oral presentations in writing or file supplementary documentary submissions, online or on paper, by following the instructions in part IV of the **SUPPLEMENTARY INFORMATION** section. Write "Impersonation SNPRM, R207000" on your submission and send it electronically to electronicfilings@ftc.gov, with a copy to OALJ@ftc.gov. If you prefer to file your submission on paper, mail it via overnight service to: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex I), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

Thomas Harris, tharris1@ftc.gov, (202-326-3620), Claire Wack, cwack@ftc.gov, (202-326-2836), and Ryan McAuliffe, rmcauliffe@ftc.gov, (202-326-3044).

SUPPLEMENTARY INFORMATION:

I. Background

Following public comment on an advance notice of proposed rulemaking ("ANPRM"), 86 FR 72901 (Dec. 23, 2021), the FTC published a notice of proposed rulemaking ("NPRM"), 87 FR 62741 (Oct. 17, 2022), entitled "Trade Regulation Rule on Impersonation of Government and Business" ("Rule"), in the **Federal Register**, proposing to add part 461 to title 16 of the Code of Federal Regulations, chapter I, to prohibit the impersonation of government, businesses, or their officers. On March 30, 2023, the Commission published an initial notice of informal hearing, 88 FR 19024, and on May 4, 2023, Chief Administrative

Law Judge Michael Chappell presided over the informal hearing, which was viewable live to the public from the Commission's website, <https://www.ftc.gov>. Based upon the comments submitted regarding the proposed provision imposing means and instrumentalities liability,¹ the Commission decided that this provision warranted further analysis and consideration, and stated that it would continue to consider the issue, including soliciting additional comment.

On March 1, 2024, the Commission published its final Rule in the **Federal Register**, 89 FR 15017. In that same issue of the **Federal Register**, the Commission also published the SNPRM, 89 FR 15072, requesting additional public comment on whether the Commission should revise the title of the Rule, add a prohibition on the impersonation of individuals, and extend liability for violations of the Rule to parties who provide goods and services with knowledge or reason to know that those goods or services will be used in impersonation schemes that violate the Rule.

In accordance with section 18(b)(1) of the FTC Act, 15 U.S.C. 57a(b)(1), which requires the Commission to provide the opportunity for an informal hearing in section 18 rulemaking proceedings, the SNPRM also announced the opportunity for interested persons to present their positions orally at an informal hearing. Six of the commenters requested the opportunity to present their position orally or participate at an informal hearing. Three additional commenters requested the opportunity to participate in a hearing if one were held but did not request a hearing themselves.

After further consideration, the Commission has decided not to proceed with the SNPRM's proposed means and instrumentalities provision (proposed § 461.5) at this time. Therefore, the purpose of the informal hearing will be to address issues relating to the proposed prohibition on impersonating individuals (proposed § 461.4).

II. The Requests for an Informal Hearing; Presentation of Oral Submissions

Section 18 of the FTC Act, 15 U.S.C. 57a, as implemented by the Commission's Rules of Practice, 16 CFR 1.11(e), provides interested persons with the opportunity to present their positions orally at an informal hearing

upon request.² To make such a request, a commenter must submit, no later than the close of the comment period for the SNPRM, (1) a request to make an oral submission, if desired; (2) a statement identifying the interested person's interests in the proceeding; and (3) any proposal to add disputed issues of material fact to be addressed at the hearing.³

The following six commenters requested an informal hearing generally in accordance with the requirements of 16 CFR 1.11(e):

1. The Abundance Institute;⁴
2. Andreesen Horowitz (a16z);⁵
3. The Consumer Technology Association (CTA);⁶
4. Software & Information Industry Association (SIIA);⁷
5. TechFreedom;⁸ and
6. TechNet.⁹

In addition, while the following commenters stated that an informal hearing was not necessary, they requested the opportunity to make an oral presentation if the Commission holds an informal hearing at others' request:

1. Electronic Privacy Information Center (EPIC), et al.;¹⁰

² 16 CFR 1.11(e).

³ 16 CFR 1.11(e)(1) through (3).

⁴ The Abundance Institute describes itself as "a mission-driven non-profit dedicated to creating the policy and cultural environment where emerging technologies can develop and thrive in order to perpetually expand widespread human prosperity." Abundance Institute Cmt. at 1.

⁵ Andreesen Horowitz of a16z states that a16z is the "world's largest venture capital firm" and a "leading investor" in generative artificial intelligence ("AI") "with a wide-ranging portfolio of companies" and the belief that AI "should be able to do a better job than unaided human intelligence in solving the complex challenges facing humanity, thereby creating a better world." a16z Cmt. at 1–2.

⁶ CTA states that it is the largest technology trade association in North America, whose members range from startups to established brands. CTA Cmt. at 1.

⁷ SIIA states that it is a trade organization made up of companies engaged in the information economy, "including digital content providers and users in academic publishing, education technology companies, software developers, cloud service providers, financial information firms, and companies that host platforms used by billions of people worldwide." SIIA Cmt. at 1.

⁸ TechFreedom states that it is a "nonprofit, nonpartisan think tank . . . dedicated to promoting technological progress that improves the human condition." TechFreedom Cmt. at 1.

⁹ TechNet describes itself as "the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level." TechNet Cmt. at 1.

¹⁰ This comment was "submitted by the following consumer and privacy advocacy organizations: Electronic Privacy Information Center (EPIC), National Consumer Law Center on behalf of its low-income clients, Consumer Federation of America, National Consumers League, Consumer Action, and

2. The Internet & Television Association (NCTA);¹¹ and

3. Truth in Advertising (TINA).¹²

The Commission finds that the requests submitted were generally adequate and therefore will hold an informal hearing. The nine commenters listed will have the opportunity to make oral presentations during the informal hearing. The Commission does not find it necessary to identify any group of interested persons with the same or similar interest in the proceeding.¹³

III. Disputed Issues of Material Fact; Final Notice

In the SNPRM, the Commission did not identify any disputed issues of material fact that needed to be resolved at an informal hearing. However, the Commission may still do so in this initial and final notice of informal hearing, either on its own initiative or in response to a persuasive showing from a commenter.¹⁴ To be appropriate for cross-examination or rebuttal, a disputed issue of material fact must raise "specific facts" that are "necessary to be resolved."¹⁵

In response to the SNPRM, six commenters proposed disputed issues of material fact related to proposed § 461.5 (*Means and Instrumentalities: Provision of Goods or Services for Unlawful Impersonation Prohibited*) regarding extending liability to parties who provide goods or services with

National Association of Consumer Advocates." EPIC, et al. Cmt. at 2.

¹¹ NCTA states that it is "the principal trade association for the U.S. cable industry, representing cable operators serving nearly 90% of the nation's cable television households and cable program networks." NCTA Cmt. at 1.

¹² TINA describes itself as "a nonpartisan, nonprofit consumer advocacy organization whose mission is to combat deceptive advertising and consumer fraud; promote understanding of the serious harms commercial dishonesty inflicts; and work with consumers, businesses, independent experts, synergy organizations, self-regulatory bodies and government agencies to advance countermeasures that effectively prevent and stop deception in our economy." TINA Cmt. at 2.

¹³ 16 CFR 1.12(a)(5) requires the initial notice of informal hearing to include a "list of the groups of interested persons determined by the Commission to have the same or similar interests in the proceeding." 16 CFR 1.12(d) explains that the Commission "will, if appropriate, identify groups of interested persons with the same or similar interests in the proceeding." Doing so facilitates the Commission's ability to "require any group of interested persons with the same or similar interests in the proceeding to select a single representative to conduct cross-examination on behalf of the group." *Id.*

¹⁴ See 16 CFR 1.12(a)(3); 15 U.S.C. 57a(c)(2)(B); see also 89 FR 15072 (Mar. 1, 2024).

¹⁵ 16 CFR 1.13(b)(1)(i) (issues that "must" be considered for cross-examination or rebuttal are only those disputed issues of fact the Commission determines to be "material" and "necessary to resolve").

¹ See SNPRM, 89 FR 15072 (Mar. 1, 2024), <https://www.federalregister.gov/documents/2024/03/01/2024-03793/trade-regulation-rule-on-impersonation-of-government-and-businesses>.

knowledge or reason to know that they will be used in impersonation schemes.

The Abundance Institute claimed in its comment: “The record contains reports of business practices described as ‘means and instrumentalities’ violations. But none of the reports identify even a single incident (let alone a ‘prevalent’ practice) of a party ‘pass[ing] on a false or misleading representation’ as is necessary to meet the first prong of the two-prong test for M&I violations of Section 5.”¹⁶

CTA proposed three disputed issues of material fact:¹⁷

1. “Whether the Means and Instrumentalities Proposal imposes an affirmative obligation on companies to address the misuse of their products and services, and whether there are any costs associated with implementing compliance plans to satisfy this requirement.”

2. “Whether the Means and Instrumentalities Proposal will chill the development of new products and services that could be misused by fraudsters.”

3. “Whether the Means and Instrumentalities Proposal’s liability framework is responsive to the known trends and evidence of online fraud.”

TechNet proposed two disputed issues of material fact:

1. “Whether the means and instrumentalities provision imposes an affirmative obligation to address the misuse of tools, products, and services and the costs associated with such compliance programs.”

2. “Whether the means and instrumentalities provision will chill the development and deployment of legitimate tools that can be misappropriated for impersonation.”

SIIA proposed three disputed issues of material fact:

1. “Whether the Commission has accurately estimated the costs associated with the proposed rule.”¹⁸

2. “Whether the means and instrumentalities provision would impose an affirmative obligation on companies to address misuses of goods

and services and, if so, costs associated with implementing additional compliance programs or efforts to address potential misuse.”

3. “Whether the means and instrumentalities provision will impede the development of technologies that have positive societal benefits but could be misused to enable impersonation.”

a16z quoted the following portion of a paragraph from the SNPRM, noting that it disputed “those material facts[:]” “Because the deceptive impersonation of individuals is already prohibited by section 5 of the FTC Act, and section 5 similarly makes unlawful providing the means and instrumentalities for a violation of section 5 of the Act, the SNPRM would not change the state of law in terms of what is legal and what is illegal. Furthermore, the proposed amendments to the Rule would impose no recordkeeping requirement and would not create or impose any compliance costs.”¹⁹ Relatedly, it proposed as a disputed issue of material fact “the existence and magnitude” of “direct and indirect harms” that the “proposed constructive knowledge standard” in § 461.5 would, in a16z’s view, “inflict.”²⁰

TechFreedom proposed as disputed issues of material fact whether “the rule would apply to AI tools covered by Section 230” and “the applicability of a constructive knowledge standard” in proposed § 461.5.²¹

Each of these proposed disputed issues of material fact relates to the § 461.5 proposal to extend liability to parties who provide goods or services with knowledge or reason to know that they will be used in impersonation schemes. After further consideration, the Commission has decided not to proceed with proposed § 461.5 at this time. It is therefore not necessary to address the proposed disputed issues concerning § 461.5, and the purpose of the informal hearing will be to address issues relating to proposed § 461.4’s prohibition on impersonating individuals.

Thus, the Commission finds that there are no “disputed issues of material fact” to resolve at the informal hearing²² and

no need for cross-examination or rebuttal submissions.²³

This initial notice of informal hearing also serves as the “final notice of informal hearing.”²⁴ A final notice of informal hearing is limited in its substance to matters that arise only when the Commission designates disputed issues of material fact: who will conduct cross-examination; whether any interested persons with similar interests will be grouped together for such purposes; and who will make rebuttal submissions.²⁵ Because cross-examination and submissions of rebuttal evidence are not anticipated to occur in this informal hearing, no separate final notice of informal hearing is necessary.

IV. List of Hearing Participants; Making an Oral Statement; Requests for Documentary Submissions

Pursuant to Commission Rule § 1.12(a)(4), 16 CFR 1.12(a)(4), the following is the list of interested persons (“Hearing Participants”) who will have the opportunity to make oral presentations at the informal hearing:

1. The Abundance Institute;
2. Andreesen Horowitz (a16z);
3. The Consumer Technology Association (CTA);
4. Software & Information Industry Association (SIIA);
5. TechFreedom;
6. TechNet;
7. Electronic Privacy Information Center (EPIC) (et al.);
8. The Internet & Television Association (NCTA); and
9. Truth in Advertising (TINA).

Because the Commission has decided not to proceed with proposed § 461.5, the purpose of the hearing will be to address issues relating to the remaining proposal to prohibit impersonation of individuals in § 461.4. Oral statements will be limited to 15 minutes, although they may be supplemented by documentary submissions, and the presiding officer may grant an extension of time for good cause shown.

Transcripts of the oral statements will be placed in the rulemaking record. Hearing Participants will be provided with instructions as to how to participate in the virtual hearing.

If you are a Hearing Participant and would like to submit your oral representation in writing or file a supplementary documentary submission, please write “Impersonation SNPRM, R207000” on your submission and send it

¹⁶ The Abundance Institute Cmt. at 15.

¹⁷ CTA Cmt. at 11–12. CTA additionally requested to cross examine witnesses pursuant to 15 U.S.C. 57a(c)(2)(B) as to these proposed disputed issues of material fact.

¹⁸ See SIIA Cmt. at 7. Although it mentions generally the estimate of potential costs of the “proposed rule,” the Commission understands the substance of this proposed disputed issue of material fact to concern the estimated costs specifically associated with proposed § 461.5 because SIIA stated in its comment that it recommends adoption of the other proposed amendments regarding individual impersonation. *Id.* at 1 (“SIIA supports the Commission’s proposed extension of the impersonation rule to individuals.”).

¹⁹ a16z Cmt. at 20 (quoting SNPRM, 89 FR 15078). The Commission does not understand a16z’s proposed disputed issue of material fact regarding the quoted portion of this paragraph to concern proposed § 461.4. Like SIIA, “a16z supports expanding the Impersonation Rule’s scope to impersonations of individuals.” *Id.* at 2.

²⁰ *Id.* at 20–21.

²¹ TechFreedom Cmt. at 2–3.

²² If any interested person seeks to have additional disputed issues of material fact designated, the person may make such request to the presiding officer pursuant to 16 CFR 1.13(b)(1)(ii).

²³ 16 CFR 1.12(b).

²⁴ 16 CFR 1.12(c).

²⁵ *Id.*

electronically to electronicfilings@ftc.gov, with a copy to OALJ@ftc.gov. If you prefer to file your submission on paper, mail it by overnight service to: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex I), Washington, DC 20580.

If you file a documentary submission under this section, your submission—including your name and your State—will be placed on the public record of this proceeding, including on the website <https://www.ftc.gov>. Because your documentary submission will be placed on the public record, you are responsible for making sure that it does not include any sensitive or confidential information. In particular, your submission 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 documentary submission doesn't include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your documentary submission 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 Commission 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.

Documentary submissions containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with Commission Rule § 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the submission must include the factual and legal basis for the confidentiality request and must identify the specific portions to be withheld from the public record. See Commission Rule § 4.9(c). Your documentary submission will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your documentary submission has been posted publicly at <https://www.ftc.gov>—as legally required by Commission Rule § 4.9(b), 16 CFR 4.9(b)—we cannot redact or remove it, unless you submit a confidentiality

request that meets the requirements for such treatment under Commission Rule § 4.9(c), 16 CFR 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 that the Commission administers permit the collection of submissions to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive documentary submissions it receives from the Hearing Participants on or before January 9, 2025. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Hearing Participants who need assistance should indicate as much in their submissions, and the Commission will endeavor to provide accommodations. Hearing Participants without the computer technology necessary to participate in video conferencing will be able to participate in the informal hearing by telephone; they should indicate as much in their submissions.

V. Conduct of the Informal Hearing; Role of Presiding Officer

The Commission's Chief Presiding Officer, the Chair, has appointed and designates Administrative Law Judge for the Federal Trade Commission, the Honorable Jay L. Himes, to serve as the presiding officer of the informal hearing. Judge Himes will conduct the informal hearing virtually using video conferencing starting at 1 p.m. Eastern on January 17, 2025. The informal hearing will be available for the public to watch live from the Commission's website, <https://www.ftc.gov>, and a recording or transcript of the informal hearing will be placed in the rulemaking record.

Because there are no "disputed issues of material fact" to resolve at the informal hearing, the presiding officer is not anticipated to make a recommended decision.²⁶ The role of the presiding officer shall include presiding over and ensuring the orderly conduct of the informal hearing, including selecting the sequence in which oral statements will be heard, and placing the transcript and any additional written submissions received into the rulemaking record. The presiding officer may prescribe additional procedures or issue rulings in accordance with Commission Rule

²⁶ See 16 CFR 1.13(d) ("The presiding officer's recommended decision will be limited to explaining the presiding officer's proposed resolution of disputed issues of material fact.").

§ 1.13, 16 CFR 1.13. In execution of the presiding officer's obligations and responsibilities under the Commission Rules, the presiding officer may issue additional public notices.

VI. Communications by Outside Parties to the Commissioners or Their Advisors

Pursuant to Commission Rule § 1.18(c)(1), 16 CFR 1.18(c)(1), the Commission has determined that communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor shall be subject to the following treatment. Written communications and summaries or transcripts of oral communications shall be placed on the rulemaking record if the communication is received before the participation deadline. They shall be placed on the public record if the communication is received later. Unless the outside party making an oral communication is a Member of Congress, such communications are permitted only if advance notice is published in the Weekly Calendar and Notice of "Sunshine" Meetings.²⁷

By direction of the Commission.

April J. Tabor,
Secretary.

[FR Doc. 2024-30718 Filed 12-23-24; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. FDA-2024-F-5640]

Monterey Mushrooms, LLC; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of petition.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that we have filed a petition, submitted by Monterey Mushrooms, LLC, proposing that the food additive regulations for vitamin D₂ mushroom powder be amended to provide for an additional method for producing the additive.

DATES: The food additive petition was filed on December 11, 2024.

ADDRESSES: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and insert the

²⁷ See 15 U.S.C. 57a(i)(2)(A); 16 CFR 1.18(c).

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.

FOR FURTHER INFORMATION CONTACT: Katie Overbey, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-7536.

SUPPLEMENTARY INFORMATION: Under section 409(b)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(b)(5)), we are giving notice that we have filed a food additive petition (FAP 5M4841), submitted by Monterey Mushrooms, LLC, 260 Westgate Dr., Watsonville, CA 95076. The petition proposes to amend the food additive regulations in § 172.382 (21 CFR 172.382 *Vitamin D₂ mushroom powder*) to provide for production of the additive by exposing sliced or diced edible cultivars of *Agaricus bisporus* to ultraviolet light.

The petitioner has claimed that this action is categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement under 21 CFR 25.32(k) because the substance is intended to remain in food through ingestion by consumers and is not intended to replace macronutrients in food. In addition, the petitioner has stated that, to their knowledge, no extraordinary circumstances exist. If FDA determines a categorical exclusion applies, neither an environmental assessment nor an environmental impact statement is required. If FDA determines a categorical exclusion does not apply, we will request an environmental assessment and make it available for public inspection.

Dated: December 13, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2024-30362 Filed 12-23-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-112129-23]

RIN 1545-BQ84

Corporate Alternative Minimum Tax Applicable After 2022; Technical Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; technical correction.

SUMMARY: This document contains technical corrections to a notice of proposed rulemaking (REG-112129-23), which was published in the **Federal Register** on Friday, September 13, 2024. REG-112129-23 contains proposed regulations that relate to the application of the corporate alternative minimum tax, which is imposed on the adjusted financial statement income of certain corporations for applicable taxable years beginning after 2022.

DATES: Written or electronic comments are still being accepted and must be received by Thursday, January 16, 2025.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG-112129-23) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS's public docket. Send paper submissions to: CC:PA:01:PR (REG-112129-23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning general corrections (including corrections to proposed §§ 1.56A-1 and 1.59-2), Madeline Padner at (202) 317-7006, and concerning corrections to proposed §§ 1.56A-15 and 1.56A-16, C. Dylan Durham at (202) 317-7005, each of the Office of Associate Chief Counsel (Income Tax and Accounting); concerning corrections to proposed §§ 1.56A-5 and 1.56A-20, Elizabeth Zanet or Brian Barrett, each of the Office of Associate Chief Counsel (Passthroughs and Special Industries) at (202) 317-6850; concerning corrections to proposed §§ 1.56A-18, 1.56A-19, 1.56A-21, 1.56A-23(e) and (f), and 1.1502-56A, Jeremy Aron-Dine or William W. Burhop, each of the Office of Associate Chief Counsel (Corporate) at (202) 317-3181; concerning corrections to proposed § 1.56A-26, Michelle L. Ng at (202) 317-6939, and concerning § 1.59-4, John J. Lee at (202) 317-6934, each of the Office of Associate Chief Counsel (International); and concerning submissions of comments or the public hearing, the Publications and Regulations Section, (202) 317-6901 (not toll-free numbers)

or by email at publichearings@irs.gov (preferred).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG-112129-23) that is the subject of these corrections is under sections 55, 56A, 59, and 1502 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG-112129-23) contains errors that need to be corrected.

The Treasury Department and the IRS intended that CAMT basis be used in amortizing or depreciating property not subject to the rules in proposed § 1.56A-15 (AFSI adjustments for section 168 property) and proposed § 1.56A-16 (AFSI adjustments for qualified wireless spectrum property). Therefore, the Treasury Department and IRS correct proposed § 1.56A-1(d)(4) to clarify that to the extent the CAMT basis of an asset is different than its AFS basis, and if income and expense (as well as gain or loss) is recognized for AFSI purposes under the section 56A regulations, then such income or expense (as well as gain or loss) reflected in FSI is redetermined for AFSI purposes by reference to the CAMT basis of the asset.

The Treasury Department and the IRS intended that the simplified method for determining applicable corporation status take into account the adjustments provided to tax-exempt entities in section 56A(c)(12) and proposed § 1.56A-14. Therefore, the Treasury Department and IRS correct proposed § 1.59-2(g)(2) to take into account the adjustments provided to tax-exempt entities by proposed § 1.56A-14.

The Treasury Department and the IRS intended proposed § 1.56A-19(g)(4)(iii) and (g)(5)(iii) to prevent a section 351 transferee that is an applicable corporation from (i) causing a section 351 exchange to be treated as a covered recognition transaction by issuing a de minimis amount of boot to a section 351 transferor that is not an applicable corporation, and thereby (ii) determining the section 351 transferee's CAMT basis in the assets received to be its AFS basis (that is, taking a fair value basis in the assets). Therefore, the Treasury Department and IRS correct proposed § 1.56A-19(g)(4)(iii) and (g)(5)(iii) to clarify that, if the amount of boot issued by the section 351 transferee to a section 351 transferor that is not an applicable corporation is less than ten percent of the fair market value of the assets transferred to the section 351

transferee by that section 351 transferor, the section 351 transferee determines its CAMT basis in the transferred assets under section 362 (that is, the CAMT basis of the assets in the hands of the section 351 transferor), increased by the regular tax gain recognized by the section 351 transferor. Proposed § 1.56A–19(g)(6)(iv) (*Example 4*) is revised to reflect the corrections to proposed § 1.56A–19(g)(5)(iii).

This document also contains corrections for other errors contained in the notice of proposed rulemaking (REG–112129–23) that need to be corrected.

Correction of Publication

Accordingly, FR Doc. 2024–20089 (REG–112129–23), appearing on page 75062 in the **Federal Register** on Friday, September 13, 2024, is corrected as follows:

1. On page 75063, in the third column, in the first partial paragraph, in the fifth line down from the top of the paragraph, the language “56(c)(3)(A)” is corrected to read “56A(c)(3)(A)”.

2. On page 75065, in the first column, in the second full paragraph, in the fifth line up from the bottom of the paragraph, the language “AFSI Tests” is corrected to read “AFSI tests”.

3. On page 75066, in the second column, in the first paragraph, in the third line down from the top of the paragraph, the language “2024–3 I.R.B.” is corrected to read “2024–3 I.R.B. 406”.

4. On page 75074, in the second column, in the first partial paragraph, in the tenth line up from the bottom of the paragraph, the language “388(g)” is corrected to read “338(g)”.

5. On page 75075, in the first column, in the thirteenth line up from the bottom of the page, the language “asset acquisition” is corrected to read “asset transaction”.

6. On page 75080, in the first column, the third line down from the top of the page is corrected to read “distributive share amount that is disallowed”.

7. On page 75086, in the third column, in the first full paragraph, the eighth line up from the bottom of the paragraph is corrected to read, “ending after December 31, 2019.”.

8. On page 75088, in the third column, in the first partial paragraph, the ninth line down from the top of the paragraph is corrected to read “in method of accounting for depreciation or a tax”.

9. On page 75088, in the third column, in the first full paragraph, in the ninth line up from the bottom of the paragraph, the language, “§ 1.56A–(d)(1)(iii)” is corrected to read, “§ 1.56A–15(d)(1)(iii)”.

10. On page 75089, in the third column, in the first full paragraph, the language, “§ 1.56A–15(e)(7)” is corrected to read, “§ 1.56A–15(e)(8)”.

11. On page 75090, in the second column, in the first full paragraph, the second line up from the bottom of the paragraph is corrected to read “ending on or before December 31.”.

12. On page 75090, in the second column, in the second full paragraph, the second line up from the bottom of the paragraph is corrected to read “ending on or before December 31.”.

13. On page 75091, in the second column, in the first full paragraph, the eighth line up from the bottom of the paragraph is corrected to read “taxable years ending on or before”.

14. On page 75101, in the first column, in the first partial paragraph:

i. The ninth and eighth lines up from the bottom of the paragraph are corrected to read, “causing the deferred sale gain or loss to be accelerated into AFSI in”.

ii. The fifth line up from the bottom of the paragraph is corrected to read “sum of (A) the deferred sale gain or loss that”.

15. On page 75101, in the third column, in the first partial paragraph, the last line of the paragraph is corrected to read “in which the distribution occurs unless the special rule in proposed § 1.56A–20(d)(1)(ii)(E) would apply to the timing of the inclusion.”.

16. On page 75103, in the third column, in the first partial paragraph, the seventh and sixth lines up from the bottom of the paragraph are corrected to read “which an acceleration or partial acceleration event described in § 1.721(c)–4(b) or § 1.721(c)–5(d), respectively, occurred; and (D) the”.

17. On page 75105, in the second column, in the first partial and first full paragraphs, the language “Section 168 Property”, is corrected to read “section 168 property”, everywhere it appears.

18. On page 75113, in the first column, the heading “3. Corporation in Existence for Less Than Three Taxable Years” is corrected to read “3. Corporation in Existence for Less Than Three Taxable Years and Short Taxable Years”.

19. On page 75120, in the first column, in the second partial paragraph, in the twelfth line up from the bottom of the paragraph, the language “section 904” is corrected to read “section 901”.

20. On page 75120, in the third column, the heading “XXX. Proposed §§ 1.1502–2, 1.1502–3, 1.1502–53, and 1.1502–55: Computation of Tax Liability of a Tax Consolidated Group and Computation of Alternative Minimum

Tax of Consolidated Groups” is corrected to read “XXX. Proposed §§ 1.1502–2, 1.1502–3, 1.1502–53, and 1.1502–55: Computation of Tax Liability of a Tax Consolidated Group and Computation of Minimum Tax Credits of Consolidated Groups”.

21. On page 75124, in the third column, in the second full paragraph, in the ninth line down from the top of the paragraph, the language “beginning after” is corrected to read “ending after”.

22. On page 75125, in the second column, in the first full paragraph, in the eighteenth line down from the top of the paragraph, the language “beginning after” is corrected to read “ending after”.

23. On page 75125, in the second column, in the first full paragraph, in the twenty-third line down from the top of the paragraph, following the word “holds”, the word “the” is removed.

24. On page 75125, in the third column, in the first paragraph, in the tenth line down from the top of the paragraph, the language “beginning after December 31, 2019.” is corrected to read “ending after December 31, 2019.”.

25. On page 75127, in the first column, in the last partial paragraph, in the fourth line up from the bottom of the page, following the word “applicable”, the language “and also apply all of the rules in proposed §§ 1.56A–4 and 1.56A–6 that apply to transfers (as defined in proposed § 1.56A–4(b)(3)) to any transfers occurring in such taxable years” is added.

26. On page 75127, in the first column, in the last partial paragraph, the second line up from the bottom of the page is corrected to read “and 1.56A–6 that apply to transfers,” and the last line of the page is removed.

27. On page 75127, in the second column, in the first partial paragraph, in the fifth line up from the bottom of the paragraph, following the language “September 13, 2024,” the language “during a taxable year of the taxpayer and each subsequent taxable year until the final regulations are applicable to such transfers,” is added.

28. On page 75127, in the second column, in the first full paragraph, following the word “applicable” in the sixteenth line up from the bottom of the paragraph, the language “and also apply all of the rules described in proposed §§ 1.56A–4 and 1.56A–6 that apply to any transfers occurring in such taxable years” is added.

29. On page 75130, in the second column, under the authority citation for Part 1, in the last paragraph in the column, in the entry for §§ 1.1502–53 and 1.1502–56A, the language

“56A(C)(2)(B)” is removed, and the language “56A(c)(2)(B)” is added in its place.

§ 1.56A-0 [Corrected]

30. On page 75135, in the third column, the entry for § 1.56A–20(c)(2)(iv) is corrected to read as follows:

* * * * *

§ 1.56A–20 AFSI adjustments to apply certain subchapter K principles.

* * * * *

(c) * * *

(2) * * *

(iv) Inclusion of deferred sale gain upon an acceleration or partial acceleration event described in § 1.721(c)–4(b) or § 1.721(c)–5(d).

* * * * *

31. On page 75136, in the second column, the entries for § 1.56A–21(c)(6) introductory text and (c)(6)(i) through (iv) are redesignated as entries for § 1.56A–21(c)(7) introductory text and (c)(7)(i) through (iv), and a new entry for § 1.56A–21(c)(6) is added to read as follows:

* * * * *

§ 1.56A–21 AFSI adjustments for troubled companies.

* * * * *

(c) * * *

(6) Exclusion from AFSI.

(7) Examples.

(i) Example 1: Bankruptcy emergence in a covered nonrecognition transaction.

(ii) Example 2: Bankruptcy emergence in a covered recognition transaction.

(iii) Example 3: Attribute reduction.

(iv) Example 4: Excluded income from the discharge of indebtedness of insolvent taxpayer.

* * * * *

§ 1.56A-1 [Corrected]

32. On page 75140, in the second column, in paragraph (c)(4)(ii), the last line of the paragraph is corrected to read “18(c)(3) and (4) and 1.56A–4(c)(4) and (d)(4).”

33. On page 75142, in the first column, in paragraph (d)(4):

i. The paragraph heading is corrected to read, “(4) *Redetermination of FSI*.”

ii. The third line down from the top of the paragraph is corrected to read, “the section 56A regulations, if income, expense, gain or”.

iii. The seventh line up from the bottom of the paragraph is corrected to read, “different from its AFS basis, and if such income, expense,”.

iv. The fourth line up from the bottom of the paragraph is corrected to read, “regulations, then such income, expense, gain or loss”.

§ 1.56A-5 [Corrected]

34. On page 75154, in the third column, in paragraph (k)(4)(i), in the sixth and fourth lines up from the bottom of the paragraph, the language “AFS \$50” is corrected to read “AFS \$50x”.

35. On page 75155, in the first column, in paragraph (k)(5)(i):

i. In the fifth line down from the top of the page, the language “AFS \$75” is corrected to read “AFS \$75x”.

ii. In the sixth and eighth lines down from the top of the page, the language “AFS \$50” is corrected to read “AFS \$50x”.

36. On page 75155, in the third column, in paragraph (k)(7), the eighth line up from the bottom of the paragraph is corrected to read, “property owned by PRS1. As a result of”.

§ 1.56A-15 [Corrected]

37. On page 75163, in the second column:

i. In paragraph (b)(11)(i), in the third line up from the bottom of the paragraph, the language “beginning after” is corrected to read “ending after”.

ii. In paragraph (b)(11)(ii), the fifth line up from the bottom of the paragraph, the language “beginning after December 31, 2019,” is corrected to read “ending after December 31, 2019,”.

38. On page 75165, in the first column, in paragraph (d)(4), the seventh line up from the bottom of the column is corrected to read, “taxable year were a full 12-month taxable”.

39. On page 75168, in the first column, in paragraph (d)(5)(v)(C), in the thirteenth line up from the bottom of the paragraph, the number “481” is corrected to read, “481(a)”.

40. On page 75168, in the second column, in paragraph (d)(5)(v)(D):

i. The thirteenth line down from the top of the page is corrected to read, “taxable years ending after”.

ii. The twentieth and twenty-first lines down from the top of the page are corrected to read “respect to taxable years ending after December 31, 2019, and before the”.

iii. The ninth and tenth lines up from the bottom of the paragraph are corrected to read, “to taxable years ending after December 31, 2019, and before the tax”.

41. On page 75168, in the third column, in paragraph (d)(5)(vi)(B), in the thirteenth line up from the bottom of the paragraph, the word “be” is removed.

42. On page 75169, in the first column, in paragraph (d)(5)(vi)(C):

i. The eighth line down from the top of the page is corrected to read, “ending after December 31, 2019,”.

ii. The sixteenth line down from the top of the page is corrected to read, “ending after December 31, 2019,”.

iii. The eighth line up from the bottom of the paragraph is corrected to read “years ending after December 31,”.

43. On page 75170, in the first column, in paragraph (d)(5)(ix)(A), the sixth line up from the bottom of the paragraph is corrected to read, “PRS1. As a result of the basis adjustment,”.

44. On page 75170, in the second column, in paragraph (d)(5)(x)(A), the fourth line up from the bottom of the paragraph is corrected to read, “As a result of the basis adjustment, X is”.

45. On page 75173, in the second column, in paragraph (e)(8)(iii)(B), the third line up from the bottom of the paragraph is corrected to read, “following the Exchange/40 years) of”.

46. On page 75174, in the first column, in paragraph (e)(8)(iv)(A):

i. In the fifth line up from the bottom of the paragraph, the number “\$50” is corrected to read “\$50x”.

ii. The fourth line up from the bottom of the paragraph is corrected to read “sale of Property A (\$900x”.

iii. In the third line up from the bottom of the paragraph the number “\$850” is corrected to read “\$850x”.

iv. The last line of the paragraph is corrected to read, “expense)).”.

47. On page 75176, in the first column, in paragraph (e)(8)(ix)(B), in the sixth line up from the bottom of the page, the word “to” is corrected to read “into”.

48. On page 75176, in the third column, in paragraph (e)(8)(xi)(A), the seventh line up from the bottom of the paragraph is corrected to read “owned by PRS1. As a result of the basis”.

49. On page 75177, in the first column, in paragraph (e)(8)(xi)(C), the second line up from the bottom of the paragraph is corrected to read “§ 1.56A–5(e)(1)(iv) and (e)(4)(ii)(A),”.

§ 1.56A-16 [Corrected]

50. On page 75177, in the second column, in paragraph (b)(8)(i), the third line up from the bottom of the paragraph is corrected to read, “to taxable years ending after”.

51. On page 75177, in the second column, in paragraph (b)(8)(ii), the sixth line up from the bottom of the paragraph is corrected to read, “with respect to taxable years ending”.

52. On page 75179, in the first column, in paragraph (e)(2)(ii)(D), the tenth line up from the bottom of the page is corrected to read “adjustments described in paragraphs”.

§ 1.56A-17 [Corrected]

53. On page 75180, in the third column, in the first full paragraph, in paragraph (c)(2)(i)(A), the second line up from the bottom of the paragraph is corrected to read “ending on or before December 31.”.

54. On page 75180, in the third column, in paragraph (c)(2)(ii)(A), in the second line up from the bottom of the paragraph, the language “beginning on or before” is corrected to read “ending on or before”.

55. On page 75180, in the third column, the paragraph heading for paragraph (c)(3)(ii)(A) is corrected to read, “(ii) *Omissions—(A) Increase to AFSI.*”.

56. On page 75181, in the third column, in paragraph (d)(1)(i):

i. In the twenty-fourth line up from the bottom of the paragraph, the language “beginning after December” is corrected to read “ending after December”.

ii. In the sixth line up from the bottom of the paragraph, the language “taxable years beginning” is corrected to read “taxable years ending”.

57. On page 75182, in the third column, paragraph (g) is corrected to read as follows:

* * * * *

(g) *Applicability date—(1) In general.* Except as provided in paragraph (g)(2) of this section, this section applies to taxable years ending after September 13, 2024.

(2) *Rule for changes in accounting principle and restatements of a prior year’s AFS.* In the case of rules contained in paragraphs (c) and (d) of this section, those rules are applicable to changes in accounting principle implemented in, and restated AFS issued in, taxable years ending after September 13, 2024.

§ 1.56A-18 [Corrected]

58. On page 75182, in the third column, in paragraph (a)(2)(i), in the third line down from the top of the paragraph, the language “shareholders of other” is removed.

59. On page 75183, in the third column, in paragraph (b)(9)(i), in the last line of the column, the word “respectively,” is removed.

60. On page 75184, in the first column, in paragraph (b)(12)(i)(A), in the second line of the paragraph, the language “the corporation” is corrected to read “that party or property”.

61. On page 75184, in the third column, paragraph (b)(19)(xv) is corrected to read “(xv) A transferor corporation; and”.

62. On page 75186, in the second column, the last sentence in paragraph (c)(6) is removed.

63. On page 75187, in the second column, in paragraph (c)(8)(vi)(C), in the second line up from the bottom of the page, the word “transaction” is corrected to read “exchange”.

64. On page 75187, in the third column, in paragraph (c)(8)(vi)(E), in the third line up from the bottom of the paragraph, the word “transaction” is corrected to read “exchange”.

65. On page 75188, in the third column, in paragraph (d)(4)(iv), the second line of the paragraph is corrected to read “recipient’s CAMT basis in the other property”.

66. On page 75189, in the first column, in paragraph (d)(5)(i)(A), the first partial paragraph, the fourth line down from the top of the page is corrected to read “issued stock with a fair market value of \$25x to X (that is, a distribution”.

67. On page 75189, in the third column, in paragraph (d)(5)(iv)(B), the last two lines up from the bottom of the paragraph are corrected to read “section 312 by the amount of AFSI, or \$12.5x.”.

68. On page 75190, in the first column, in paragraph (e)(2)(ii), the last three lines of the paragraph are corrected to read “equal to the target corporation’s AFS basis in that property that would obtain if the transaction were treated as an asset sale for AFS purposes.”.

69. On page 75190, in the third column, in paragraph (e)(6), the last two lines of the paragraph are corrected to read “AFS basis in that property that would obtain if the transaction were treated as an asset sale for AFS purposes.”.

70. On page 75190, in the third column, in paragraph (e)(7)(i), in the tenth line down from the top of the paragraph, the language “a regular tax” is corrected to read “an AFS”.

71. On page 75190, in the third column, in paragraph (e)(7)(ii), the last line of the page is corrected to read “Distributing applies section 336(e) to the”.

72. On page 75191, in the first column, in paragraph (e)(7)(ii), the first partial paragraph, in the fourth line up from the bottom of the paragraph, the number “\$66x” is corrected to read “\$60x”.

73. On page 75191, in the first column, in the first partial paragraph, paragraph (e)(7)(ii), in the last line of the paragraph, the language “regular tax” is corrected to read “AFS”.

74. On page 75193, in the first column, in paragraph (g)(4), the last two lines of the paragraph are corrected to

read “corporation’s AFS basis in that property that would obtain if the transaction were treated as an asset sale for AFS purposes.”.

75. On page 75193, in the first column, in paragraph (g)(6)(i)(A), in the second line up from the bottom of the paragraph, the language “and a value of \$30x” is removed.

76. On page 75193, in the second column, in the first partial paragraph, paragraph (g)(6)(ii)(B), in the last line of the paragraph, the language “regular tax” is corrected to read “AFS”.

77. On page 75193, in the second column, in paragraph (g)(6)(iii)(A), in the fourteenth line up from the bottom of the paragraph, the language “regular tax” is corrected to read “AFS”.

78. On page 75193, in the second column, in paragraph (g)(6)(iii)(B), the last two lines of the paragraph are corrected to read “assets is equal to new Target’s AFS basis in those assets, or \$100x.”.

§ 1.56A-19 [Corrected]

79. On page 75194, in the third column, in paragraph (b)(4)(i), the eighth line up from the bottom of the paragraph is corrected to read “paragraphs (b)(1) and (3) of this”.

80. On page 75195, in the second column, in paragraph (b)(7)(ii):

i. The seventh line down from the top of the paragraph is corrected to read “of Acquiror nonvoting stock.” and the eighth line down from the top of the paragraph is removed.

ii. The thirteenth through tenth lines up from the bottom of the paragraph are corrected to read “determines its AFSI by redetermining any FSI reflected in its AFS resulting from the transaction by reference to its CAMT basis in the Target stock. As a result, X”.

81. On page 75196, in the third column, in the first full paragraph, paragraph (c)(8)(i)(A), in the fourth line up from the bottom of the paragraph, the language “and a value of \$30x” is removed.

82. On page 75198, in the second column, in paragraph (d)(6)(i)(A), the seventeenth line up from the bottom of the paragraph is corrected to read “transactions that qualify for nonrecognition treatment under section”.

83. On page 75198, in the second column, in paragraph (d)(6)(i)(B), the sixth line up from the bottom of the page is corrected to read, “Contribution, or \$0x. Additionally, under paragraph (d)(1)(i)(C) of this section, Distributing adjusts its CAMT earnings resulting from the Controlled Split-Off by applying section 312. Under paragraph”.

84. On page 75198, in the third column, in paragraph (d)(6)(ii)(A), the seventh line up from the bottom of the paragraph is corrected to read “\$200x, and additionally Controlled transfers \$10x cash to”.

85. On page 75198, in the third column, in paragraph (d)(6)(iii)(A), the seventh through third lines up from the bottom of the page are corrected to read “\$210x, and additionally Distributing receives \$20x of cash. Distributing distributes only \$15x of the cash received from Controlled to its shareholders.”.

86. On page 75199, in the first column, in paragraph (d)(6)(iii)(B):

i. In the second through seventh lines down from the top of the paragraph, the language, “Distributing distributed Controlled securities with a fair market value of more than the adjusted basis of the property transferred to Controlled, resulting in gain to Distributing under section 361(b)(3),” is removed and the language “Distributing did not purge all of the boot received from Controlled in the Contribution,” is added in its place.

ii. The ninth line down from the top of the paragraph is corrected to read “is a covered recognition transaction. See paragraph (d)(6)(iii)(D) (*Example 3*) of this section.”.

iii. The last line of the paragraph is corrected to read “\$190x. Under paragraph (d)(5)(i)(A) of this section, the Contribution is a covered recognition transaction to Controlled. Under paragraph (d)(5)(ii)(B) of this section Controlled’s CAMT basis in the property received from Distributing is its AFS basis, or \$210x.”.

87. On page 75199, in the first column, in paragraph (d)(6)(iii)(C), the sixth line down from the top of the paragraph is corrected to read “of this section (*Example 1*). Under paragraph (d)(1)(i)(C) of this section, Distributing adjusts its CAMT earnings resulting from the Controlled Split-Off by applying section 312. Under”.

88. On page 75199, in the second column, in paragraph (e)(2)(ii), the fourth and third lines up from the bottom of the paragraph are corrected to read “or security holder. See § 1.56A–18(d) for rules”.

89. On page 75201, in the third column, in paragraph (g)(4)(ii), in the third line up from the bottom of the paragraph, the language “CAMT gain” is corrected to read “AFSI”.

90. On page 75201, in the third column, the introductory text of paragraph (g)(4)(iii) is corrected to read as follows:

* * * * *

(g) * * *

(4) * * *

(iii) *Special CAMT basis limitation rule.* If the requirements of paragraphs (g)(4)(iii)(A) through (C) of this section are satisfied, the section 351 transferee determines its CAMT basis under paragraph (g)(4)(ii) of this section in the property received from a section 351 transferor by applying section 362 using the CAMT basis (in lieu of AFS basis) of that property, increased by the amount of gain recognized to the section 351 transferor on the transfer for regular tax purposes.

* * * * *

91. On page 75202, in the first column, the introductory text of paragraph (g)(5)(iii) is corrected to read as follows:

* * * * *

(g) * * *

(5) * * *

(iii) *Special CAMT basis limitation rule.* If the requirements of paragraphs (g)(5)(iii)(A) through (C) of this section are satisfied, the section 351 transferee determines its CAMT basis under paragraph (g)(5)(ii) of this section in the property received from a section 351 transferor by applying section 362 using the CAMT basis (in lieu of AFS basis) of that property, increased by the amount of gain recognized to the section 351 transferor on the transfer for regular tax purposes.

* * * * *

92. On page 75202, in the second column, in paragraph (g)(6), the last line of the introductory text is corrected to read “of a tax consolidated group. Additionally, X is a section 351 transferor, and Y is a section 351 transferee.”.

93. On page 75202, in the second column, in paragraph (g)(6)(i):

i. The language “Acquiror” is removed, and the language “X” is added in its place, everywhere it appears.

ii. The language “Target” is removed, and the language “Y” is added in its place everywhere it appears.

94. On page 75202, in the second column, in paragraph (g)(6)(ii)(A):

i. In the third line up from the bottom of the paragraph, the language “Acquiror” is corrected to read “X”.

ii. In the second line up from the bottom of the paragraph, the language “Target” is corrected to read “Y”.

95. On page 75202, in the second and third columns, paragraph (g)(6)(ii)(B) is corrected to read as follows:

* * * * *

(g) * * *

(6) * * *

(ii) * * *

(B) *Analysis.* The Exchange is a covered recognition transaction to each

of X and Y. See paragraph (g)(1)(ii) of this section. Under paragraph (g)(3)(i) of this section, X redetermines its AFSI by computing any gain or loss using its CAMT basis in the assets transferred to Y, or \$50x (\$90x–\$40x). Under paragraph (g)(3)(ii) of this section, X’s CAMT basis in the Y stock received is its AFS basis, or \$80x. Under paragraph (g)(3)(iii) of this section, X adjusts its CAMT retained earnings by the amount of AFSI resulting from the Exchange, or \$50x. Because Y transfers only cash and stock to X in the Exchange, under paragraph (g)(5)(i) of this section, Y disregards any FSI resulting from the Exchange and instead determines AFSI using CAMT basis. Under paragraph (g)(5)(ii) of this section, Y determines its CAMT basis using its AFS basis in the property. Paragraph (g)(5)(iii) of this section does not apply. Under paragraph (g)(5)(iv) of this section, Y adjusts its CAMT retained earnings by the amount of AFSI recognized on the Exchange.

* * * * *

96. On page 75202, in the third column, in paragraph (g)(6)(iii)(A):

i. In the fourth line up from the bottom of the paragraph, the language “X” is corrected to read “Z”.

ii. The language “Target” is corrected to read “Y”, everywhere it appears.

97. On page 75202, in the third column, in paragraph (g)(6)(iii)(B):

i. The language “X” is corrected to read “Z” everywhere it appears.

ii. The language “Acquiror” is corrected to read “X” everywhere it appears.

iii. The language “Target” is corrected to read “Y” everywhere it appears.

98. On page 75202, in the third column, in paragraph (g)(6)(iv)(A):

i. In the fourth line up from the bottom of the paragraph, the language “Acquiror” is corrected to read “X”.

ii. In the second line up from the bottom of the paragraph, the language “Target” is corrected to read “Y”.

99. On page 75202, in the third column, in paragraph (g)(6)(iv)(B):

i. The second line down from the top of the paragraph is corrected to read “transferred by Y to X in the”.

ii. In the fifth line down from the top of the paragraph, the language “Target” is corrected to read “Y”.

iii. In the sixth line down from the top of the paragraph, the language “Acquiror” is corrected to read “X”.

iv. The last five lines of the page are corrected to read “Y’s CAMT basis in the assets received from X is determined under section 362, using CAMT basis in lieu of AFS basis, increased by any gain recognized by X for regular tax purposes, or \$45x (\$40x + \$5x).”.

100. On page 75203, in the first column, the first two lines of the page are removed.

§ 1.56A–20 [Corrected]

101. On page 75203, in the first column, in paragraph (a)(1), in the twelfth and thirteenth lines down from the top of the paragraph, the language “sets forth the scope of this section and” is removed.

102. On page 75203, in the third column, in paragraph (c)(2)(i)(E), the eighth line down from the top of the paragraph is corrected to read “year and thus subject to depreciation or amortization in”.

103. On page 75203, in the third column, the paragraph heading of paragraph (c)(2)(ii) is corrected to read “(ii) *Inclusion of deferred sale gain or loss upon a decrease in contributor’s distributive share percentage—(A) In general.*”.

104. On page 75204, in the first column, in paragraph (c)(2)(ii)(A), the fifth line up from the bottom of the paragraph is corrected to read “(c)(2)(ii) as a result of a decrease in the”.

105. On page 75204, in the second column, the paragraph heading of paragraph (c)(2)(iv) is corrected to read “(iv) *Inclusion of deferred sale gain upon an acceleration or partial acceleration event described in § 1.721(c)–4(b) or § 1.721(c)–5(d).*”.

106. On page 75204, in the third column, in paragraph (c)(3)(ii)(B), the second and third lines of the paragraph are corrected to read “causing the deferred sale gain or loss to be accelerated into AFSI in”.

107. On page 75205, in the second column, in paragraph (d)(1)(ii)(C), in the fourth line down from the top of the page, the word “sale” is corrected to read “distribution”.

108. On page 75205, in the second column, in paragraph (d)(1)(ii)(D), in the second to last line of the paragraph, the word “sale” is corrected to read “distribution”.

109. On page 75205, in the second column, in paragraph (d)(1)(ii)(E), in the fourth line up from the bottom of the paragraph, the word “sale” is corrected to read “distribution”.

110. On page 75206, in the third column, paragraph (g)(2)(i)(C) is corrected to read, “(C) The date on which an acceleration event or partial acceleration event described in § 1.721(c)–4(b) or § 1.721(c)–5(d), respectively, occurred; and”.

111. On page 75207, in the third column, in paragraph (h)(3)(ii)(B), in the second line down from the top of the page, the number “\$437.5” is corrected to read “\$437.5x”.

112. On page 75207, in the third column, in paragraph (h)(5)(ii), in the second and tenth lines up from the bottom of the paragraph, the number “\$5,000” is corrected to read “\$5,000x”.

§ 1.56A–21 [Corrected]

113. On page 75209, in the third column, in paragraph (b)(3)(iii):

i. The last line of the introductory text is corrected to read “indebtedness of the CAMT entity that results from—”.

ii. Paragraph (b)(3)(iii)(A) is removed.

iii. Paragraph (b)(3)(iii)(B) is redesignated as new paragraph (b)(3)(iii)(A) and the first line of the newly redesignated paragraph is corrected to read “(A) The satisfaction”.

iv. Paragraph (b)(3)(iii)(C) is redesignated as new paragraph (b)(3)(iii)(B) and the first line of the newly redesignated paragraph is corrected to read “(B) The satisfaction”.

114. On page 75210, in the third column, in the first partial paragraph, paragraph (c)(4)(iv)(A), in the last line of the paragraph, the language “See § 1.56A–1(d)(3).” is removed.

115. On page 75211, in the first column, paragraph (c)(6) is redesignated as paragraph (c)(7) and new paragraph (c)(6) is added to read as follows:

* * * * *

(c) * * *
(6) *Exclusion from AFSI.* For purposes of determining the AFSI of a CAMT entity, the CAMT entity disregards the total amount of income reflected in its FSI resulting solely from the discharge of indebtedness of the CAMT entity to the extent that payment of the liability would have given rise to a direct reduction in AFSI.

* * * * *

116. On page 75211, in the first column, in newly redesignated paragraph (c)(7), the last line of the introductory text is corrected to read “of a tax consolidated group, and the exclusion in paragraph (c)(6) of this section does not apply.”.

117. On page 75211, in the first column, in newly redesignated paragraph (c)(7)(i)(A), the third line up from the bottom of the paragraph is corrected to read “the discharge of indebtedness. X has no other items of income, gain, deduction, or loss for its 2024 taxable year. Y”.

118. On page 75211, in the second column, in newly redesignated paragraph (c)(7)(ii)(A), in the fourth line down from the top of the paragraph, the language “paragraph (c)(6)(i)(A)” is corrected to read “paragraph (c)(7)(i)(A)”.

119. On page 75211, in the third column, in newly redesignated

paragraph (c)(7)(iv)(A), in the fifth line down from the top of the paragraph, the language “(c)(6)(iii)(A)” is corrected to read “(c)(7)(iii)(A)”.

120. On page 75211, in the third column, in newly redesignated paragraph (c)(7)(iv)(B), the tenth line down from the top of the paragraph is corrected to read “of computing its AFSI. See *id.* X then uses its FSNOL to reduce its AFSI by \$120x. See § 1.56A–23(c). X’s”.

121. On page 75211, in the third column, in paragraph (d)(2)(i), the last line on the page is corrected to read “*General rule.* Solely with regard to the”.

122. On page 75212, in the first column, in paragraph (d)(2)(i), the first five lines of the page are corrected to read “emergence from bankruptcy by a CAMT entity, the CAMT entity determines its CAMT consequences resulting from that emergence (and not as the result of a discharge of indebtedness or covered recognition transaction, as provided in paragraphs (d)(2)(ii) and (iii) of this section) by—”.

§ 1.56A–22 [Corrected]

123. On page 75214, in the first column, in paragraph (c)(2)(ii), in the eleventh line up from the bottom of the paragraph, the word “section” is removed.

§ 1.56A–23 [Corrected]

124. On page 75215, in the third column, paragraph (e)(2)(i) is corrected to read “(i) A transaction described in section 381(a) of the Code; or”.

125. On page 75216, in the first column, in paragraph (e)(3)(i)(B), the last line of the paragraph is corrected to read “section and the exceptions in paragraph (e)(3)(v) of this section.”.

126. On page 75216, in the third column, the paragraph heading of paragraph (e)(4)(i) is corrected to read “(i) *Example 1: Acquisition of Target stock followed by contribution—*”.

127. On page 75216, in the third column, in paragraph (e)(4)(i)(A):

i. In the seventh line up from the bottom of the paragraph, the language “assets” is corrected to read “assets that do not constitute a line of business”.

ii. In the sixth line up from the bottom of the paragraph, the language “(Expansion)” is corrected to read “(Contribution)”.

iii. In the fifth line up from the bottom of the paragraph, the language “Expansion” is corrected to read “Contribution”.

128. On page 75218, in the second column, in paragraph (f)(4)(iii), in the third line up from the bottom of the paragraph, the language “RBIL” is

corrected to read “recognized built-in loss”.

129. On page 75218, in the second column, in paragraph (f)(5)(i);

i. In the eighth line up from the bottom of the paragraph, the language “an unrealized loss” is corrected to read “a built-in loss”.

ii. In the sixth line up from the bottom of the paragraph, the language “an unrealized gain” is corrected to read “a built-in gain”.

§ 1.56A–26 [Corrected]

130. On page 75221, in the third column, in paragraph (d)(1), the fourth and fifth lines up from the bottom of the paragraph are corrected to read, “CAMT entity must adjust its AFSI with respect to that transaction to reflect”.

§ 1.59–2 [Corrected]

131. On page 75223, in the third column, in paragraph (c)(2)(ii)(B), in the sixth line down from the top of the paragraph, the language “(c)(2)(i)(C)” is corrected to read “(c)(2)(ii)(C)”.

132. On page 75226, in the first and second columns, paragraph (f)(2)(i) is corrected to read as follows:

* * * * *

(f) * * *

(2) * * *

(i) *In general*—(A) *Corporation experiencing ownership change*. For purposes of paragraph (f)(1) of this section, if a corporation experiences a change in ownership during a taxable year that results in the corporation and a person no longer being treated as related under the relevant relationship criteria, then following the change in ownership—

(1) The corporation retains its AFSI for any relevant period prior to the change in ownership to determine whether the corporation meets the average annual AFSI test (as described in paragraph (c) of this section) for the taxable year in which the change in ownership occurs or for any subsequent taxable year; but

(2) The corporation does not include that person’s AFSI in the corporation’s AFSI for any period prior to the change in ownership (notwithstanding that the corporation and the person were treated as related under the relevant relationship criteria during some, or all, of that period) to determine whether the corporation meets the average annual AFSI test for the taxable year in which the change in ownership occurs or for any subsequent taxable year in which the corporation and the person are not treated as related under the relevant relationship criteria.

(B) *Person related to corporation following ownership change*. Following

a corporation’s change in ownership, each person treated as related to the corporation under the relevant relationship criteria determines whether it meets the average annual AFSI test (if applicable) for the taxable year in which the change in ownership occurs or for any subsequent taxable year by separately applying the rules in this paragraph (f). For example, such person does not include the corporation’s AFSI in the person’s AFSI for any relevant period prior to the corporation’s change in ownership if the corporation and the person were never previously related under the relevant relationship criteria. For the avoidance of doubt, such person includes the corporation’s AFSI in its AFSI for any relevant period following the change in ownership during which the parties are related under the relevant relationship criteria, unless paragraph (f)(2)(i)(A) of this section applies.

(C) *Change in ownership*. For purposes of paragraphs (f)(2)(i)(A) and (B) of this section, a corporation experiences a change in ownership during a taxable year of the corporation if—

(1) The corporation is not a test group parent (as defined in paragraph (b)(7) of this section);

(2) The corporation is treated as related to a test group parent under the relevant relationship criteria as of the first day of the taxable year; and

(3) As a result of a transaction (or series of related transactions) the corporation and the test group parent no longer satisfy the relevant relationship criteria as of the last day of the taxable year.

* * * * *

133. On page 75227, in the first, second, and third columns, in paragraphs (f)(3)(i)(D) and (E) and (f)(3)(ii)(C), the reference “(b)(6)” is corrected to read, “(b)(7)”, everywhere it appears.

134. On page 75228, in the first column, in paragraph (g)(2)(iii)(B), the second and third lines down from the top of the paragraph are corrected to read, “than the AFSI adjustments in §§ 1.56A–8(b), 1.56A–14, and, solely for purposes of”.

§ 1.1502–56A [Corrected]

135. On page 75238, in the second column, in paragraph (d)(3)(i):

i. The fifth and sixth lines up from the bottom of the paragraph are corrected to read, “beginning after December 31, 2019. For each share of stock of a”.

ii. The second line up from the bottom of the paragraph is corrected to read “(shareholder member) on the first day of the first taxable year beginning

after December 31, 2019, the CAMT basis of such share equals the sum”.

136. On page 75238, in the second column, in paragraph (d)(3)(ii):

i. In the fifth line up from the bottom of the paragraph, the language “The CAMT basis in a” is corrected to read “For each”.

ii. The last line of the paragraph is corrected to read “consolidated group after the first day of the first taxable year beginning after December 31, 2019, the CAMT basis of such share equals the sum of:”.

137. On page 75238, in the second column, in paragraph (d)(3)(iii)(A), in the fourth line up from the bottom of the page, the word “including” is corrected to read “incorporating”.

138. On page 75239, in the first column, in paragraph (e)(4)(i)(B), the third line up from the bottom of the paragraph is corrected to read “elimination)). Accordingly, the P Group’s”.

139. On page 75240, in the third column, in paragraph (f)(6)(ii), the sixth and fifth lines up from the bottom of the paragraph are corrected to read “apportioned to M2 (($\$20x/(\$20x + \$40x + \$5x) \times \$5x = \$16.9x$). See”.

140. On page 75243, in the first column, in paragraph (j)(3)(ii), the second to last and last lines of the paragraph are corrected to read “is apportioned to T (($\$200x/(\$200x + \$1,000x) \times \$165x = \$27.5x$).”.

Kalle L. Wardlow,

Federal Register Liaison, Publications & Regulations Section, Associate Chief Counsel, (Procedure and Administration).

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DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 10

[REG–116610–20]

RIN 1545–BQ12

Regulations Governing Practice Before the Internal Revenue Service

AGENCY: Office of the Secretary, Treasury.

ACTION: Notice of proposed rulemaking, notice of public hearing, and withdrawal of notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the regulations governing practice before the IRS. These regulations propose to eliminate provisions related to

registered tax return preparers, classify the use of certain contingent fee arrangements by practitioners as disreputable conduct, establish new standards for appraisals and the disqualification of appraisers, and update certain provisions as appropriate. This document also provides notice of a public hearing on the proposed regulations and withdraws the notice of proposed rulemaking published on July 28, 2009. The regulations would affect registered tax return preparers, enrolled agents (EAs), enrolled retirement plan agents, enrolled actuaries, Annual Filing Season Program (AFSP) participants, attorneys, certified public accountants (CPAs), appraisers, and other practitioners.

DATES: Electronic or written comments must be received by February 24, 2025. The public hearing is being held on March 6, 2025, at 10 a.m. Eastern Time (ET). Requests to speak and outlines of topics to be discussed at the public hearing must be submitted as prescribed in the “Comments and Public Hearing” section. The IRS must receive speakers’ outlines of the topics to be discussed at the public hearing by February 24, 2025. If no outlines are received by February 24, 2025, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5 p.m. ET on March 4, 2025. As of December 26, 2024, the notice of proposed rulemaking (REG–113289–08) published on July 28, 2009 (74 FR 37183), is withdrawn.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG–116610–20) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically or on paper to the public docket. *Send paper submissions to:* CC:PA:01:PR (REG–116610–20), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, William J. Prater at (202) 317–6251; concerning submissions of comments or the public hearing, The Publications and Regulations Section at (202) 317–6901 (not toll-free numbers) or by

sending an email to publichearings@irs.gov (preferred).

SUPPLEMENTARY INFORMATION:

Authority

This document contains proposed regulations that would amend the regulations under 31 U.S.C. 330 relating to the regulation of practice before the IRS, which are codified at 31 CFR part 10 and reprinted as Treasury Department Circular No. 230 (Circular 230). Since 1884, Federal law (now codified at 31 U.S.C. 330), has expressly authorized the Secretary of the Treasury (Secretary) to regulate practice before the Treasury Department. Specifically, 31 U.S.C. 330(a) provides that subject to section 500 of title 5, the Secretary may “regulate the practice of representatives of persons before the Department of the Treasury.” In addition, before admitting a representative to practice, the Secretary may require that the representative demonstrate “good character,” “good reputation,” the “necessary qualifications to enable the representative to provide to persons valuable service,” and “competency to advise and assist persons in presenting their cases.” See 31 U.S.C. 330(a). The Secretary may delegate these duties and powers to another officer or employee of the Treasury Department under 31 U.S.C. 321(b).

Background

The provisions of 31 CFR part 10 are currently designated as §§ 10.0 through 10.93 and a section of the current regulations is referred to as, as an example, “current § 10.0” in this Background and the Explanation of Provisions. Circular 230, which contains current §§ 10.0 through 10.93 related to governing practice before the IRS, has been amended periodically since it was first published in 1921.

A. Tax Return Preparation

Prior to 2011, individual tax return preparers were generally not subject to Circular 230 unless the tax return preparer was an attorney, certified public accountant (CPA), enrolled agent (EA), or other type of practitioner identified in Circular 230. On June 3, 2011, the Treasury Department and the IRS published final regulations (TD 9527) in the **Federal Register** (76 FR 32286) to establish qualifications for tax return preparers, which required them to become registered tax return preparers subject to the requirements under Circular 230 and describing the allowable scope of a registered tax return preparer’s practice before the IRS (2011 amendments).

The 2011 amendments were challenged in *Loving v. IRS*, 917 F.Supp.2d 67 (D.D.C. 2013), in which case the plaintiffs argued that the Treasury Department and the IRS did not have authority under 31 U.S.C. 330 to regulate tax return preparation because return preparation was not practice before the IRS. The United States District Court for the District of Columbia (District Court for the District of Columbia or district court) concluded that under 31 U.S.C. 330(a), practice before the IRS is limited to representing taxpayers before the IRS by assisting them in presenting their cases. Because the district court considered preparing and filing tax returns as falling short of “presenting a case,” it held that the Treasury Department and the IRS lacked statutory authority to regulate tax return preparation as practice before the IRS under 31 U.S.C. 330(a) and enjoined the Treasury Department and the IRS from enforcing the 2011 amendments to Circular 230 related to registered tax return preparers. The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit or court of appeals) affirmed the district court’s opinion and order for injunction. The court of appeals upheld the district court’s statutory construction, explaining that, while tax return preparers assist taxpayers, they do not represent taxpayers before the IRS or formally act as their agent. *Loving v. IRS*, 742 F.3d 1013 (D.C. Cir. 2014).

B. Contingent Fees

Final regulations (TD 9359) published in the **Federal Register** (72 FR 54540) on September 26, 2007, amended the rules under Circular 230 regarding charging contingent fees in current § 10.27 (2007 amendments). The 2007 amendments amended the exceptions to the general prohibition on contingent fees, which prohibited practitioners from charging contingent fees for original returns, to permit practitioners to charge a contingent fee for services rendered in connection with the IRS’s examination of, or challenge to, (i) an original tax return or (ii) an amended return or claim for refund or credit where the amended return or claim for refund or credit was filed within 120 days of the taxpayer receiving a written notice of the examination or a written challenge to the original tax return. The Treasury Department and the IRS subsequently clarified the 2007 amendments in Notice 2008–43, 2008–1 C.B. 748 (March 26, 2008) to provide that a practitioner may charge a contingent fee for services rendered in connection with the IRS’s examination of, or challenge to, an amended return or claim for

refund or credit filed (1) before the taxpayer received a written notice of examination of, or a written challenge to, the original tax return or (2) no later than 120 days after the receipt of such written notice or written challenge. Notice 2008–43 also provided an exception that allows practitioners to charge a contingent fee with respect to whistleblower claims under section 7623 of the Internal Revenue Code (Code). Current § 10.27 also permits practitioners to charge contingent fees in connection with the determination of statutory interest and penalties and for services rendered in connection with judicial proceedings arising under the Code. Current § 10.27 prohibits contingent fee arrangements for services rendered in connection with any other matter before the IRS, including the preparation of original returns, amended returns, and claims for refund or credit.

On July 28, 2009, the Treasury Department and the IRS published in the **Federal Register** (74 FR 37183) a notice of proposed rulemaking (REG–113289–08) proposing modifications to the rules relating to contingent fees under Circular 230 (2009 proposed regulations). The 2009 proposed regulations have not been finalized.

In 2014, the District Court for the District of Columbia held that preparing and filing ordinary refund claims, like preparing original tax returns, did not involve representing taxpayers or practice before the IRS. *Ridgely v. Lew*, 55 F. Supp.3d 89 (D.D.C. 2014). As a result, according to the district court, the IRS lacked authority to treat the preparation of ordinary refund claims as practice before the IRS as described under 31 U.S.C. 330(a). *Id.* Thus, the district court concluded that the IRS cannot prohibit charging contingent fees for ordinary refund claims based on its authority to regulate practice before the IRS under 31 U.S.C. 330(a).

C. Written Tax Advice

Circular 230 was most recently amended in TD 9668, which was published in the **Federal Register** (79 FR 33685) on June 12, 2014, to, among other changes, revise rules relating to written tax advice and eliminate the covered opinion rules (in former § 10.35) that previously governed written tax advice.

Explanation of Provisions

The proposed regulations contained in this notice of proposed rulemaking would amend Circular 230 by eliminating provisions related to registered tax return preparers or that imposed standards on tax return preparation that are unrelated to

representation before the Treasury Department and the IRS. The proposed regulations would also amend Circular 230 by eliminating current § 10.27, which, among other things, treats the preparation of tax returns and claims for refund or credit as matters before the IRS for which contingent fees may not be charged, and defining certain contingent fee arrangements as disreputable conduct. Specifically, the proposed regulations would establish that contingent fee arrangements for services in connection with preparing an original tax return, amended tax return, or claim for refund or credit constitute disreputable conduct subject to sanction. Because the proposed regulations would make substantial changes to the regulation of contingent fees under Circular 230, this document also proposes to withdraw the 2009 proposed regulations.

The proposed regulations would also revise or eliminate provisions that are out of date and incorporate new provisions to better align Circular 230 with the modern practice environment. The scope of the proposed regulations is limited to practice before the IRS. Therefore, the proposed regulations would not alter or supplant other ethical standards applicable to practitioners.

A section of the proposed regulations is referred to as, as an example, “proposed § 10.0” in this Explanation of Provisions and the Special Analyses.

A. Amendments Regarding Tax Return Preparation

1. Elimination of Regulation of Registered Tax Return Preparers as Practitioners

As a result of the decision and injunction order in *Loving*, the 2011 amendments that relate to registered tax return preparers are no longer enforceable. Therefore, the proposed regulations would eliminate rules regarding registered tax return preparers under current §§ 10.3 through 10.6. The proposed regulations would also remove references to registered tax return preparers under current §§ 10.0, 10.2, 10.30, 10.38, and 10.90 and redesignate current § 10.90 as § 10.110.

2. Revision of Standards Relating to Tax Return Preparation

Circular 230 contains provisions that are unrelated to the registered tax return preparer program but impose specific standards on tax return preparation. Consistent with the holding in *Loving*, the proposed regulations would eliminate or revise these provisions to impose standards related to tax returns prepared, approved, or submitted in

connection with representing a client in a matter before the IRS. This distinction would be also incorporated under the amended definition of “practice before the IRS” under proposed § 10.2(a)(4), which would clarify that practice before the IRS includes the preparation and submission of tax returns in connection with representing a client in a matter before the IRS.

Current § 10.8 provides rules related to tax return preparation, describes actions that individuals who did not prepare all, or substantially all, of a tax return can take before the IRS, and prohibits non-practitioners from preparing all, or substantially all, of a tax return. The proposed regulations would eliminate the current language under § 10.8 in its entirety. However, guidance regarding what actions non-practitioners may take in response to IRS inquiries is still necessary and authorized under 31 U.S.C. 330. Therefore, the proposed regulations would retitle current § 10.8 as “Participation in IRS proceedings by non-practitioners” and would provide that, except for appraisers who have been disqualified pursuant to proposed § 10.61(a), any individual may appear as a witness before the IRS or furnish information at the request of the IRS.

Current § 10.22 imposes standards related to diligence as to accuracy, including standards related to the preparation or approval of tax returns, documents, affidavits, and other papers. The proposed regulations would revise current § 10.22 to specify that the diligence as to the accuracy requirement for tax returns is limited to tax returns prepared, approved, or submitted in connection with representing a client in a matter before the IRS. The proposed regulations would not revise existing diligence standards related to documents, affidavits, and other papers that are not tax returns. The diligence requirements in the proposed regulations would also apply to a practitioner’s preparation of a tax return prior to representing a client in a matter before the IRS when the subsequent representation involves the tax return. When the representation involves a tax return prepared by a practitioner, the practitioner’s diligence with respect to preparing the tax return would be treated under the proposed regulations as related to the practitioner’s practice before the IRS under 31 U.S.C. 330(a).

Current § 10.34 imposes standards with respect to a practitioner’s preparation of tax returns and other documents. The current regulations incorporate standards under the Code relating to tax return positions, describe standards for advising clients with

respect to potential penalties, and address the ability of a practitioner to rely on information furnished by a client. The proposed regulations would maintain these standards but clarify that the standards only apply to a tax return either when the tax return is prepared while representing a client before the IRS or when the tax return prepared prior to representation is submitted while representing a client before the IRS, regardless of whether the tax return was filed with the IRS before the representation begins. With respect to tax returns prepared prior to representation, the current standards relate to a practitioner's duty to not further an unreasonable return position taken on a previously prepared return while representing a client in a matter before the IRS. The proposed regulations would not impose the standards on the preparation of a tax return in the absence of a practitioner's representation of a client.

B. Amendments Regarding the Regulation of Contingent Fees

Current § 10.27 prohibits practitioners from entering into contingent fee arrangements for services rendered in connection with a "matter before the IRS," which § 10.27(c)(2) defines to include assisting with filing tax returns or claims for refund or credit and "all matters connected with a presentation to the [IRS] . . . relating to a taxpayer's rights, privileges, or liabilities under the laws and regulations administered by the [IRS]." Current § 10.27 was intended to restrict contingent fee arrangements based on their potential to encourage practitioners and their clients to take aggressive positions with the hope that they will not be audited.

As described in the Background, the District Court for the District of Columbia held in *Ridgely* that practitioners do not act in a representative capacity when they assist clients with "ordinary refund claims," which are defined as refund claims, including amended returns, filed prior to the examination of a tax return for that taxable year or period. The district court also concluded that preparing an ordinary refund claim is not an activity that constitutes practice before the IRS under 31 U.S.C. 330(a). Thus, the court concluded that the IRS cannot prohibit charging contingent fees for ordinary refund claims based on its authority to regulate practice before the IRS under 31 U.S.C. 330(a). The court did not otherwise address the propriety of contingent fees.

The proposed regulations would remove current § 10.27 and, under subpart C, define disreputable conduct

under proposed § 10.51 to include both charging contingent fees in connection with the preparation of an original or amended tax return or claim for refund or credit, and charging fees that, under the facts and circumstances, are unconscionable fees.

Charging a contingent fee for the preparation of an original return, amended return, or claim for refund or credit prepared prior to the examination of a tax return is disreputable conduct because these circumstances encourage evasion or abuse of Federal tax laws by incentivizing practitioners to take unduly aggressive tax positions for their clients, which would increase their clients' reported tax benefits, thus resulting in personal gain for the practitioner. A practitioner with a direct, financial interest in the tax benefits of a client may be incentivized to increase such tax benefits. Therefore, these contingent fee arrangements reflect conduct that is incompatible with ethical practice before the Treasury Department or the IRS under Circular 230.

Under 31 U.S.C. 330(c), the Treasury Department and the IRS have the authority to censure or suspend or disbar from practice before the Treasury Department or the IRS practitioners who engage in disreputable conduct whether or not the conduct constitutes representation of a client. Unlike the contingent fee standards under current § 10.27, proposed § 10.51 is not dependent upon the preparation of a tax return or claim for refund or credit constituting practice before the IRS. Charging contingent fees for preparing tax returns, amended returns, and claims for refund or credit is prohibited under the rules of professional conduct applicable to many accountants. The American Institute for Certified Public Accountants (AICPA) Code of Professional Conduct, for example, acknowledges the disreputable nature of contingent fees and prohibits CPAs from charging contingent fees for the preparation of original returns, amended returns, and ordinary refund claims because of the risk that these contingent fee arrangements would allow a CPA to benefit improperly from an interest in, or relationship with, a client. *See* AICPA Code of Professional Conduct 1.000.010.14(c); 1.510.001.01(b). Many state accountancy board rules also prohibit contingent fee arrangements for preparing an original or amended return or claim for refund or credit. *See, e.g.,* N.J. Admin. Code section 13:29–3.8(e) (2019); Tenn. Code Ann. section 62–1–123(b)(1)(B) (2016) (prohibiting contingent fees for preparation of an original return); Cal. Code Regs. Tit. 16

section 62(a)(2) & (3) (2021); *cf.* New York Society of Certified Public Accountants Code of Professional Conduct Rule 302 (March 2013).

C. Enrolled Retirement Plan Agent and Enrolled Agent Procedures

Current § 10.3(e)(1) provides that enrolled retirement plan agents (ERPAs) may practice before the IRS. Current § 10.4(b) authorizes the IRS to grant status as ERPAs to individuals who demonstrate special competence in qualified retirement plan matters by passing a written examination and who have not engaged in any conduct that would justify suspension or disbarment under Circular 230. The IRS stopped offering the Enrolled Retirement Plan Agent Special Enrollment Examination (ERPA–SEE) on February 12, 2016, and no longer accepts applications for new enrollment as an ERPA. Because of a steady decline in ERPA–SEE test-takers, the cost to administer the ERPA–SEE no longer warranted offering the test. *See* 83 FR 58202, published in the **Federal Register** on November 19, 2018. Individuals who had passed the ERPA–SEE before February 12, 2016, and are currently enrolled as ERPAs can maintain their status. Therefore, the proposed regulations would clarify that ERPAs who passed the ERPA–SEE prior to February 12, 2016, remain authorized to practice before the IRS if they continue to pay the annual user fee described under 26 CFR 300.10(b) and complete the continuing education described in § 10.6(e). The proposed regulations would also remove current § 10.4(b), which describes the process to become an ERPA by special examination.

Current § 10.4(d) provides that a former IRS employee, based on past service and technical experience in the IRS, may be granted enrollment as an EA or ERPA without testing if certain criteria are met. There is no statutory requirement that the IRS provide this exemption to former employees and administering requests for this waiver has consumed substantial IRS resources. Accordingly, the proposed regulations would eliminate the opportunity for former IRS employees to apply for a waiver of enrollment requirements as of 30 days after the date these regulations are published in the **Federal Register** as final regulations. Applications from former IRS employees submitted on or before that date would be processed according to the procedures under current § 10.4(d).

Current § 10.5 includes ERPAs in the description of application procedures to become a practitioner under Circular 230. Because the IRS no longer offers

the special enrollment examination to become an ERPA and no longer accepts applications for new enrollment as an ERPA, these procedures are no longer relevant and references to ERPA's would be removed under proposed § 10.5. The renewal period and procedures for existing ERPA's remains unchanged under current § 10.6.

Current § 10.6(b) states that the IRS will provide confirmation of enrollment to EAs and ERPA's by issuing a registration card or certificate. Instead of specifying the form of confirmation, proposed § 10.6(b) would provide that the IRS will issue a document, which may be an enrollment card or other document. This revision would give the IRS flexibility as to the form of enrollment confirmation provided to practitioners in the future without requiring an amendment to the regulations.

Current § 10.6(d)(2) provides an explanation of the renewal period for EAs. Proposed § 10.6(d)(2) would make minor revisions to this description but makes no substantive changes to the renewal period or renewal process for EAs.

D. Limited Practice and Annual Filing Season Program (AFSP) Participants

Proposed § 10.7(c)(1)(viii) would provide that individuals who possess a current Annual Filing Season Program (AFSP) Record of Completion may engage in limited practice, by representing taxpayers before the IRS with respect to tax returns or claims for refund or credit the individuals prepared and signed during a calendar year for which a Record of Completion was issued. The individual must have a valid Record of Completion for the calendar year in which the tax return or claim for refund or credit was prepared and signed and a valid Record of Completion for the year or years in which the representation occurs. AFSP participants generally are otherwise unenrolled preparers who, pursuant to Rev. Proc. 2014–42, 2014–29 I.R.B. 192 (July 14, 2014), voluntarily consent to be subject to Circular 230 duties and restrictions to participate in the AFSP, including prohibitions on incompetence or disreputable conduct, and must comply with the duties and restrictions to the extent they represent taxpayers before the IRS under the AFSP. The authority for the Treasury Department and the IRS to implement the AFSP was upheld by the D.C. Circuit, in *AICPA v. IRS*, 746 Fed. Appx. 1 (D.C. Cir. 2018).

E. Continuing Education Provider Fees

Under current § 10.9(a)(2), continuing education providers that provide

education to practitioners on subject matters described under current § 10.6(f) must be approved by the IRS, obtain a continuing education number, and pay any applicable user fee. Continuing education providers must follow the procedures outlined under Rev. Proc. 2012–12, 2012–2 I.R.B. 275 (January 9, 2012) to become an accredited provider and obtain a continuing education provider number. Continuing education providers must renew their status annually by renewing their provider number and paying a user fee. Under current § 10.9(a)(4), continuing education providers must seek approval for individual continuing education programs and obtain a program number.

The continuing education program is administered by a third-party vendor through a five-year contract with the IRS. The vendor will charge continuing education providers a \$650 application and renewal fee through 2025. Continuing education providers must renew for the upcoming calendar year before midnight on December 31 or incur late fees ranging between \$100 and \$200. Under the vendor's contract with the IRS, the vendor's fee is reviewed and approved by the IRS.

Because the IRS does not incur any direct costs to administer the continuing education program, it does not currently charge a separate user fee to recover costs. In the future, however, the IRS may charge a user fee if circumstances change. Any future user fee will be calculated pursuant to the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701) and OMB Circular A–25, *User Charges*. New proposed § 10.9(c) explains that a potential user fee may be charged in addition to the current vendor fee for approval of continuing education providers and their programs.

F. Knowledge of Error or Omission

Current § 10.21 requires practitioners to advise a client of any noncompliance with internal revenue laws or any error or omission on a tax return or other document submitted to the IRS and the consequences under the Code and regulations of the noncompliance, error, or omission. Proposed § 10.21 would clarify that the noncompliance, error, or omission may have been made by either the client or the practitioner or a prior practitioner, such as if the practitioner or prior practitioner made an inadvertent mistake on a tax return prepared and filed for the client that the practitioner later discovers.

Proposed § 10.21 would expand the current guidance by requiring practitioners to explain actions the client should take to correct the noncompliance, error, or omission.

Knowingly failing to inform a client of the noncompliance, error, or omission is disreputable conduct under 31 U.S.C. 330(c) because it causes practitioners to perpetuate false or misleading information to the IRS and potentially exposes the client to penalties and other adverse consequences. Proposed § 10.21 would also instruct practitioners to consider whether they can continue to meet their obligation to exercise diligence under proposed § 10.22(a) as to the accuracy of tax returns and other documents if the client refuses to take corrective action during the course of the practitioner's representation. A practitioner's obligation under proposed § 10.22(a) applies only to tax returns that are prepared, approved, or submitted in connection with representing a client in a matter before the IRS. Under those circumstances, the failure to correct inaccurate or unsupportable return positions would result in their perpetuation in submissions to the IRS during the course of the practitioner's representation. These changes would align Circular 230 with similar professional standards relating to knowledge of a client's error. *See* AICPA Statement on Standards for Tax Services No. 6 (Knowledge of Error: Return Preparation and Administrative Proceedings) (Rev. April 30, 2018); *see also Schmitz v. Crotty*, 528 NW 112 (Iowa 1995) (holding that in a civil malpractice action, an attorney was negligent for, in part, failing to correct an error on tax returns that he was aware of).

G. Negotiation of Payments to Clients

Current § 10.31 provides that a practitioner may not endorse or otherwise negotiate any check issued to a client by the Government in respect of a Federal tax liability, including directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the practitioner or any firm or other entity with which the practitioner is associated. When it was last amended in 2014, this regulation was revised to clarify that the prohibition on practitioner negotiation of taxpayer tax refunds applied to the electronic environment in which both the IRS and practitioners operated. Proposed § 10.31 would maintain this prohibition and broaden it to apply to all electronic payments to clients with respect to a Federal tax liability, including prepaid debit cards, phone or mobile payments, or other forms of electronic payments, even if that payment method is not currently used by the Treasury Department. These changes

acknowledge the evolving electronic environment in which tax refunds and other payments to taxpayers are processed through a variety of means.

H. Best Practices for Tax Practitioners

Current § 10.33 provides best practices for practitioners related to client representation. Proposed § 10.33 would replace references to “tax advisors” with “tax practitioners” to better align § 10.33 with descriptions used elsewhere in Circular 230.

Proposed § 10.33(a)(4) would provide that it is a best practice for practitioners to create a data security policy to maintain safeguards with respect to client information and establish a plan and procedures for responding to data breaches. Practitioners who also prepare returns have a legal obligation to comply with the Federal Trade Commission’s Safeguards Rule under the Gramm-Leach Bliley Act, which requires businesses to implement safeguards, including a written information security plan, to protect the security, confidentiality and integrity of customer information. 16 CFR part 314 (2002). This proposed change acknowledges this duty and complements the newly proposed duty to maintain technological competence under proposed § 10.35 and better aligns Circular 230 with other professional standards. *See* American Bar Association Formal Ethics Opinion 18–483; IRS Publication 4557, *Safeguarding Taxpayer Data*; IRS Publication 5708, *Creating a Written Information Security Plan for Your Tax & Accounting Practice*.

Proposed § 10.33(a)(5) would provide that it is a best practice for practitioners to identify, evaluate, and address a mental impairment arising out of, or related to, age, substance abuse, a physical or mental health condition, or some other circumstance that could adversely impact a practitioner’s ability to effectively represent a client before the IRS. An impairment, left untreated, can have adverse consequences on a client’s representation and to the health and well-being of a practitioner. The purpose of proposed § 10.33(a)(5) is to encourage practitioners who are suffering from a mental impairment to seek and obtain assistance or treatment. *See, e.g.,* DC Legal Ethics Opinion 377.

Proposed § 10.33(a)(6) would provide that it is a best practice for practitioners to establish a business continuity and succession plan that includes procedures and safeguards related to both the cessation of a practitioner’s practice or the occurrence of an outside event, such as a natural disaster or cyberattack. Business continuity and

succession planning are essential because they proactively protect clients in the event of a practitioner’s death or disability or from the occurrence of an unforeseen event.

Finally, proposed § 10.33 would eliminate current § 10.33(b), which provides steps to ensure that a firm’s procedures are consistent with best practices. Current § 10.33(b) would be duplicative of procedures under proposed § 10.36 to ensure compliance with subparts A, B, and C of part 10, which instructs practitioners to take reasonable steps to ensure that the firm’s procedures are consistent with the best practices under proposed § 10.33(a).

I. Duty To Maintain Technological Competence

Current § 10.35 provides that a practitioner must be competent when engaged in practice before the IRS. Specifically, practitioners are required to have the appropriate level of knowledge, skill, thoroughness, and preparation necessary for the matter in which the practitioner is engaged. Increasingly, competence also includes maintaining familiarity with technological tools used to represent a client. A similar standard for technological competency is included in the American Bar Association (ABA) Model Rules of Professional Conduct. Proposed § 10.35 is based on Comment 8 to ABA Model Rule 1.1 and would define competency to include understanding the benefits and risks associated with relevant technology used by the practitioner to provide services to clients or to store or transmit confidential information, including tax return information.

J. Regulation of Written Tax Advice

Current § 10.37 provides basic principles to which all practitioners must adhere when giving written tax advice. Circular 230 was amended in 2014 to eliminate the covered opinion rules (in former § 10.35) and replace them with broad standards for written tax advice under a current § 10.37. *See* TD 9668. Proposed § 10.37 would maintain these principles-based standards and make minor wording changes. Current § 10.37(d) defines a “Federal tax matter,” for purposes of that section, as the application or interpretation of a revenue provision defined under section 6110(i)(1)(B) of the Code, any provision of law impacting a person’s obligations under the internal revenue laws and regulations, and any other law or regulation administered by the IRS. Proposed § 10.37 would amend this

definition of a Federal tax matter under proposed § 10.37(d) to clarify that it encompasses any transaction, plan, arrangement, or other matter (whether prospective or completed), which is of the type that the IRS determines has the potential for tax avoidance or evasion.

This proposed change aligns standards for written tax advice under proposed § 10.37 more closely with the statutory language of 31 U.S.C. 330(e), which acknowledges that the Treasury Department may “impose standards applicable to the rendering of written advice with respect to any entity, transaction plan or arrangement, or other plan or arrangement, which is of a type which the Secretary determines as having a potential for tax avoidance or evasion.”

Current § 10.37(c)(1) imposes a reasonable practitioner standard, considering all of the facts and circumstances, to determine whether a practitioner has complied with the written advice standards under this section. Current § 10.37(c)(2) imposes the same reasonable practitioner standard in the case of an opinion the practitioner knows or has reason to know will be used by another person to promote, market, or recommend to one or more taxpayers a partnership or other entity, investment plan, or arrangement a significant purpose of which is the avoidance or evasion of any tax (Significant Purpose Transactions). Current § 10.37(c)(2) adds that, under the facts-and-circumstances analysis for Significant Purpose Transactions, emphasis will be “given to the additional risk caused by the practitioner’s lack of knowledge of the taxpayer’s particular circumstances.” Considering a practitioner’s knowledge of the taxpayer’s circumstances is generally relevant to whether a practitioner has satisfied written tax advice standards. Therefore, the proposed regulations would remove paragraph (c)(2) in current § 10.37 and proposed § 10.37(c) would include consideration of the practitioner’s knowledge of the client’s particular circumstances under the reasonable practitioner standard.

K. Incompetence or Disreputable Conduct

Current § 10.51 defines disreputable conduct for which a practitioner may be sanctioned. Incompetence or disreputable conduct under current § 10.51 is a basis for imposing sanctions against practitioners that is separate from a failure to meet the duties and abide by the restrictions relating to practice before the IRS under subpart B. Subpart C, retitled to relate to

incompetence and disreputable conduct, would redesignate current § 10.51 as proposed § 10.50 and, as described in part B of this Explanation of Provisions, proposed § 10.51 would define certain fee arrangements that constitute disreputable conduct.

Proposed § 10.50(a) would explain that a practitioner can be sanctioned for conduct that relates to the practitioner's overall fitness to practice and is not limited to actions taken while representing clients in a matter before the IRS. Proposed § 10.50(a)(12) would clarify that contemptuous conduct subject to sanction includes conduct in connection with practice before the IRS, any proceeding pursuant to redesignated proposed § 10.80 or any investigation by the Treasury Inspector General for Tax Administration. New proposed § 10.50(a)(19) would provide that the willful failure to follow any Federal tax law is disreputable conduct because knowingly violating a Federal tax law reflects a lack of due regard for the tax laws.

New proposed § 10.50(b) would provide that any assessment against a practitioner of penalties relating to a willful attempt to understate tax liabilities under section 6694(b); aiding or abetting in the understatement of tax liabilities under section 6701; careless, reckless, or intentional disregard for the rules or regulations (within the meaning of 26 CFR 1.6662–3(b)(2) and 1.6694–3(c)) under section 6662(b)(1); or promotion of abusive tax shelters under section 6700 will be considered a violation of proposed § 10.50(a)(7). The assessment of any of these penalties, however, would not be required to show a violation of proposed § 10.50(a)(7).

L. Appraiser Standards

The proposed regulations would incorporate new subpart D, which provides definitions related to appraisers and standards for the disqualification of appraisers. Current § 10.50(b) references the authority of the Secretary, or her delegate, and the IRS to disqualify appraisers from presenting evidence or testimony in any administrative proceeding before the Treasury Department or the IRS. Current Circular 230, however, does not provide a separate definition of appraisers or what constitutes an administrative proceeding for purposes of disqualification. The proposed regulations would provide separate definitions for both appraisers and administrative proceedings and explain how they would relate to the new appraiser standards. Current § 10.60(b) provides that proceedings to disqualify appraisers can be instituted whenever a

penalty has been assessed against an appraiser under the Code and the IRS determines that the appraiser acted willfully, recklessly, or through gross incompetence with respect to the conduct at issue.

This penalty prerequisite limits the IRS's ability to respond to misconduct under Circular 230 when the misconduct is not covered by a specific penalty, an applicable penalty is not imposed, or a proposed penalty assessment has not yet been made. There is no penalty prerequisite for appraiser disqualification under 31 U.S.C. 330, and the only procedural requirement for the disqualification of appraisers under 31 U.S.C. 330(d) is notice and an opportunity for a hearing. An appraiser's conduct may be disreputable or fail to conform to appraisal standards even when the IRS has not assessed a penalty or when no penalty under the Code is applicable. Therefore, the proposed regulations would eliminate the penalty prerequisite under current § 10.60(b) because it provides an unnecessary barrier to address misconduct.

Proposed § 10.61, under new subpart D, would require appraisals submitted in an administrative proceeding before the IRS to conform to the substance and principles of the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation or the International Valuation Standards (IVS) promulgated by the International Valuation Standards Council. Proposed § 10.61 would thus ensure that appraisals submitted in an administrative proceeding generally conform to broadly applicable standards without requiring strict compliance with such standards. Appraisers who willfully fail to meet these standards may be subject to disqualification under Circular 230. A failure to conform to the substance and principles of either USPAP or IVS standards that is not the result of willful, reckless, or grossly incompetent conduct is not sanctionable. In contrast, appraisers who recklessly or through gross incompetence engage in a pattern of submitting appraisals that do not conform to the substance and principles of USPAP or IVS standards may be subject to disqualification under the proposed regulations. The IRS's Office of Professional Responsibility (OPR) would determine whether an appraisal conforms to the substance and principles of these general appraisal guidelines during the Circular 230 investigatory and disciplinary process, prior to instituting any formal disciplinary proceeding under subpart F

of 31 CFR part 10. An opinion by a court, such as the United States Tax Court (Tax Court), finding that an appraiser failed to comply with the substance and principles of USPAP (or otherwise violated the standards for appraisers) may be considered when making that determination. *See, e.g., Ocone Landing Property, LLC v. Commissioner*, T.C. Memo. 2024–25 (finding that the appraisers had reached an advance agreement with the donors to appraise the subject property “in the neighborhood of” a pre-determined overvalued price).

Using the substance and principles of the USPAP or IVS appraisal standards as a basis for disqualification would enable the IRS to proactively address inadequate appraisals submitted in administrative proceedings. Both USPAP and IVS provide broad standards for general appraisal methodology. USPAP and IVS appraisal standards also provide a generally accepted standard of care that is widely followed in U.S. and international valuation matters for real property, personal property, and businesses. As such, they form a “floor” for appraiser competency, similar to how the ABA's Model Rules of Professional Conduct provide general standards for attorneys. Like state bars, other professional appraiser organizations and state licensing boards elaborate on and are free to impose stricter standards on appraisers. Further, USPAP is required for state-licensed and state-certified real property appraisers and has been widely adopted by professional appraisal societies. Internal Revenue Service Advisory Council Annual Report at 118–28 (November 2017). Under Notice 2006–96, 2006–46 I.R.B. 902 (November 13, 2006), the IRS already recognizes USPAP as generally accepted appraisal standards relating to charitable contribution deductions under section 170(f)(11)(E)(i) of the Code. The Tax Court has also looked to adherence to USPAP as a measure of the credibility of an appraisal. *See, e.g., Estate of Cecil v. Commissioner*, T.C. Memo. 2023–24 (giving no weight to a valuation that was inconsistent with USPAP). Therefore, the proposed regulations would provide additional clarity to appraisers with respect to the standard for appraisals submitted in an IRS administrative proceeding.

Proposed § 10.61(b)(2) would also provide that appraisers who know or reasonably should know that an appraisal will be used in an administrative proceeding by taxpayers to support a substantial valuation misstatement under section 6662(e), a substantial estate or gift tax valuation

understatement within the meaning of section 6662(g), or a gross valuation misstatement pursuant to section 6662(h), would be subject to disqualification if they act willfully, recklessly, or through gross incompetence. This standard would allow the IRS to address common appraiser misconduct related to tax return positions.

Consistent with current § 10.60(b), new proposed § 10.61(c) would provide that an appraiser who has been assessed a penalty under section 6694, 6695A, 6700, or 6701 of the Code, for which it is determined that the appraiser acted willfully, recklessly, or through gross incompetence with respect to the proscribed conduct may be disqualified for engaging in disreputable conduct, although this assessment is not a prerequisite to disqualification. Appraisers who have been assessed penalties as a result of their willful, reckless, or grossly incompetent conduct have engaged in disreputable conduct that should disqualify them from presenting evidence or testimony in an administrative proceeding before the Treasury Department or the IRS and should result in the appraiser's appraisals having no probative effect in an administrative proceeding. If the penalty is later abated, an appraiser can petition for reinstatement under redesignated proposed § 10.101.

The proposed regulations also provide that an appraiser may show adherence to USPAP standards when issuing the relevant appraisal, which will be taken into account as a defense in determining whether an appraiser acted willfully, recklessly, or through gross incompetence with respect to potential disqualification under proposed § 10.61(b)(2) or (c).

Because appraisers are not practitioners under Circular 230, it is appropriate to include standards relating to their disqualification under a separate subpart from standards relating to practitioners. However, because appraisers are subject to the same notice and opportunity for a hearing as practitioners under Circular 230, disqualification procedures for appraisers would remain the same as those for practitioners under new subpart F (Rules Applicable to Disciplinary Proceedings).

M. Effect of Disbarment, Suspension, or Censure

In 2017, the United States District Court for the District of Nevada held in *Sexton v. Hawkins*, 119 A.F.T.R. 2d 2017-1187 (D. Nev. 2017), that the Treasury Department and the IRS did not have jurisdiction to investigate

whether suspended practitioners have violated the terms of their suspension because suspended individuals were not considered practitioners under Circular 230. The Treasury Department and the IRS disagree with this holding. The IRS has continuing jurisdiction to investigate suspended practitioners under 31 U.S.C. 330(c), which provides authority to suspend, disbar, or censure practitioners under Circular 230. The ability to investigate compliance by practitioners with the terms of their censure or suspension is critical to ensure compliance and maintain the integrity of practitioner discipline under Circular 230. Practitioners who do not comply with requests for information from OPR or who violate the terms of their suspension may face further sanctions, such as monetary penalties or disbarment.

Proposed § 10.99(e) would clarify that suspended practitioners remain practitioners under Circular 230 for the purposes of investigating and acting on any violation of a suspension or any violation of the law or regulations governing practice before the IRS while suspended. It is also important to the enforcement of 31 U.S.C. 330 and the integrity of Circular 230 for the IRS to ensure that individuals who are not authorized to practice before the IRS, either because they have been disbarred or because they do not have the required credentials, do not claim authority to practice. Proposed § 10.99(f), therefore, would clarify that the IRS has jurisdiction to make inquiries to determine whether an individual has wrongly held themselves out as a practitioner.

N. Expedited Suspension

Current § 10.81 provides guidance on how practitioners can petition OPR for reinstatement, but it does not address practitioners or appraisers who have been suspended or disqualified through the expedited procedures under current § 10.82. Moreover, while current § 10.82 authorizes the immediate suspension of a practitioner who has engaged in certain conduct, it does not include expedited procedures for appraisers or address the voluntary forfeiture of a license or certification by practitioners or appraisers. Current § 10.81, which is proposed to be redesignated as § 10.101, would allow practitioners or appraisers who have received an expedited suspension or disqualification to petition for reinstatement at any time upon a showing of good cause.

The proposed changes to current § 10.82, which is proposed to be redesignated as § 10.102, explain that practitioners can establish good cause

by showing that the conditions giving rise to their expedited suspension or disqualification no longer apply. For example, the restoration of a suspended license, the reversal of a conviction, or the removal of a sanction may be sufficient to show good cause. Proposed § 10.102 would also extend expedited disciplinary proceedings to appraisers who have had a license or certification revoked or suspended by a state licensing or certification board or who have voluntarily forfeited their license or certification. Finally, proposed § 10.102(e)(1)(iii) would clarify that, when a practitioner or appraiser responds to a show cause order but does not request a conference, the IRS will issue a written notice of expedited suspension immediately following consideration of a practitioner or appraiser's response.

Proposed § 10.102(a)(7)(i) and (ii), redesignated from § 10.82(b)(5)(i) and (ii), would only update the cross-references in those provisions. They are otherwise not proposed to be revised, though they are set out in their entirety below for the convenience of the reader. The Treasury Department and IRS do not seek comments on the substance of these provisions, and any such comments would be outside the scope of the proposed regulations.

O. Comments Requested

The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Comments are also specifically requested on whether, in a future regulation, the definition of practitioners eligible to practice before the IRS should be proposed to be expanded to include individuals admitted to practice law in a Tribal court.

Proposed Applicability Date

The proposed regulations are proposed to apply 30 days after date of publication of final regulations in the **Federal Register**.

Special Analyses

I. Regulatory Planning and Review

The Office of Information and Regulatory Affairs has determined that this regulation is not significant and not subject to review under Executive Order 12866 (June 9, 2023). Therefore, a regulatory impact assessment is not required.

II. Initial Regulatory Flexibility Analysis

When the IRS issues a general notice of proposed rulemaking, the Regulatory Flexibility Act (RFA) requires the agency to "prepare and make available

for public comment an initial regulatory flexibility analysis,” which will “describe the impact of the proposed rule on small entities.” 5 U.S.C. 603(a). Unless an agency determines that a proposal is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis (IRFA) of the proposed rule. The proposed regulations will affect a substantial number of small entities. Because the proposed regulations do not impose new requirements on practitioners or appraisers, the Treasury Department and the IRS do not anticipate that the proposed regulations, if promulgated, would have a significant economic impact on any of the regulated entities. The Treasury Department and the IRS, however, request comments on the potential economic impact of the proposed regulations and include an IRFA.

Description of the reasons why action by the agency is being considered and succinct statement of the objectives of, and the legal basis for, the proposed rule.

As discussed in this preamble, current Circular 230 has not been amended since 2014 and many of its provisions have been made obsolete by current law or need to be updated to reflect the current practice environment. Accordingly, the proposed regulations would eliminate provisions related to tax return preparation outside of practice before the IRS, revise contingent fee rules, and update various standards and procedures. In addition, the definition of appraiser and the procedures for disqualifying appraisers from submitting appraisals in an administrative proceeding before the Treasury Department or the IRS are being amended and updated. Thus, the general objective of the proposed regulations is to align Circular 230 with current law and to clarify or update its standards. None of the revisions, however, propose to impose new standards or burdens on practitioners or appraisers. The proposed regulations would either update long-standing Circular 230 standards or incorporate standards that practitioners or appraisers comply with outside of practice before the IRS. For example, the proposed contingent fee restrictions are also incorporated in other widely applicable rules of professional conduct. Likewise, appraisers are generally already required to meet the broad appraisal standards referenced by the proposed regulations.

The legal basis for the proposed regulations is 31 U.S.C. 330.

Description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.

The proposed regulations would affect EAs, ERPAs, attorneys, CPAs, and AFSP participants who practice before the IRS. The proposed regulations would also affect appraisers who submit appraisals in an administrative proceeding before the Treasury Department or the IRS. Circular 230 affects both individual practitioners and firms. For example, the flush language of 31 U.S.C. 330(c) authorizes the Secretary, or her delegate, to impose a monetary penalty on a firm if the firm knew or should have known that a representative acting on its behalf intended to defraud a client. Further, proposed § 10.36(a) would require practitioners who oversee a firm’s practice to take reasonable steps to ensure that the firm has adequate procedures to comply with Circular 230. However, because the proposed regulations would only affect individual practitioners and appraisers, the economic impact of these regulations on any small entity generally will be the result of an individual practitioner or appraiser owning a small business, or a small business employing a practitioner or appraiser, and the business paying for the individual to maintain its status or to comply with other requirements in the Circular. Because an estimate of the number of small entities to which the proposed rule will apply is not available, the Treasury Department and the IRS considered the estimated number of practitioners and appraisers who will be affected by the proposed rule. Based on IRS records, the total number of impacted practitioners and appraisers is approximately 451,405. Specifically, Centralized Authorization File records, which reflect practitioners who filed third-party authorizations with the IRS, reflect approximately 200,000 unique CPAs, 65,000 unique attorneys, and 40,000 unique practitioners who identify as both attorneys and CPAs as of May 17, 2024. Further, IRS Return Preparer Office (RPO) registration records show approximately 62,383 EAs, 608 ERPAs, 3,402 enrolled actuaries, and 75,357 AFSP participants. Finally, in 2022, the most recent year for which complete data are available, approximately 4,200 unique appraisers signed the “Declaration of Appraiser” on a Form 8283, *Noncash Charitable Contributions*. Appraisers sign Forms 8283 for appraisals that are used in connection with a tax return or claim of refund. Thus, the forms represent a

reasonable approximation of appraisers who are likely to be covered by these proposed rules.

A description of the projected recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to such requirements that the type of professional skills necessary for preparation of the report or record.

No reporting or recordkeeping requirements are projected to be associated with the proposed regulations.

Identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

The IRS is not aware of any Federal rules that duplicate, overlap, or conflict with the proposed rule.

Description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities, including a discussion of significant alternatives.

Section 330 of title 31, United States Code authorizes the Secretary, or her delegate, to impose standards on individuals who practice before the Treasury Department and the IRS; to suspend or disbar from practice certain individuals; and to bar certain appraisers from submitting evidence or testimony in any administrative proceeding before the Treasury Department or the IRS. The Treasury Department and the IRS have issued regulations under Circular 230 for these purposes since 1921 and have regularly updated them to reflect changing law and current standards of practice. These updates, including those found in the proposed regulations, are essential to ensure that practitioners and appraisers are competent, reputable and have the necessary requirements to provide taxpayers with valuable service. The proposed regulations could have created a new standard for appraisals submitted in an administrative proceeding before the IRS, but that would have been more burdensome to appraisers. Instead, requiring appraisals to conform in substance and principles to the USPAP or IVS is less costly and burdensome because appraisers are already required to abide by these standards. Further, the proposed regulations could have implemented case law to preclude regulating contingent fee arrangements for preparing original or amended returns and ordinary refund claims, but this position would not have met the objective to discourage unduly

aggressive tax positions that result in evasion or abuse of the Federal tax laws. Therefore, the proposed regulations would adopt a straightforward standard: charging a contingent fee for the preparation of an original return, amended return, or claim for refund or credit prepared prior to the examination of a tax return is disreputable conduct.

III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. This proposed rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

IV. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These proposed regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

V. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments) prohibits an agency from publishing any rule that has Tribal implications if the rule either imposes substantial, direct compliance costs on Indian Tribal governments, and is not required by statute, or preempts Tribal law, unless the agency meets the consultation and funding requirements of section 5 of the Executive order.

The Treasury Department and the IRS will hold a consultation with Tribal leaders to receive Tribal feedback on whether practitioners eligible to practice before the IRS should include individuals admitted to practice law in a Tribal court, which will inform the development of future regulations.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, Notices, and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are timely submitted to the Treasury Department and the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic and paper comments submitted will be available at <https://www.regulations.gov> or upon request. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing is being held on March 6, 2025, beginning at 10 a.m. ET, in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed as well as the time to be devoted to each topic by February 24, 2025. A period of ten minutes will be allocated to each person for making comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available free of charge at the hearing. If no outlines of the topics to be discussed at the hearing are received by February 24, 2025, the public hearing will be cancelled. If the public hearing is cancelled, a notification of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to publichearings@irs.gov to have your name added to the building

access list. The subject line of the email must contain the regulation number REG-116610-20 and, the language TESTIFY In Person. For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG-116610-20.

Individuals who want to testify by telephone at the public hearing must send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-116610-20 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG-116610-20.

Individuals who want to attend the public hearing in person without testifying must also send an email to publichearings@irs.gov to have your name added to the building access list. The subject line of the email must contain the regulation number (REG-116610-20) and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing In Person for REG-116610-20. Requests to attend the public hearing must be received by 5 p.m. ET on March 4, 2025.

Individuals who want to attend the public hearing telephonically without testifying must also send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number (REG-116610-20) and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG-116610-20. Requests to attend the public hearing must be received by 5 p.m. ET on March 4, 2025.

Hearings will be made accessible to people with disabilities. To request special assistance during the hearing, contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to publichearings@irs.gov (preferred) or by telephone at (202) 317-6901 (not a toll-free number) by at least March 3, 2025.

Drafting Information

The principal author of these regulations is William J. Prater of the Office of the Associate Chief Counsel (Procedure and Administration). However, other personnel from the Treasury Department and the IRS participated in the development of the regulations.

Withdrawal of Notice of Proposed Rulemaking

The Treasury Department and the IRS withdraw the notice of proposed rulemaking (REG-113289-08) that was published in the **Federal Register** on July 28, 2009 (74 FR 37183) under the authority of 31 U.S.C. 330.

List of Subjects in 31 CFR Part 10

Accountants, Administrative practice and procedure, Lawyers, Reporting and recordkeeping requirements, Taxes.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 31 CFR part 10 as follows:

PART 10—PRACTICE BEFORE THE INTERNAL REVENUE SERVICE

■ **Paragraph 1.** The authority for 31 CFR part 10 continues to read as follows:

Authority: Sec. 3, 23 Stat. 258, secs. 2–12, 60 Stat. 237 *et seq.*; 5 U.S.C. 301, 500, 551–559; 31 U.S.C. 321; 31 U.S.C. 330; Reorg. Plan No. 26 of 1950, 15 FR 4935, 64 Stat. 1280, 3 CFR, 1949–1953 Comp., P. 1017.

■ **Par. 2.** Part 10 is amended by removing the language “taxpayer”, “taxpayers”, and “taxpayer’s” wherever they appear and adding the language “client”, “clients”, and “client’s” in their places, respectively.

■ **Par. 3.** Section 10.0 is revised to read as follows:

§ 10.0 Scope of part.

(a) *In general.* This part contains rules governing the recognition of attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, enrolled actuaries, and other persons representing clients before the Internal Revenue Service. This part also establishes standards for appraisers who submit appraisals or present evidence or testimony to the Department of the Treasury or the Internal Revenue Service (IRS). Subpart A of this part sets forth rules relating to the authority to practice before the IRS; subpart B of this part prescribes the duties and restrictions relating to subpart A; subpart C of this part prescribes incompetence and disreputable conduct; subpart D of this part sets forth standards relating to the disqualification of appraisers and prescribes sanctions for violating the standards; subpart E of this part prescribes the sanctions for violating the standards in subparts B through D; subpart F of this part contains the rules applicable to disciplinary proceedings and general provisions relating to the availability of official records.

(b) *Applicability date.* This section is applicable beginning on [date 30 days after date of publication of final regulations in the **Federal Register**].

■ **Par. 4.** Section 10.2 is amended by:

■ 1. Revising paragraphs (a)(4) through (6).

■ 2. Removing paragraphs (a)(7) and (8).

■ 3. Revising paragraph (b).

The revisions read as follows:

§ 10.2 Definitions.

(a) * * *

(4) *Practice before the Internal Revenue Service* comprehends all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a client’s rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing documents; filing documents; corresponding and communicating with the Internal Revenue Service; rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion; and representing a client at conferences, hearings, and meetings. Any action that supports a presentation to the Internal Revenue Service, including the preparation and submission of tax returns in connection with representing a client in a matter before the Internal Revenue Service, may constitute practice before the Internal Revenue Service.

(5) *Practitioner* means any individual described in § 10.3(a), (b), (c), (d), or (e).

(6) A *tax return* includes an amended tax return and a claim for refund or credit within the meaning of section 6696(e)(2) of the Internal Revenue Code, such as a claim for refund or credit made on IRS Form 843, *Claim for Refund and Request for Abatement*.

(b) This section is applicable beginning on [date 30 days after date of publication of final regulations in the **Federal Register**].

■ **Par. 5.** Section 10.3 is amended by:

■ 1. Revising paragraphs (c), (d)(3), and (e)(1) and (3).

■ 2. Removing paragraph (f).

■ 3. Redesignating paragraphs (g) through (j) as paragraphs (f) through (i).

■ 4. Revising newly redesignated paragraph (i).

The revisions read as follows:

§ 10.3 Who may practice.

* * * * *

(c) *Enrolled agents.* Any individual enrolled as an agent pursuant to this part who is not currently under suspension or disbarment from practice

before the Internal Revenue Service, and whose valid enrollment is active and has not been terminated under § 10.6, may practice before the Internal Revenue Service.

(d) * * *

(3) An individual who practices before the Internal Revenue Service pursuant to paragraph (d)(1) of this section is subject to the provisions of this part in the same manner as attorneys, certified public accountants, enrolled agents, and enrolled retirement plan agents.

(e) * * *

(1) Any individual enrolled prior to February 12, 2016, as a retirement plan agent pursuant to this part who is not currently under suspension or disbarment from practice before the Internal Revenue Service, and whose enrollment is not in inactive status or has not been terminated under § 10.6, may practice before the Internal Revenue Service.

* * * * *

(3) An individual who practices before the Internal Revenue Service pursuant to paragraph (e)(1) of this section is subject to the provisions of this part in the same manner as attorneys, certified public accountants, enrolled agents, and enrolled actuaries.

* * * * *

(i) *Applicability date.* This section is applicable beginning on [date 30 days after date of publication of final regulations in the **Federal Register**].

■ **Par. 6.** Section 10.4 is amended by:

■ 1. Revising the section heading.

■ 2. Removing paragraphs (b) through (d).

■ 3. Redesignating paragraphs (e) and (f) as paragraphs (b) and (c).

■ 4. Revising newly redesignated paragraph (c).

The revisions read as follows:

§ 10.4 Eligibility to become an enrolled agent.

* * * * *

(c) *Applicability date.* This section is applicable beginning on [date 30 days after date of publication of final regulations in the **Federal Register**]. Former IRS employees must apply for special enrollment in accordance with 31 CFR 10.4(d), revised as of July 1, [year to be determined], on or before [date 30 days after date of publication of final regulations in the **Federal Register**].

■ **Par. 7.** Section 10.5 is amended by revising the section heading and paragraphs (a), (b), (d)(2), (e), and (g) to read as follows:

§ 10.5 Application to become an enrolled agent.

(a) *Form; address.* An applicant to become an enrolled agent must apply as required by forms or procedures established and published by the Internal Revenue Service, including proper execution of required forms under oath or affirmation. The address on the application will be the address under which a successful applicant is enrolled and is the address to which all correspondence concerning enrollment will be sent.

(b) *Fee.* A reasonable nonrefundable fee may be charged for each application to become an enrolled agent. *See* 26 CFR part 300.

* * * * *

(d) * * *

(2) If the applicant does not pass the tax compliance or suitability check, the applicant will not be issued a confirmation of enrollment pursuant to § 10.6(b). An applicant who is initially denied enrollment for failure to pass a tax compliance check may reapply after the initial denial if the applicant becomes current with respect to the applicant's tax liabilities.

(e) *Temporary recognition.* On receipt of a properly executed application, the Commissioner, or delegate, may grant the applicant temporary recognition to practice pending a determination as to whether status as an enrolled agent should be granted. Temporary recognition will be granted only in unusual circumstances and it will not be granted, in any circumstance, if the application is not regular on its face, if the information stated in the application, if true, is not sufficient to warrant granting the application to practice, or if the Commissioner, or delegate, has information indicating that the statements in the application are untrue or that the applicant would not otherwise qualify to become an enrolled agent. Issuance of temporary recognition does not constitute either a designation or a finding of eligibility as an enrolled agent, and the temporary recognition may be withdrawn at any time.

* * * * *

(g) *Applicability date.* This section is applicable beginning on [date 30 days after date of publication of final regulations in the **Federal Register**].

■ **Par. 8.** Section 10.6 is amended by:

■ 1. Revising the section heading and paragraphs (a), (b), (c), and (d)(1) and (2).

■ 2. Removing paragraph (d)(4).

■ 3. Redesignating paragraphs (d)(5) through (7) as paragraphs (d)(4) through (6).

■ 4. Revising newly redesignated paragraphs (d)(4) and (6) and paragraph (e) introductory text.

■ 5. Removing paragraph (e)(1)(iii).

■ 6. Redesignating paragraph (e)(1)(iv) as paragraph (e)(1)(iii).

■ 7. Removing paragraphs (e)(3) and (f)(1)(iii).

■ 8. Revising paragraphs (f)(2)(ii) heading, (f)(2)(iii)(C), (i)(4) and (5), and (j)(2).

■ 9. In paragraph (j)(3), removing the language “or inactive registered individuals” from the end of the first sentence.

■ 10. Revising paragraphs (j)(4) through (6), (k), (l), and (n).

The revisions read as follows:

§ 10.6 Term and renewal of status as an enrolled agent or enrolled retirement plan agent.

(a) *Term.* Each individual authorized to practice before the Internal Revenue Service as an enrolled agent or enrolled retirement plan agent will be accorded active enrollment status subject to renewal of enrollment as provided in this part.

(b) *Confirmation of enrollment.* The Internal Revenue Service will issue an enrollment document (such as an enrollment card or other document) to an individual who meets the enrollment requirements in this paragraph (b) and whose application to practice before the Internal Revenue Service is approved. This approval will be valid for the period stated on the enrollment document. An enrolled agent or enrolled retirement plan agent may not practice before the Internal Revenue Service without a valid approval. The enrollment document is in addition to any notification that may be provided to each individual who obtains a preparer tax identification number.

(c) *Change of address.* An enrolled agent or enrolled retirement plan agent must send notification of any change of address to the address specified by the Internal Revenue Service within 60 days of the change of address. This notification must include the enrolled agent's or enrolled retirement plan agent's name, prior address, new address, tax identification number(s) (including preparer tax identification number), and the date the change of address is effective. Unless this notification is sent, the address for purposes of any correspondence from the appropriate Internal Revenue Service office responsible for administering this part will be the address reflected on the practitioner's most recent application for enrollment, or application for renewal of enrollment. A practitioner's change of

address notification under this part will not constitute a change of the practitioner's last known address for purposes of section 6212 of the Internal Revenue Code.

(d) * * *

(1) *In general.* Enrolled agents or enrolled retirement plan agents must renew their status with the Internal Revenue Service to maintain eligibility to practice before the Internal Revenue Service. Failure to receive notification from the Internal Revenue Service of the renewal requirement will not be justification for the individual's failure to satisfy the requirement of this paragraph (d).

(2) *Renewal period for enrolled agents.* (i) Applications for renewal of status as an enrolled agent will be required between November 1 and January 31 every three years according to the last digit of the individual's Social Security number or tax identification number. Those individuals who receive initial enrollment as an enrolled agent after November 1 and before April 2 of the applicable renewal period will not be required to renew their enrollment before the first full renewal period following the receipt of their initial enrollment.

(ii) Enrolled agents who have a Social Security number or tax identification number that ends with the numbers 0, 1, 2, or 3, except for those individuals who received their initial enrollment after November 1, 2024, must apply for renewal between November 1, 2024, and January 31, 2025. The renewal will be effective April 1, 2025.

(iii) Enrolled agents who have a Social Security number or tax identification number that ends with the numbers 4, 5, or 6, except for those individuals who received their initial enrollment after November 1, 2025, must apply for renewal between November 1, 2025, and January 31, 2026. The renewal will be effective April 1, 2026.

(iv) Enrolled agents who have a Social Security number or tax identification number that ends with the numbers 7, 8, or 9, or who do not have a Social Security number, except for those individuals who received their initial enrollment after November 1, 2026, must apply for renewal between November 1, 2026, and January 31, 2027. The renewal will be effective April 1, 2027.

* * * * *

(4) *Notification of renewal.* After review and approval, the Internal Revenue Service will notify the individual of the renewal and will issue the individual a document evidencing

current status as an enrolled agent or enrolled retirement plan agent.

* * * * *

(6) *Forms.* Forms required for renewal may be obtained by sending a written request to the address specified by the Internal Revenue Service or from such other source as the Internal Revenue Service will publish in the Internal Revenue Bulletin (*see* 26 CFR 601.601(d)(2)(ii)(b)) and on the Internal Revenue Service website.

(e) *Condition for renewal: continuing education.* To qualify for renewal as an enrolled agent or enrolled retirement plan agent an individual must certify in the manner prescribed by the Internal Revenue Service that the individual has satisfied the requisite number of continuing education hours.

* * * * *

(f) * * *

(2) * * *

(ii) *Correspondence or individual study programs (including recorded programs).* * * *

(iii) * * *

(C) The maximum continuing education credit for instruction and preparation may not exceed six hours annually for enrolled agents and enrolled retirement plan agents.

* * * * *

(i) * * *

(4) If a request for waiver is not approved, the individual will be placed in inactive status. The individual will be notified that the waiver was not approved and that the individual has been placed on a roster of inactive enrolled agents or enrolled retirement plan agents.

(5) If the request for waiver is not approved, the individual may file a protest as prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance. A protest filed under this section is not governed by subpart F of this part.

* * * * *

(j) * * *

(2) The continuing education records of an enrolled agent or enrolled retirement plan agent may be reviewed to determine compliance with the requirements and standards for renewal as provided in paragraph (f) of this section. As part of this review, the enrolled agent or enrolled retirement plan agent may be required to provide the Internal Revenue Service with copies of any continuing education records required to be maintained under this part. If the enrolled agent or enrolled retirement plan agent fails to comply with the requirement in this paragraph (j)(2), any continuing

education hours claimed may be disallowed.

* * * * *

(4) Individuals in inactive status and individuals who are ineligible to practice before the Internal Revenue Service may not state or imply that they are eligible to practice before the Internal Revenue Service, or use the terms enrolled agent or enrolled retirement plan agent, the designations *EA* or *ERPA*, or other form of reference to eligibility to practice before the Internal Revenue Service.

(5) An individual placed in inactive status may be reinstated to an active status by filing an application for renewal and providing evidence of the completion of all required continuing education hours for the enrollment cycle. Continuing education credit under this paragraph (j)(5) may not be used to satisfy the requirements of the enrollment cycle in which the individual has been placed back on the active roster.

(6) An individual placed in inactive status must file an application for renewal and satisfy the requirements for renewal as set forth in this section within three years of being placed in inactive status. Otherwise, the name of such individual will be removed from the inactive status roster and the individual's status as an enrolled agent or enrolled retirement plan agent will terminate. Future eligibility for active status must then be reestablished by the individual as provided in this section.

* * * * *

(k) *Inactive retirement status.* An individual who no longer practices before the Internal Revenue Service may request to be placed in an inactive retirement status at any time and such individual will be placed in an inactive retirement status. The individual will be ineligible to practice before the Internal Revenue Service. An individual who is placed in an inactive retirement status may be reinstated to an active status by filing an application for renewal and providing evidence of the completion of the required continuing education hours for the enrollment cycle. Inactive retirement status is not available to an individual who is ineligible to practice before the Internal Revenue Service or an individual who is the subject of a pending disciplinary matter under this part.

(l) *Renewal while under suspension or disbarment.* An individual who is ineligible to practice before the Internal Revenue Service by virtue of disciplinary action under this part is required to conform to the requirements

for renewal of enrollment before the individual's eligibility is restored.

* * * * *

(n) *Applicability date.* This section is applicable beginning on [date 30 days after date of publication of final regulations in the **Federal Register**].

■ **Par. 9.** Section 10.7 is amended by adding paragraph (c)(1)(viii) and revising paragraph (f) to read as follows:

§ 10.7 Representing oneself; participating in rulemaking; limited practice; and special appearances.

* * * * *

(c) * * *

(1) * * *

(viii) An individual who possesses a current Annual Filing Season Program (AFSP) Record of Completion may represent a client before revenue agents, customer service representatives, or similar officers and employees of the Internal Revenue Service, including the Taxpayer Advocate Service, during an examination of a tax return or claim for refund or credit that the individual prepared and signed. The individual must have: a valid Record of Completion for the calendar year in which the tax return or claim for refund or credit was prepared and signed and a valid Record of Completion for the year or years in which the representation occurs.

* * * * *

(f) *Applicability date.* This section is applicable beginning on [date 30 days after date of publication of final regulations in the **Federal Register**].

■ **Par. 10.** Section 10.8 is revised to read as follows:

§ 10.8 Participation in IRS proceedings by non-practitioners.

(a) *Furnishing Information.* Any individual, except appraisers who have been disqualified pursuant to § 10.61(a), including non-practitioners, may appear as a witness before the Internal Revenue Service, or furnish information at the request of the Internal Revenue Service or any of its officers or employees.

(b) *Applicability date.* This section is applicable beginning on [date 30 days after date of publication of final regulations in the **Federal Register**].

■ **Par. 11.** Section 10.9 is amended by:

■ 1. In paragraph (a)(2)(i), removing the language “and pay any applicable user fee” from the end of the paragraph.

■ 2. In paragraph (a)(2)(ii), removing the language “and paying any applicable user fee” from the end of the paragraph.

■ 3. In paragraph (a)(4)(i), removing the language “and pay any applicable user fee” from the first sentence in the paragraph.

■ 4. Revising paragraph (c).

■ 5. Adding paragraph (d).

The revision and addition read as follows:

§ 10.9 Continuing education providers and continuing education programs.

* * * *

(c) *Fee.* In addition to any vendor fees that are charged, a continuing education provider may be required to pay a user fee to obtain or renew a continuing education provider number or continuing education provider program number.

(d) *Applicability date.* This section is applicable beginning on [date 30 days after date of publication of final regulations in the **Federal Register**].

■ **Par. 12.** Section 10.21 is revised to read as follows:

§ 10.21 Knowledge of error or omission.

(a) *In general.* A practitioner who, while representing a client in a matter before the Internal Revenue Service, knows that either the client, the practitioner, or a prior practitioner has not complied with the revenue laws of the United States and regulations, or has made an error in or omission from any return, document, affidavit, or other paper that the client submitted or executed under the revenue laws of the United States and regulations, must advise the client promptly of the fact of such noncompliance, error, or omission. The practitioner must advise the client of the consequences of the noncompliance, error, or omission, as provided under the internal revenue laws of the United States and regulations, and recommend the corrective actions, such as disclosure, to be taken.

(b) *Disclosure and continued representation.* If a practitioner is representing a client in a matter before the Internal Revenue Service, the practitioner should request the client's agreement to disclose the noncompliance, error, or omission to the Internal Revenue Service. The practitioner must also take reasonable steps to ensure that the noncompliance, error, or omission is not repeated in subsequent submissions to the Internal Revenue Service. If the client does not agree to disclose the noncompliance, error, or omission, the practitioner should consider whether the practitioner can continue to represent the client before the Internal Revenue Service and meet the obligation to ensure diligence as to accuracy under § 10.22.

(c) *Applicability date.* This section is applicable beginning on [date 30 days after date of publication of final regulations in the **Federal Register**].

■ **Par. 13.** Section 10.22 is amended by revising paragraphs (a)(1) through (3) and (c) to read as follows:

§ 10.22 Diligence as to accuracy.

(a) * * *

(1) In preparing or assisting in the preparation of, approving, or submitting documents, affidavits, and other papers, including tax returns prepared, approved or submitted in connection with representing a client in a matter before the Internal Revenue Service;

(2) In determining the correctness of oral or written representations made by the practitioner when representing a client in a matter before the Internal Revenue Service; and

(3) In determining the correctness of oral or written representations made by the practitioner to clients when representing clients in a matter before the Internal Revenue Service.

* * * *

(c) *Applicability date.* This section is applicable beginning on [date 30 days after date of publication of final regulations in the **Federal Register**].

§ 10.27 [Removed]

■ **Par. 14.** Section 10.27 is removed.

■ **Par. 15.** Section 10.30 is amended by revising paragraphs (a)(1) and (e) to read as follows:

§ 10.30 Solicitation.

(a) * * *

(1) A practitioner may not, with respect to any Internal Revenue Service matter, in any way use or participate in the use of any form of public communication or private solicitation containing a false, fraudulent, or coercive statement or claim; or a misleading or deceptive statement or claim. Enrolled agents and enrolled retirement plan agents, in describing their professional designation, may not utilize the term *certified* or imply an employer-employee relationship with the Internal Revenue Service. Examples of acceptable descriptions for enrolled agents are “enrolled to represent clients before the Internal Revenue Service,” “enrolled to practice before the Internal Revenue Service,” “admitted to practice before the Internal Revenue Service,” *EA*, or *E.A.* Similarly, examples of acceptable descriptions for enrolled retirement plan agents are “enrolled to represent clients before the Internal Revenue Service as a retirement plan agent” and “enrolled to practice before the Internal Revenue Service as a retirement plan agent,” *ERPA*, or *E.R.P.A.*

* * * *

(e) *Applicability date.* This section is applicable beginning on [date 30 days

after date of publication of final regulations in the **Federal Register**].

* * * *

■ **Par. 16.** Section 10.31 is revised to read as follows:

§ 10.31 Negotiation of payments to clients.

(a) *In general.* A practitioner may not endorse or otherwise negotiate or transfer any paper or electronic check, prepaid or debit card, phone or mobile payment, or other form of payment issued to a client by the government in respect of a Federal tax liability.

Negotiate or transfer includes directing or accepting payment by any means, electronic or otherwise, into an account owned, controlled by, or held for the benefit of the practitioner or any firm or other entity with which the practitioner is associated.

(b) *Applicability date.* This section is applicable beginning on [date 30 days after date of publication of final regulations in the **Federal Register**].

■ **Par. 17.** Section 10.33 is amended by:

■ 1. Revising the section heading and paragraphs (a) introductory text and (a)(1).

■ 2. Redesignating paragraph (a)(4) as paragraph (a)(7).

■ 3. Adding new paragraph (a)(4) and paragraphs (a)(5) and (6).

■ 4. Revising paragraph (b).

■ 5. Removing paragraph (c).

The revisions and additions read as follows:

§ 10.33 Best practices for tax practitioners.

(a) *Best practices.* Tax practitioners should provide clients with the highest quality representation concerning Federal tax issues by adhering to best practices in providing advice and in preparing or assisting in the preparation of a submission to the Internal Revenue Service. In addition to compliance with the standards of practice provided elsewhere in this part, best practices include the following:

(1) Communicating clearly with the client regarding the terms of the engagement, including those relating to fees, expenses, and payment. For example, the practitioner should determine the client's expected purpose for and use of the advice and should have a clear understanding with the client regarding the form and scope of the advice or assistance to be rendered.

* * * *

(4) Maintaining a policy related to data security safeguards with respect to a client's tax return or other confidential information. Practitioners should also consider developing an incident response plan with specific procedures for responding to a data breach and for disclosure of data breaches to clients.

(5) Identifying, evaluating, and addressing a mental impairment, whether chronic or temporary, arising out of or related to age, substance abuse, a physical or mental health condition, or other circumstance that may have an adverse impact on a tax practitioner's ability to provide the highest quality representation of a client before the Internal Revenue Service.

(6) Establishing a business continuity and succession plan that addresses procedures and safeguards in the event of the sale or cessation of the practitioner's practice, the practitioner's death or disability, or the occurrence of extraordinary events such as a natural disaster, cyberattack, or pandemic.

* * * * *

(b) *Applicability date.* This section is applicable beginning on [date 30 days after date of publication of final regulations in the **Federal Register**].

■ **Par. 18.** Section 10.34 is amended by revising the section heading and paragraphs (a) heading, (a)(1)(i) introductory text, (c)(1)(i) and (ii), and (d) and (e) to read as follows:

§ 10.34 Standards with respect to tax returns, documents, affidavits, and other papers prepared or submitted while representing a client before the Internal Revenue Service.

(a) *Tax returns prepared or submitted while representing a client in a matter before the IRS.* (1) * * *

(i) Prepare, while representing a client in a matter before the Internal Revenue Service or, for tax returns prepared by the practitioner prior to the representation, including returns already filed with the Internal Revenue Service, submit a tax return or claim for refund or a claim for a credit that the practitioner knows or reasonably should know contains a position that—

* * * * *

(c) * * *

(1) * * *

(i) A position taken on a tax return that is relevant to the representation of a client in a matter before the Internal Revenue Service if—

(A) The practitioner provided written advice, as defined under § 10.37, to the client with respect to the position; or

(B) The practitioner prepared and submitted the tax return while representing the client in a matter before the IRS.

(ii) Any document, affidavit or other paper submitted in a matter before the Internal Revenue Service.

* * * * *

(d) *Relying on information furnished by clients.* A practitioner advising a client to take a position on a tax return, document, affidavit or other paper

submitted in a matter before the Internal Revenue Service, generally may rely in good faith without verification upon information furnished by the client. However, the practitioner may not ignore the implications of information furnished to, or actually known by, the practitioner, and must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete.

(e) *Applicability date.* This section is applicable beginning on [date 30 days after date of publication of final regulations in the **Federal Register**].

■ **Par. 19.** Section 10.35 is amended by adding a sentence at the end of paragraph (a) and revising paragraph (b) to read as follows:

§ 10.35 Competence.

(a) * * * Competency includes understanding the benefits and risks associated with relevant technology that is used by the practitioner to provide services to clients or to store and transmit tax return and other confidential information.

(b) This section is applicable beginning on [date 30 days after date of publication of final regulations in the **Federal Register**].

■ **Par. 20.** Section 10.36 is amended by revising paragraphs (a) and (c) to read as follows:

§ 10.36 Procedures to ensure compliance.

(a) Any individual subject to the provisions of this part who has (or individuals who have or share) principal authority and responsibility for overseeing a firm's practice governed by this part, including, while representing a client, the provision of advice concerning Federal tax matters or the preparation or submission of documents in a matter before the Internal Revenue Service, must take reasonable steps to ensure that the firm has adequate procedures in effect for all members, associates, and employees (whether or not those individuals are otherwise subject to this part) for purposes of complying with subparts A through C of this part, as applicable (including the best practices described in § 10.33(a)). In the absence of a person or persons identified by the firm as having the principal authority and responsibility described in this paragraph (a), the Internal Revenue Service may identify one or more individuals subject to the provisions of this part responsible for compliance with the requirements of this section.

* * * * *

(c) This section is applicable beginning on [date 30 days after date of

publication of final regulations in the **Federal Register**].

■ **Par. 21.** Section 10.37 is amended by revising the section heading and paragraphs (b)(2), (c), (d) introductory text, (d)(2), and (e) to read as follows:

§ 10.37 Requirements for written tax advice.

* * * * *

(b) * * *

(2) The practitioner knows or reasonably should know that the other person is not competent or lacks the necessary qualifications to provide the advice, or is unaware of all relevant facts and circumstances; or

* * * * *

(c) *Standard of review.* In evaluating whether a practitioner giving written advice concerning one or more Federal tax matters complied with the requirements of this section, the Commissioner, or delegate, will apply a reasonable practitioner standard, considering all facts and circumstances, including, but not limited to, the scope of the engagement, the practitioner's knowledge of the client's particular circumstances, and the type and specificity of the advice sought by the client.

(d) *Federal tax matter.* A Federal tax matter, as used in this section, is any transaction, plan, arrangement, or other matter (whether prospective or completed), which is of a type that the Internal Revenue Service determines as having a potential for tax avoidance or evasion, concerning the application or interpretation of—

* * * * *

(2) Any provision of law impacting a person's obligations under the internal revenue laws and regulations, including but not limited to the person's liability to pay tax, ability to take a specific return position (whether prospective or completed), or obligation to file returns; or

* * * * *

(e) *Applicability date.* This section is applicable beginning on [date 30 days after date of publication of final regulations in the **Federal Register**].

§§ 10.38, 10.91, and 10.93 [Removed]

■ **Par. 22.** Sections 10.38, 10.91, and 10.93 are removed.

§§ 10.50, 10.51, 10.52, 10.53, 10.60, 10.61, 10.62, 10.63, 10.64, 10.65, 10.66, 10.67, 10.68, 10.69, 10.70, 10.71, 10.72, 10.73, 10.74, 10.75, 10.76, 10.77, 10.78, 10.79, 10.80, 10.81, 10.82, 10.90, and 10.92

[Redesignated as §§ 10.70, 10.50, 10.71, 10.72, 10.80, 10.81, 10.82, 10.83, 10.84, 10.85, 10.86, 10.87, 10.88, 10.89, 10.90, 10.91, 10.92, 10.93, 10.94, 10.95, 10.96, 10.97, 10.98, 10.99, 10.100, 10.101, 10.102, 10.100, and 10.113]

■ **Par. 23.** Redesignate the sections in the first column as the sections in the second column:

Current section:	New section:
10.50	10.70
10.51	10.50
10.52	10.71
10.53	10.72
10.60	10.80
10.61	10.81
10.62	10.82
10.63	10.83
10.64	10.84
10.65	10.85
10.66	10.86
10.67	10.87
10.68	10.88
10.69	10.89
10.70	10.90
10.71	10.91
10.72	10.92
10.73	10.93
10.74	10.94
10.75	10.95
10.76	10.96
10.77	10.97
10.78	10.98
10.79	10.99
10.80	10.100
10.81	10.101
10.82	10.102
10.90	10.110
10.92	10.113

■ **Par. 24.** Revise the heading for subpart C to read as follows:

Subpart C—Incompetence or Disreputable Conduct

■ **Par. 25.** Newly redesignated § 10.50 is amended by:

- 1. Revising paragraphs (a) introductory text and (a)(12).
- 2. Adding paragraph (a)(19).
- 3. Revising paragraph (b).
- 4. Adding paragraph (c).

The revisions and additions read as follows:

§ 10.50 Incompetence or disreputable conduct.

(a) *Incompetence or disreputable conduct.* Incompetence or disreputable conduct for which a practitioner may be sanctioned under § 10.70 includes actions that relate to a practitioner's fitness to practice before the Internal Revenue Service, regardless of whether those actions are connected to a presentation to the Internal Revenue

Service as defined under § 10.2(a)(4). Incompetence or disreputable conduct includes, but is not limited to—

* * * * *

(12) Contemptuous conduct in connection with practice before the Internal Revenue Service (or during any proceeding pursuant to § 10.80 or an investigation by the Treasury Inspector General for Tax Administration), including the use of abusive or otherwise contemptuous acts or language, making false accusations or statements, knowing them to be false, or circulating or publishing malicious or libelous matter.

* * * * *

(19) Willfully failing to follow any Federal tax law.

(b) *Assessment of certain penalties.* Assessment against a practitioner of a penalty related to a willful attempt to understate tax liabilities under section 6694(b) of the Internal Revenue Code (Code); aiding or abetting in the understatement of tax liabilities under section 6701 of the Code; careless, reckless, or intentional disregard for applicable rules or regulations (within the meaning of 26 CFR 1.6662–3(b)(2) and 1.6694–3(c)) under section 6662(b)(1) of the Code; or promotion of abusive tax shelters under section 6700 of the Code will be considered a violation of paragraph (a)(7) of this section. The assessment of any of these penalties, however, is not required to show a violation of paragraph (a)(7) of this section.

(c) *Applicability date.* This section is applicable beginning on [date 30 days after date of publication of final regulations in the **Federal Register**].

■ **Par. 26.** New § 10.51 is added to subpart C to read as follows:

§ 10.51 Fees that constitute disreputable conduct.

(a) *Unconscionable fees.* Charging an unconscionable fee is disreputable conduct.

(b) *Contingent fees.* Charging a contingent fee in connection with the preparation of an original or amended tax return or claim for refund or credit prepared prior to the examination of the tax return is disreputable conduct.

(1) *Preparation of an original or amended tax return or claim for refund or credit* includes providing advice that is directly relevant to determining the existence, character, or amount of an item, entry, or another portion of a tax return or claim for refund, including any schedules that are part of the tax return or claim for refund or credit.

(2) *Contingent fee* is any fee that is based in whole or in part on whether or not a position taken on a tax return or

other filing avoids challenge by the Internal Revenue Service or is sustained either by the Internal Revenue Service or in litigation. A contingent fee includes a fee that is based on a percentage of the refund reported on a tax return, that is based on a percentage of the taxes saved, or that otherwise depends on the specific tax result attained. A contingent fee also includes any fee arrangement in which the practitioner will reimburse the client for all or a portion of the client's fee in the event that a position on a tax return or other filing is challenged by the Internal Revenue Service or is not sustained, whether pursuant to an indemnity agreement, a guarantee, rescission rights, or any other arrangement with a similar effect.

(c) *Applicability date.* This section is applicable beginning on [date 30 days after date of publication of final regulations in the **Federal Register**].

■ **Par. 27.** Revise the heading for subpart D to read as follows:

Subpart D—Appraisers

■ **Par. 28.** Add new §§ 10.60 through 10.62 to subpart D to read as follows:

* * * * *
Sec.
10.60 Definitions.
10.61 Disqualification of appraisers.
10.62 Receipt of information concerning appraisers.
* * * * *

§ 10.60 Definitions.

(a) *Appraiser.* The term *appraiser* means any individual who determines the market value of any asset to support a position taken on a tax return or in an administrative proceeding. Appraisers include, but are not limited to, individuals who meet the definition of a “qualified appraiser” under section 170(f)(11)(E) of the Internal Revenue Code.

(b) *Administrative proceeding.* An administrative proceeding for purposes of this subpart, includes any matter or other action before the Department of the Treasury or the Internal Revenue Service that involves the presentation of documents, testimony, or other evidence. Administrative proceedings include, but are not limited to, investigations, examinations, appeals, and collection actions.

(c) *Applicability date.* This section is applicable beginning on [date 30 days after date of publication of final regulations in the **Federal Register**].

§ 10.61 Disqualification of appraisers.

(a) *Authority to disqualify appraisers.* The Commissioner, or delegate, after due notice and an opportunity for a

hearing, may disqualify an appraiser for violations of any of the standards under paragraph (b) of this section or for the disreputable conduct described under paragraph (c) of this section.

Disqualification may include a finding that appraisals by such appraiser will have no probative effect in an administrative proceeding or barring an appraiser from presenting evidence or testimony in any administrative proceeding before the Department of the Treasury or the Internal Revenue Service.

(1) The disqualification of an appraiser will remain in effect until the appraiser is authorized to present evidence or testimony pursuant to § 10.101. The prohibition applies to appraisals, evidence, and testimony submitted or presented by the appraiser and is not limited to a specific appraisal or client. The prohibition also applies to appraisals made before the effective date of disqualification.

(2) Any appraisal made by a disqualified appraiser after the effective date of disqualification will not have probative effect in any administrative proceeding before the Department of the Treasury or the Internal Revenue Service. An appraisal otherwise barred from admission into evidence pursuant to this section may be admitted into evidence solely for the purpose of determining the client's reliance in good faith on such appraisal.

(b) *Appraisal standards and prohibited conduct.* (1) All appraisals submitted in an administrative proceeding should conform to the substance and principles of generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation or the International Valuation Standards (IVS) promulgated by the International Valuation Standards Council (IVSC).

(2) An appraiser may not prepare an appraisal, where the appraiser knew or reasonably should have known that it would be submitted during an administrative proceeding and used to support a substantial valuation misstatement as defined in section 6662(e) of the Internal Revenue Code (Code), a substantial estate or gift tax valuation understatement as defined in section 6662(g), or a gross valuation misstatement as defined in section 6662(h).

(c) *Disreputable conduct.* An appraiser who has been assessed a penalty under section 6694, 6695A, 6700, or 6701 of the Code, for which it is determined that the appraiser acted willfully, recklessly, or through gross

incompetence with respect to the proscribed conduct may be disqualified for engaging in disreputable conduct.

(d) *Misconduct triggering disqualification.* An appraiser may be disqualified under § 10.61(a) if the appraiser:

(1) Willfully violates any of the standards described in paragraphs (b)(1) and (2) of this section.

(2) Recklessly or through gross incompetence engages in a pattern of submitting appraisals that violate the standards described in paragraph (b)(1) of this section.

(3) Recklessly or through gross incompetence violates the standard described in paragraph (b)(2) of this section.

(4) Engages in the disreputable conduct described in paragraph (c) of this section.

(e) *Defenses to disqualification.* If an appraiser shows compliance with the substance and principles of USPAP standards or IVS with all relevant appraisals, the showing will be taken into account as a defense in determining whether the appraiser acted willfully, recklessly, or through gross incompetence with respect to a violation of paragraph (b)(2) or (c) of this section.

(f) *Applicability date.* This section is applicable beginning on [date 30 days after date of publication of final regulations in the **Federal Register**].

§ 10.62 Receipt of information concerning appraisers.

(a) *Officer or employee of the Internal Revenue Service.* If an officer or employee of the Internal Revenue Service has reason to believe an appraiser has violated § 10.61(b)(1) or (2) or has been assessed a penalty under section 6694, 6695A, 6700, or 6701 of the Internal Revenue Code, the officer or employee will promptly make a written report of the suspected violation. The report will explain the facts and reasons upon which the officer's or employee's belief rests and must be submitted to the office(s) of the Internal Revenue Service responsible for administering or enforcing this part.

(b) *Other persons.* Any person other than an officer or employee of the Internal Revenue Service having information of misconduct described in § 10.61(d) may make an oral or written report of the alleged misconduct to the office(s) of the Internal Revenue Service responsible for administering or enforcing this part or any officer or employee of the Internal Revenue Service. If the report is made to an officer or employee of the Internal Revenue Service, the officer or

employee will make a written report of the suspected misconduct and submit the report to the office(s) of the Internal Revenue Service responsible for administering and enforcing this part.

(c) *Destruction of report.* No report made under paragraph (a) or (b) of this section will be maintained unless retention of the report is permissible under the applicable records control schedule as approved by the National Archives and Records Administration and designated in the Internal Revenue Manual. Reports must be destroyed as soon as permissible under the applicable records control schedule.

(d) *Effect on proceedings under subpart E of this part.* The destruction of any report will not bar any proceeding under subpart E but will preclude the use of a copy of the report in a proceeding under subpart E.

(e) *Applicability date.* This section is applicable to conduct occurring on or after [date 30 days after date of publication of final regulations in the **Federal Register**].

■ **Par. 29.** Revise the heading for subpart E to read as follows:

Subpart E—Sanctions for Violation of the Regulations

§§ 10.70, 10.71, and 10.72 [Transferred to Subpart E]

■ **Par. 30.** Newly redesignated §§ 10.70, 10.71, and 10.72 are transferred to subpart E.

■ **Par. 31.** Newly redesignated § 10.70 is amended by:

- 1. Removing paragraph (b).
- 2. Redesignating paragraphs (c) through (f) as paragraphs (b) through (e).
- 3. Revising newly redesignated paragraph (e).

The revision reads as follows:

§ 10.70 Sanctions.

* * * * *

(e) *Applicability date.* This section is applicable to conduct occurring on or after [date 30 days after date of publication of final regulations in the **Federal Register**].

■ **Par. 32.** Newly redesignated § 10.71 is revised to read as follows:

§ 10.71 Violations subject to sanction.

(a) A practitioner may be sanctioned under § 10.70 if the practitioner—

(1) Willfully violates any of the regulations (other than § 10.33) contained in this part; or

(2) Recklessly or through gross incompetence (within the meaning of § 10.50(a)(13)) violates § 10.34, § 10.35, § 10.36, or § 10.37.

(b) This section is applicable to conduct occurring on or after [date 30

days after date of publication of final regulations in the **Federal Register**].

■ **Par. 33.** Newly redesignated § 10.72 is amended by revising paragraphs (d) and (e) to read as follows:

§ 10.72 Receipt of information concerning practitioner.

* * * * *

(d) *Effect on proceedings under subpart F of this part.* The destruction of any report will not bar any proceeding under subpart F but will preclude the use of a copy of the report in a proceeding under subpart F.

(e) *Applicability date.* This section is applicable to conduct occurring on or after [date 30 days after date of publication of final regulations in the **Federal Register**].

■ **Par. 34.** Add subpart F to read as follows:

Subpart F—Rules Applicable to Disciplinary Proceedings and General Provisions

§§ 10.80 through 10.102, 10.110, and 10.113 [Transferred to Subpart F]

■ **Par. 35.** Newly redesignated §§ 10.80 through 10.102, 10.110, and 10.113 are transferred to subpart F.

■ **Par. 36.** Newly redesignated § 10.80 is amended by revising paragraphs (b) and (d) to read as follows:

§ 10.80 Institution of proceeding.

* * * * *

(b) Whenever the Secretary of the Treasury, or delegate, determines that the appraiser acted willfully, recklessly, or through gross incompetence, or engaged in disreputable conduct, as defined under § 10.61(d)(1) through (4), with respect to the proscribed conduct, the appraiser may, in accordance with this section, be subject to a proceeding for disqualification. A proceeding for disqualification of an appraiser is instituted by the filing of a complaint, the contents of which are more fully described in § 10.82.

* * * * *

(d) This section is applicable beginning on [date 30 days after date of publication of final regulations in the **Federal Register**].

■ **Par. 37.** Newly redesignated § 10.85 is amended by:

- 1. Revising paragraph (a)(2).
- 2. Adding paragraph (a)(3).
- 3. Revising paragraph (c).

The revisions and addition read as follows:

§ 10.85 Supplemental charges.

(a) * * *

(2) It appears that the respondent has knowingly introduced false testimony

during the proceedings against the respondent; or

(3) It appears that the respondent has engaged in contemptuous conduct within the meaning of § 10.50(a)(12) during the proceedings against the respondent.

* * * * *

(c) *Applicability date.* This section is applicable beginning on [date 30 days after date of publication of final regulations in the **Federal Register**].

■ **Par. 38.** Newly redesignated § 10.99 is amended by revising paragraph (e) and adding paragraphs (f) and (g) to read as follows:

§ 10.99 Effect of disbarment, suspension, or censure.

* * * * *

(e) *Jurisdiction to investigate compliance with censure, suspension, or disqualification.* A practitioner or appraiser who is censured, suspended, or disqualified under § 10.61(a), § 10.70, or § 10.102 will be considered a practitioner or appraiser for the purpose of investigating whether the practitioner or appraiser is in compliance with the terms of their censure, suspension, or disqualification. Censured, suspended, or disqualified practitioners or appraisers may face additional sanctions or disbarment for any violation.

(f) *Jurisdiction to investigate disbarred practitioners and non-practitioners.* The IRS may investigate a practitioner disbarred under § 10.70 or a non-practitioner to determine whether they are wrongly holding themselves out as practitioners.

(g) *Applicability date.* This section is applicable beginning on [date 30 days after date of publication of final regulations in the **Federal Register**].

■ **Par. 39.** Newly redesignated § 10.101 is revised to read as follows:

§ 10.101 Petition for reinstatement.

(a) *In general.* A practitioner disbarred or suspended under § 10.70, or an appraiser disqualified under § 10.61, may petition for reinstatement before the Internal Revenue Service after the expiration of 5 years following such disbarment, suspension, or disqualification (or immediately following the expiration of the suspension or disqualification period, if shorter than 5 years). A practitioner or appraiser suspended or disqualified under § 10.102 may petition for reinstatement at any time upon a showing of good cause as described in § 10.102(f)(2). Reinstatement will not be granted unless the Internal Revenue Service determines that the petitioner is not likely to engage thereafter in conduct contrary to the regulations in

this part, and that granting such reinstatement would not be contrary to the public interest.

(b) *Applicability date.* This section is applicable beginning on [date 30 days after date of publication of final regulations in the **Federal Register**].

■ **Par. 40.** Newly redesignated § 10.102 is amended by:

- 1. Revising the section heading.
- 2. Removing paragraph (a).
- 3. Redesignating paragraphs (b) through (h) as paragraphs (a) through (g).
- 4. Revising newly redesignated paragraphs (a), (b) introductory text, (b)(2) and (4), and (e) through (g).

The revisions and additions read as follows:

§ 10.102 Expedited suspension or disqualification.

(a) *When applicable.* The expedited suspension procedures in this section are initiated by issuing the show cause order described under paragraph (d) of this section. A show cause order will be issued to any practitioner or appraiser for whom paragraph (a)(1), (2), (3), (4), (5), (6), or (7) of this section is true within the 5 years prior to the date that the show cause order was issued. The expedited procedures described in this section may be used to suspend the practitioner from practice before the Internal Revenue Service, disqualify an appraiser from presenting evidence or testimony in any administrative proceeding before the Department of the Treasury or the Internal Revenue Service, or find that any appraisal made by a disqualified appraiser after the effective date of disqualification will not have probative effect in any administrative proceeding before the Department of the Treasury or the Internal Revenue Service.

(1) A practitioner has a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause (not including failure to pay a professional licensing fee) by any authority or court, agency, body, or board described in § 10.50(a)(10).

(2) An appraiser has a license or certification to conduct appraisals revoked or suspended by any state licensing or certification board.

(3) A practitioner or appraiser has voluntarily forfeited a practitioner's or appraiser's license or certification after any authority described in paragraph (a)(1) or (2) of this section initiated an investigation of, or proceeding against, the practitioner or appraiser for alleged violations of applicable standards or rules of conduct for which the practitioner's or appraiser's license or certification could be suspended or

revoked for cause, if proven. Voluntary forfeiture includes retirement, resignation, consensual permanent inactivation, or similar action.

(4) A practitioner has, irrespective of whether an appeal has been taken, been convicted of any crime under title 26, United States Code, any crime involving dishonesty or breach of trust, or any felony for which the conduct involved renders the practitioner unfit to practice before the Internal Revenue Service.

(5) A practitioner has violated conditions imposed on the practitioner pursuant to § 10.99(d).

(6) A practitioner has been sanctioned by a court of competent jurisdiction, whether in a civil or criminal proceeding (including suits for injunctive relief), relating to any client's tax liability or relating to the practitioner's own tax liability, for—

(i) Instituting or maintaining proceedings primarily for delay;

(ii) Advancing frivolous or groundless arguments; or

(iii) Failing to pursue available administrative remedies.

(7) A practitioner has demonstrated a pattern of willful disreputable conduct by—

(i) Failing to make an annual Federal tax return, in violation of the Federal tax laws, during 4 of the 5 tax years immediately preceding the institution of a proceeding under paragraph (b) of this section and remains noncompliant with any of the practitioner's Federal tax filing obligations at the time the notice of suspension is issued under paragraph (e) of this section; or

(ii) Failing to make a return required more frequently than annually, in violation of the Federal tax laws, during 5 of the 7 tax periods immediately preceding the institution of a proceeding under paragraph (b) of this section and remains noncompliant with any of the practitioner's Federal tax filing obligations at the time the notice of suspension is issued under paragraph (e) of this section.

(b) *Expedited suspension or disqualification procedures.* A suspension or disqualification under this section will be proposed by a show cause order that names the respondent, is signed by an authorized representative of the Internal Revenue Service under § 10.89(a)(1), and is served according to the rules set forth in § 10.83(a). The show cause order must give a plain and concise description of the allegations that constitute the basis for the proposed suspension or disqualification. The show cause order must notify the respondent—

(2) That an expedited suspension or disqualification decision by default may be rendered if the respondent fails to file a response as required;

* * * * *

(4) That the respondent may be suspended or disqualified either immediately following the expiration of the period within which a response must be filed or, if a conference is requested, immediately following the conference.

* * * * *

(e) *Suspension or disqualification—*

(1) *In general.* The Commissioner, or delegate, may suspend the respondent from practice before the Internal Revenue Service or disqualify an appraiser from presenting evidence or testimony in any administrative proceeding before the Department of the Treasury or Internal Revenue Service by a written notice of expedited suspension or disqualification immediately following:

(i) The expiration of the period within which a response to a show cause order must be filed if the respondent does not file a response as required by paragraph (c) of this section;

(ii) The conference described in paragraph (d) of this section if the Internal Revenue Service finds that the respondent is described in paragraph (a) of this section;

(iii) If the respondent has not requested a conference, upon consideration of any response described in paragraph (c) of this section; or

(iv) The respondent's failure to appear, either personally or through an authorized representative, at a conference scheduled by the Internal Revenue Service under paragraph (d) of this section.

(2) *Duration of suspension or disqualification.* A suspension or disqualification under this section will commence on the date that the written notice of expedited suspension or disqualification is served on the practitioner or appraiser, either personally or through an authorized representative. The suspension or disqualification will remain effective until the earlier of:

(i) The date the Internal Revenue Service lifts the suspension or disqualification upon receipt of a petition for reinstatement under § 10.101 and after determining that the practitioner or appraiser has shown good cause based on all the relevant facts and circumstances why the suspension or disqualification should be lifted and the individual reinstated to practice; or

(ii) The date the suspension or disqualification is lifted or otherwise

modified by an Administrative Law Judge or the Secretary of the Treasury, or delegate deciding appeals, in a proceeding referred to in paragraph (f) of this section and instituted under § 10.80.

(3) *Good cause.* For purposes of this paragraph (e), a suspended practitioner or disqualified appraiser may show good cause when, for example, the individual was suspended or disqualified:

(i) Under paragraphs (a)(1) through (3) of this section, and the individual's license or certificate to practice as an attorney, certified public accountant, actuary, or appraiser has been restored;

(ii) Under paragraph (a)(4) of this section, and the conviction was reversed on appeal, with no retrial underway or pending;

(iii) Under paragraph (a)(5) of this section, and the individual is no longer in violation of the conditions imposed on the individual under § 10.99(d) and the individual either fully satisfied the conditions or is compliant with them if they are still in effect;

(iv) Under paragraph (a)(6) of this section, and the individual has satisfied any terms of the court-imposed sanction, such as payment of a monetary sanction or completion of mandated hours of pro bono work; has not been sanctioned again for the same or substantially similar conduct by a court or any other authority described in § 10.50(a)(10); and has ceased the conduct that resulted in the sanction (for example, ceased advancing frivolous or groundless arguments in matters before the Internal Revenue Service and courts or other tribunals); or

(v) Under paragraph (a)(7) of this section, and the individual is fully compliant with the individual's tax filing and payment obligations, including any installment agreement or other payment arrangement entered into with the Internal Revenue Service.

(f) *Demand for § 10.80 proceeding.* If the Internal Revenue Service suspends a practitioner or disqualifies an appraiser under the expedited suspension procedures described in this section, the practitioner or appraiser may demand that the Internal Revenue Service institute a proceeding under § 10.80 and issue the complaint described in § 10.82. The demand must be in writing, specifically reference the suspension or disqualification action under § 10.82, and be made within 2 years from the date on which the practitioner's suspension or appraiser's disqualification commenced. The Internal Revenue Service must issue a complaint demanded under this paragraph (f) within 60 calendar days of

* * * * *

receiving the demand. If the Internal Revenue Service does not issue such complaint within 60 days of receiving the demand, the suspension or disqualification is lifted automatically. The preceding sentence does not, however, preclude the Commissioner, or delegate, from instituting a regular proceeding under § 10.80.

(g) *Applicability date.* This section is applicable beginning on [date 30 days after date of publication of final regulations in the **Federal Register**].

■ **Par. 41.** Newly redesignated § 10.110 is amended by:

- 1. Removing paragraph (a)(4).
- 2. Redesignating paragraphs (a)(5) and (6) as paragraphs (a)(4) and (5).
- 3. Revising paragraph (c).

The revision reads as follows:

§ 10.110 Records.

* * * * *

(c) *Applicability date.* This section is applicable beginning on [date 30 days after date of publication of final regulations in the **Federal Register**].

■ **Par. 42.** Sections 10.111 and 10.112 are added to read as follows:

§ 10.111 Establishment of advisory committees.

(a) *Advisory committees.* To promote and maintain the public's confidence in tax advisors, the Internal Revenue Service is authorized to establish one or more advisory committees composed of at least six individuals authorized to practice before the Internal Revenue Service. Membership of an advisory committee must be balanced among those who practice as attorneys, accountants, enrolled agents, enrolled actuaries, and enrolled retirement plan agents. Under procedures prescribed by the Internal Revenue Service, an advisory committee may review and make general recommendations regarding the practices, procedures, and policies of the offices described in § 10.1.

(b) *Applicability date.* This section is applicable beginning on [date 30 days after date of publication of final regulations in the **Federal Register**].

§ 10.112 Saving provision.

Any proceeding instituted under this part prior to [date 30 days after date of publication of final regulations in the **Federal Register**], for which a final decision has not been reached or for which judicial review is still available is not affected by the revisions to this part effective [effective date of final regulations]. Any proceeding under this part based on conduct engaged in prior to [date 30 days after date of publication of final regulations in the **Federal**

Register], which is instituted after that date, will apply this subpart, but the conduct engaged in prior to [effective date of final regulations], will be judged by the regulations in effect at the time the conduct occurred.

■ **Par. 43.** Section 10.114 is added to read as follows:

§ 10.114 Applicability date.

Except as otherwise provided in any section of this part and subject to § 10.112, the provisions of this part are applicable on [date 30 days after date of publication of final regulations in the **Federal Register**].

Douglas W. O'Donnell,

Deputy Commissioner.

Aviva R. Aron-Dine,

Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2024–29371 Filed 12–20–24; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF EDUCATION

34 CFR Part 30

[Docket ID ED–2023–OPE–0123]

RIN 1840–AD95

Student Debt Relief Based on Hardship for the William D. Ford Federal Direct Loan Program (Direct Loans), the Federal Family Education Loan (FFEL) Program, the Federal Perkins Loan (Perkins) Program, and the Health Education Assistance Loan (HEAL) Program; Withdrawal

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Withdrawal of notice of proposed rulemaking and termination of rulemaking proceeding.

SUMMARY: The U.S. Department of Education (Department) is withdrawing a notice of proposed rulemaking (NPRM) that, under the Secretary's authority to waive repayment of a loan provided by the Higher Education Act of 1965, as amended (HEA), proposed to specify the Secretary's authority to waive all or part of any student loan debts owed to the Department based on the Secretary's determination that a borrower has experienced or is experiencing hardship related to such a loan.

DATES: The notice of proposed rulemaking published in the **Federal Register** at 89 FR 87130 on October 31, 2024, is withdrawn as of December 20, 2024.

FOR FURTHER INFORMATION CONTACT: Tamy Abernathy, U.S. Department of

Education, Office of Postsecondary Education, 400 Maryland Avenue SW, 5th floor, Washington, DC 20202. Telephone: (202) 245–4595. Email: NegRegNPRMHelp@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: Background

On October 31, 2024, the Department published an NPRM in the **Federal Register** that, in accordance with the Secretary's authority to waive repayment of a loan provided by sections 432(a)(6) and 468(2) of the HEA, would specify the Secretary's discretion to provide debt relief to borrowers who are experiencing or have experienced hardship related to their loans. See 89 FR 87130. The proposed regulations would modify the Department's existing debt collection regulations to provide greater specificity regarding the Secretary's discretion to waive Federal student loan debt. The proposed rule outlines two pathways for discretionary relief: (i) a predictive assessment offering individualized, automatic waivers based on the borrower's likelihood of default to provide immediate relief as soon as practicable; and (ii) a holistic assessment of the borrower's circumstances based on an application or information within the Department's possession to address persistent hardships not sufficiently addressed by other Department programs.

The Department accepted public comments on the NPRM from October 31, 2024 through December 2, 2024. In response to the NPRM, the Department received 14,735 written comments, and the Department reviewed such comments.

Withdrawal of the Notice of Proposed Rulemaking and Termination of the Rulemaking Proceeding

In accordance with the Secretary's authority under sections 432(a)(6) and 468(2) of the HEA to waive repayment of a loan, the Department issued the NPRM to specify the Secretary's discretion to provide targeted debt relief to borrowers who have experienced or are experiencing hardship repaying their student loans based on the criteria specified in the NPRM.¹

¹ As the Department noted in the NPRM, these proposed regulations related to hardship are separate from the proposals for student debt relief specified in the Notice of Proposed Rulemaking issued on April 17, 2024 (April 2024 NPRM) (89 FR 27564), which is the subject of a separate Notice of Withdrawal. These proposed regulations differ from the waivers in the April 2024 NPRM along various dimensions, including that the provisions in this

The Department believed clarifying the circumstances in which the Secretary may use the existing and longstanding waiver authority under sections 432(a)(6) and 468(2) of the HEA would better inform the public about how the Secretary may exercise this waiver authority in a consistent and equitable manner. Current regulations do not describe how the Secretary uses this waiver authority. We also believed that providing such specificity would allow the Department to highlight circumstances where we are particularly concerned about borrowers' inability to successfully repay their debts in full and where the Department anticipated that the costs of collection would exceed the expected benefits.

However, upon further consideration of the operational challenges in implementing the proposals in the NPRM, the Secretary withdraws the NPRM and terminates the rulemaking proceeding.

In making this decision, we reconsidered the Department's ability to implement the proposed rules if they were finalized in a form identical or largely similar to what was included in the NPRM. With the time remaining in this Administration, the Department is focused on several priorities including court-ordered settlements and helping borrowers manage the final elements of the return to repayment following the Fall 2024 end of the 12-month on-ramp period designed to assist borrowers who were unable to make their payments or who needed more time to access information to determine the right repayment plan for their circumstances. With the end of the on-ramp period, some borrowers may start becoming delinquent and start down the path to default. Given that many newer borrowers are at risk of default, and the Department expects that many of these newer borrowers would not have been otherwise eligible for immediate relief under the proposed rules in the NPRM, along with the uncertainty around the implementation of the NPRM proposals, the Department at this time intends to commit its limited operational resources to helping at-risk borrowers return to repayment successfully. For all of these independently sufficient reasons, the Department is withdrawing this NPRM.

Importantly, the Department is not withdrawing this NPRM and terminating this rulemaking proceeding based upon a changed view of the Secretary's authority under section

432(a) and 468(2) of the HEA, or based upon any preliminary determination about the limitations of such authority. *See Missouri v. Biden*, No. 24–cv–1316, ECF No. 57 (granting preliminary injunction in challenge focused on separate April 2024 NPRM relying on waiver authority). Rather, the Department continues to believe that the NPRM is authorized by the Secretary's longstanding and existing authority under the HEA, as explained in the NPRM. *See, e.g.*, 89 FR 87133–34.

We do not intend for a final rule to be issued on this NPRM. Were the Department to issue a regulation in this area in the future, it would be bound by the requirements of section 492(a) and (b) of the HEA, 20 U.S.C. 1098a(a) and (b).

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, braille, large print, audiotope, compact disc, or other accessible format.

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Miguel Cardona,
Secretary of Education.

[FR Doc. 2024–30605 Filed 12–20–24; 8:45 am]

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DEPARTMENT OF EDUCATION

34 CFR Parts 75 and 76

[Docket ID ED–2022–OPE–0157]

RIN 1840–AD72

Direct Grant Programs, State-Administered Formula Grant Programs; Withdrawal

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The U.S. Department of Education (Department) is withdrawing a notice of proposed rulemaking to rescind regulations related to religious student organizations at certain public institutions of higher education (IHEs). The proposed regulations would have applied to public IHEs that receive a direct grant from the Department or a subgrant from a State-administered formula grant program of the Department.

DATES: The notice of proposed rulemaking published in the **Federal Register** at 88 FR 10857 on February 22, 2023, is withdrawn as of December 20, 2024.

FOR FURTHER INFORMATION CONTACT:

Scott Prince, U.S. Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW, 5th floor, Washington, DC 20202. Telephone: (202) 453–5568. Email: NegRegNPRMHelp@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Background

On September 23, 2020, the Department promulgated a final rule that addressed freedom of speech and the free exercise of religion at institutions of higher education participating in certain programs administered by the Department. *See* 85 FR 59916.¹ On August 19, 2021, the Department announced our intent to conduct a review of these regulations while keeping in mind the importance of several key elements, including First Amendment protections, nondiscrimination requirements, and the promotion of inclusive learning environments for all students.² As part

¹ The Department also published a document with two technical corrections on November 6, 2020, *see* 85 FR 70975.

² Cooper, Michelle Asha. “Update on the Free Inquiry Rule,” Department of Education Homeroom

NPRM applied distinct and different eligibility criteria and addressed different challenges with student loan repayment faced by borrowers. *See, e.g.*, 89 FR at 87131 n. 2.

of the review, the Department conducted outreach and held meetings with: (1) higher education and institutional stakeholders, including organizations representing public institutions; (2) faith-based organizations, including organizations representing religious IHEs; and (3) organizations that advocate for civil rights and civil liberties. On February 22, 2023, the Department published a notice of proposed rulemaking (NPRM) in the **Federal Register** proposing to rescind portions of the rule that became effective on November 23, 2020. See 88 FR 10857. Specifically, the Department proposed to rescind 34 CFR 75.500(d) and 76.500(d), which prescribe a role for the Department in enforcing grant conditions related to religious student organizations at certain public institutions of higher education (IHEs). These regulations apply to public IHEs that receive a direct grant from the Department or a subgrant from a State-administered formula grant program of the Department.

The Department accepted public comments on the NPRM from February 22, 2023, through March 24, 2023. In response to that NPRM the Department received approximately 58,000 public comments.

Withdrawal of the Notice of Proposed Rulemaking and Termination of the Rulemaking Proceeding

The Department issued the NPRM to amend 34 CFR parts 75 and 76 and provided its reasons for proposing to rescind the 2020 final regulations in that document. However, upon further consideration, the Department is withdrawing the NPRM and terminating the rulemaking proceeding.

During the public comment period, the Department received approximately 58,000 comments. Several hundred of the comments calling for withdrawal were from individuals and organizations who argued that rescinding the current rule is not necessary because it is not complex or burdensome. Additionally, many comments in support of the current regulations pointed to ongoing issues faced by religious student groups as evidence of the need to keep these regulations. Numerous commenters in favor of rescinding these provisions asserted that the current regulations are not necessary to protect these constitutional freedoms and expressed concern that the regulations could be read to require institutions to afford preferential treatment to religious student groups.

We appreciate the feedback that the Department received in response to the NPRM. In light of the concerns raised by commenters both in support of and in opposition to the proposed rescissions, the forthcoming change in administration, and the significant resources needed to review and consider all relevant matters presented in the public comments, the Department for each of these independent reasons does not believe that finalizing the proposed rescissions is an efficient use of Department resources at this time. Therefore, the Secretary exercises his discretion to withdraw the NPRM and terminate this rulemaking. We do not intend for a final rule to be issued on this NPRM. Any future rulemaking the Department may undertake on this topic would similarly be subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 551, *et seq.*³

Importantly, this withdrawal does not change or alter the Department's role with respect to the other material grant conditions added by the 2020 final regulations at §§ 75.500(b) and (c) and 76.500(b) and (c). The Department will determine if an IHE has violated the grant conditions in those provisions only if a State or Federal court issues a final, non-default judgment against a public IHE for violating the First Amendment or against a private IHE for violating stated institutional policies. Absent such a judgment, the Department presumes public IHEs to be in compliance with the First Amendment where the alleged violations concern matters other than denial of equal treatment to religious student organizations because of the organization's beliefs, practices, policies, speech, membership standards, or leadership standards, which are informed by sincerely held religious beliefs. Under the 2020 final regulations at §§ 75.500(b) and (c) and 76.500(b) and (c), the Department's role is not to investigate alleged violations of these grant conditions and is limited to deciding whether and to what extent to impose additional penalties where a State or Federal court has rendered a relevant final, non-default judgment.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**,

³ The Department notes that the 2020 final regulations do not impose conditions on participation in the programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA). See 85 FR 59942. Any future rulemaking that would seek to impose conditions on participation in title IV programs would be subject to the negotiated rulemaking requirement in section 492 of the HEA, 20 U.S.C. 1098a.

individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

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Miguel Cardona,

Secretary of Education.

[FR Doc. 2024–30923 Filed 12–20–24; 2:00 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

34 CFR Part 106

[Docket ID ED–2022–OCR–0143]

RIN 1870–AA19

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams; Withdrawal

AGENCY: Office for Civil Rights, Department of Education.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The U.S. Department of Education (Department) is withdrawing the notice of proposed rulemaking entitled “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams” published in the **Federal Register** on April 13, 2023. The proposed rule would have amended the regulations implementing Title IX of the Education Amendments of 1972 (Title IX).

DATES: The notice of proposed rulemaking published in the **Federal Register** on April 13, 2023, 88 FR 22860, is withdrawn as of December 20, 2024.

FOR FURTHER INFORMATION CONTACT: Bianca Costello, U.S. Department of Education, 400 Maryland Avenue SW, Fifth Floor, Washington, DC 20202. Telephone: (202) 219–2126. Email: bianca.costello@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Background

On April 13, 2023, the Department published a notice of proposed rulemaking titled “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams” (Athletics NPRM) in the **Federal Register** that proposed amending 34 CFR 106.41 of the Department’s regulations implementing Title IX. 88 FR 22860. The intent of the Athletics NPRM was to “propose a regulatory standard under Title IX that would govern a recipient’s adoption or application of sex-related criteria that would limit or deny a student’s eligibility to participate on a male or female athletic team consistent with their gender identity.” *Id.* The Department’s proposed rule provided that, if a recipient adopts or applies sex-related criteria that would limit or deny a student’s eligibility to participate on a male or female team consistent with their gender identity, such criteria must, for each sport, level of competition, and grade or educational level: (i) be substantially related to the achievement of an important educational objective, and (ii) minimize harms to students whose opportunity to participate on a male or female team consistent with their gender identity would be limited or denied. 88 FR 22891.

The Department invited the public to comment on all aspects of the Athletics NPRM, as well as the Regulatory Impact Analysis. In response, the Department received more than 150,000 public comments on the Athletics NPRM during the 30-day comment period.

Withdrawal of the Notice of Proposed Rulemaking and Termination of the Rulemaking Proceeding

The Department reviewed and considered all comments submitted during the comment period and appreciates the time and effort spent by commenters in sharing their views with

the Department. Commenters offered a broad spectrum of opinions on the Athletics NPRM. Some commenters expressed general support for the proposed regulation, and some asked the Department to modify the proposed regulation to provide for more students to participate on a sex-separate athletic team consistent with their gender identity, particularly at the elementary and secondary school levels. Other commenters opposed the proposed regulation in its entirety and asked the Department to withdraw the Athletics NPRM. Numerous commenters expressed concerns about the application of the proposed regulation in practice, arguing that the proposed regulation was unclear or too complex for recipients to implement, and many commenters offered alternative regulatory text for the Department’s consideration to clarify, simplify, elaborate on, or substantively change the focus and impact of the proposed rule. Additionally, a significant number of commenters included discussions of case law, scientific studies and research papers, and existing athletic association policies and practices regarding athletic eligibility criteria that, according to the commenters, supported the adoption, modification, or withdrawal of the proposed regulation.

The Department recognizes that there are multiple pending lawsuits related to the application of Title IX in the context of gender identity, including lawsuits related to Title IX’s application to athletic eligibility criteria in a variety of factual contexts. In light of the comments received and those various pending court cases, the Department has determined not to regulate on this issue at this time. Therefore, the Department hereby withdraws the Athletics NPRM and terminates this rulemaking proceeding. We do not intend for a final rule to be issued on this NPRM. If, in the future, we decide it is appropriate to issue regulations on this topic, we will do so via a new notice of proposed rulemaking, subject to the requirements of the Administrative Procedure Act, 5 U.S.C. 551, *et seq.*

To the extent the Department receives complaints of discrimination about a recipient’s obligation to provide equal opportunity to participate in athletics regardless of sex, it will continue to apply the longstanding legal standards reflected in the athletics regulations at 34 CFR 106.41 and in U.S. Dep’t of Health, Educ., and Welfare, Office for Civil Rights, A Policy Interpretation: Title IX and Intercollegiate Athletics, 44 FR 71413 (Dec. 11, 1979), <https://www.govinfo.gov/content/pkg/FR-1979-12-11/pdf/FR-1979-12-11.pdf>.

The Athletics NPRM issued on April 13, 2023, is hereby withdrawn, and the rulemaking proceeding for that NPRM is terminated as of the date of publication of this notice in the **Federal Register**.

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, braille, large print, audiotape, compact disc, or other accessible format.

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Miguel Cardona,

Secretary of Education.

[FR Doc. 2024–30921 Filed 12–20–24; 2:00 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

34 CFR Parts 600, 602, and 668

[Docket ID ED–2022–OPE–0050]

RIN 1840–AD82, 1840–AD83, 1840–AD86

Program Integrity and Institutional Quality: State Authorization, Cash Management, Accreditation and Related Issues

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Termination of negotiated rulemaking process for State Authorization, Cash Management, Accreditation and Related Issues.

SUMMARY: The U.S. Department of Education (Department) announces the termination of the negotiated rulemaking process for three Program Integrity and Institutional Quality issues that were undertaken as part of a larger negotiated rulemaking process for

Federal programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA): State Authorization, Cash Management, Accreditation and Related Issues (Accreditation).

DATES: The negotiated rulemaking process for State Authorization, Cash Management, and Accreditation and Related Issues is terminated as of December 20, 2024.

FOR FURTHER INFORMATION CONTACT: Scott Prince, U.S. Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW, 5th Floor, Washington, DC 20202. Telephone: (202)453-5568. Email: NegRegNPRMHelp@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2023, the Department published a notification in the **Federal Register** announcing our intent to establish a negotiated rulemaking committee to prepare proposed regulations for the Federal Student Aid programs authorized under title IV of the HEA. *See* 88 FR 17777.

On April 11–13, 2023, the Department held a virtual public hearing at which individuals and representatives of interested organizations provided advice and recommendations relating to the issues identified in the March 24 notification. We also took written public comments from March 24, 2023, through April 24, 2023.

On November 29, 2023, the Department published a negotiated rulemaking in the **Federal Register** announcing its intent to establish a negotiated rulemaking committee and soliciting nominations for individual negotiators to represent key stakeholder constituencies for the issues to be negotiated to serve on the rulemaking committee. *See* 88 FR 83365. The document covered six issues:

(1) The Federal TRIO programs, including improvements to programmatic eligibility and operations under 34 CFR parts 642 through 647;

(2) The Secretary's recognition of accrediting agencies in 34 CFR part 602 and related parts;

(3) Institutional eligibility under 34 CFR 600.2, including State authorization as a component of such eligibility under 34 CFR 600.9;

(4) Return of title IV funds, to address requirements for participating institutions to return unearned title IV funds in a manner that protects students and taxpayers while easing

administrative burden for institutions of higher education under 34 CFR 668.22;

(5) Cash management, to address timely student access to disbursements of title IV, HEA Federal student financial assistance and provisions related to credit balances, escheatment, or loss of such funds under 34 CFR part 668, subpart K; and

(6) The definition of “distance education” under 34 CFR 600.2 as it pertains to clock hour programs and reporting for students who enroll primarily online.

The Department held three negotiated rulemaking sessions of four days each. During each daily negotiated rulemaking session, we provided an opportunity for public comment and expanded that time to one hour for the second and third sessions. Additionally, non-Federal negotiators shared feedback from their stakeholders with the negotiating committee.

On July 24, 2024, the Department published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) proposing to amend the Student Assistance General Provisions regulations to promote program integrity and institutional quality in three of the six negotiated rulemaking issues: (1) distance education; (2) the return of title IV, HEA funds; and (3) the Federal TRIO programs. *See* 89 FR 60256. This document does not apply to the issues covered in the July 24, 2024, NPRM, which will be addressed through that separate rulemaking.

This document pertains to the three remaining issues included in the November 29, 2023, notification establishing the negotiated rulemaking committee: accreditation, state authorization, and cash management. For the reasons discussed below, the Department is terminating the negotiated rulemaking process for these issues.

Termination of the Negotiated Rulemaking Process for State Authorization, Cash Management, Accreditation and Related Issues

The Department began the rulemaking efforts described above to amend 34 CFR parts 600, 602, and 668 to create more student-friendly policies relating to the use and receipt of Federal student financial aid and to hold institutions accountable for providing high-quality educational opportunities. However, the Department has decided not to make any regulatory changes on the issues of accreditation, state authorization, and cash management at this time, to allow for additional evaluation of recent changes in other regulations and industry practices. This decision reflects

the Department's commitment to deliberative policymaking and consideration of feedback received during the negotiated rulemaking process, which highlighted the need for additional time and further study. Terminating the negotiated rulemaking process at this time will allow the agency to gather additional data, assess evolving industry practices, and evaluate whether existing regulations remain necessary or require modification.

The Department considered several factors in reaching the decision to terminate the negotiated rulemaking process on these remaining three identified issues. We considered that two of the areas—state authorization and accreditation—have recently undergone significant changes, as explained below, that continue to affect the field even after the conclusion of negotiated rulemaking, and we decided it is preferable to wait and see the effectiveness of those changes before issuing further regulations. Waiting to assess the effects of these changes will allow the Department to better identify any needed future alterations and improve the evidentiary base for future rulemaking.

Regarding state authorization, the Department decided to terminate the negotiated rulemaking process so we could observe the effects of two recent policy changes. One is a change to § 668.14(b)(32)(iii) that went into effect on July 1, 2024. *See* 88 FR 74568. The new regulation requires institutions to certify to the Department that they are in compliance with all State laws related to closure of postsecondary institutions, including record retention, teach-out plans or agreements, and tuition recovery funds or surety bonds. That change addressed one of the major concerns the Department had related to state authorization—ensuring that States were not limited in their ability to manage the effects of closure on students living within their borders, even if the college is located in a different state. Given that the change to § 668.14(b)(32)(iii) only took effect a few months ago, evaluating its effect as closures occur will help the Department understand whether further modifications may be necessary.

The Department also believes it is worth evaluating how State-led efforts at improving state authorization proceed before making further regulatory changes. This particularly involves the policy modification process adopted by the National Council for State Authorization Reciprocity Agreements (NC-SARA), an organization formed in partnership with four regional compacts

in which almost all states across the country participate for purposes of providing state authorization and reciprocity. NC-SARA first started using a policy modification process in January 2023 to create a formal mechanism for addressing issues with state authorization and reciprocity.¹ That process continues to be refined. As many commenters noted during the public hearings and negotiated rulemaking sessions on state authorization, allowing this policy modification process to continue is one way to address the Department's goals.

Regarding accreditation, the Department adopted a series of final regulations in this area that went into effect on July 1, 2020. *See* 84 FR 58834. These regulations made significant changes to the Department's process for reviewing and recognizing accrediting agencies. Although these regulations went into effect four years ago, the Department is still in the midst of the first cycle of implementing these changes across all accrediting agencies. That is a result of the five-year timeframe on renewal of recognition for accrediting agencies, as well as the requirements that agencies submit applications for renewal two years before their deadline for renewal and the additional periods institutions have for submitting compliance or monitoring reports. Allowing a full 5-year review cycle under the 2020 regulations for all accrediting agencies provides a greater opportunity to demonstrate the effectiveness of the existing rules and evaluate outcomes before making other changes to the process. This also allows Department staff to focus on existing reviews instead of directing focus away from these key activities. Seeing the effects across a full cycle will help us better identify any needed modifications.

The Department also has decided to terminate the negotiated rulemaking process on the third remaining regulatory area, cash management. While we discussed several regulatory changes to this topic, the most significant was a proposal addressing textbook billing practices. That issue generated significant discussion during negotiated rulemaking and from public commenters, among all the cash management proposals. We are persuaded by concerns raised during the negotiated rulemaking sessions about the need to gather additional data, assess evolving industry practices, and evaluate how policies related to the costs of books and supplies as part of

tuition and fees best serve students and their use of financial aid. The current provisions are in § 668.164(c) and (m). The Department received public feedback during the negotiated rulemaking process articulating the benefits of these policies. The Department also acknowledges concerns from commenters, including from students who have experience navigating these products, that these policies may not always deliver costs to students that are below market rates or may not give students a true opportunity to opt out. Given this mix of input, we believe further research to assess the benefits or drawbacks of this way of billing for textbooks is needed before proceeding with rulemaking. Additionally, because textbook billing is the most significant issue related to cash management addressed by the committee, we do not believe exploring further regulatory changes in this part of the regulations is the best use of limited Department resources at this time. Any institution that includes the costs of books and supplies as part of tuition and fees as described in 668.164(c) must ensure they have a clearly communicated and actionable policy under which the student may opt out of the method the institution provides for students to obtain books and supplies. If the Department continues to find that institutions are not complying with the current requirements in § 668.164(c) and (m), we may propose additional protective or restrictive measures to ensure that students have access to books or supplies at below competitive market rates.

For the reasons described above, at this time the Secretary exercises his discretion to terminate the negotiated rulemaking process for issues related to accreditation, state authorization, and cash management. Were the Department to issue a regulation in this area in the future, it would be bound by the requirements of Section 492(a) and (b) of the HEA, 20 U.S.C. 1098a(a) and (b).

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Miguel Cardona,

Secretary of Education.

[FR Doc. 2024–30919 Filed 12–20–24; 2:00 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

34 CFR Parts 30 and 682

[Docket ID ED–2023–OPE–0123]

RIN 1840–AD93

Student Debt Relief for the William D. Ford Federal Direct Loan Program (Direct Loans), the Federal Family Education Loan (FFEL) Program, the Federal Perkins Loan (Perkins) Program, and the Health Education Assistance Loan (HEAL) Program; Withdrawal

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Withdrawal of notice of proposed rulemaking and termination of rulemaking proceeding.

SUMMARY: The U.S. Department of Education (Department) is withdrawing a notice of proposed rulemaking (NPRM) that, under the Secretary's authority to waive repayment of a loan provided by the Higher Education Act of 1965, as amended (HEA), proposed to do the following: amend regulations regarding waiver of certain student loan debts; provide targeted debt relief as part of efforts to address the burden of student loan debt; and modify the Department's existing debt collection regulations to provide greater specificity regarding certain non-exhaustive situations in which the Secretary may exercise discretion to waive all or part of any debts owed to the Department.

DATES: The notice of proposed rulemaking published in the **Federal Register** at 89 FR 27564 on April 17, 2024, is withdrawn as of December 20, 2024.

FOR FURTHER INFORMATION CONTACT: Tamy Abernathy, U.S. Department of

¹ <https://www.nc-sara.org/sara-policy-modification-process>.

Education, Office of Postsecondary Education, 400 Maryland Avenue SW, 5th Floor, Washington, DC 20202. Telephone: (202) 245-4595. Email: NegRegNPRMHelp@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

SUPPLEMENTARY INFORMATION:

Background

On April 17, 2024, the Department published an NPRM in the **Federal Register** that, in accordance with the Secretary's authority to waive repayment of a loan provided by section 432(a) of the HEA, would specify the Secretary's discretion to provide debt relief targeted to specific circumstances. *See* 89 FR 27564. The proposed regulations would modify the Department's existing debt collection regulations to provide greater specificity regarding the Secretary's discretion to waive Federal student loan debt. It would also specify the Secretary's authority to waive all or part of any debts owed to the Department based on a number of different circumstances, such as the following: growth in a borrower's loan balance beyond what was owed upon entering repayment; the amount of time since a loan first entered repayment; whether the borrower is otherwise eligible for loan forgiveness or discharge under existing authority but has not successfully applied; and whether a borrower obtained a loan to attend an institution or program that was subject to secretarial actions to end its title IV eligibility, that closed prior to such secretarial actions, or was associated with closed Gainful Employment programs with high debt-to-earnings rates or low median earnings.

The Department accepted public comments on the NPRM from April 17, 2024 through May 17, 2024. In response to the NPRM, the Department received 148,567 written comments, and the Department has reviewed such comments.

Withdrawal of the Notice of Proposed Rulemaking and Termination of the Rulemaking Proceeding

In accordance with the Secretary's authority under section 432(a) of the HEA to waive repayment of a loan, the Department issued the NPRM to specify the Secretary's discretion to provide targeted debt relief to borrowers facing specific challenges repaying their student loans. The NPRM also proposed revisions to update and clarify various references and provisions in subparts A, C, E, and F of 34 CFR part 30 and

proposed to amend part 682 by adding a new § 682.403.

The Department believed clarifying the circumstances in which the Secretary may use the existing and longstanding waiver authority under section 432(a) of the HEA would better inform the public about how the Secretary may exercise this waiver authority in a consistent and equitable manner. Current regulations do not describe how the Secretary uses this waiver authority. We also believed that providing such specificity would allow the Department to highlight circumstances where we are particularly concerned about borrowers' inability to successfully repay their debt in full in a reasonable period, where the Department anticipated that the costs of collection would exceed the amount recoverable, and in circumstances that would implicate equity and fairness.

However, upon further consideration of the operational challenges in implementing the proposals in the NPRM, the Secretary withdraws the NPRM and terminates the rulemaking proceeding.

In making this decision, we considered the Department's ability to implement the proposed rules if they were finalized in a form identical or largely similar to what was included in the NPRM. With the time remaining in this administration, the Department is focused on several priorities including court-ordered settlements and helping borrowers manage the final elements of the return to repayment following the Fall 2024 end of the 12-month on-ramp period designed to assist borrowers who were unable to make their payments or who needed more time to access information to determine the right repayment plan for their circumstances. With the end of the on-ramp period, some borrowers may start becoming delinquent and start down the path to default. Given that many newer borrowers are at risk of default, and many of these borrowers would not have been otherwise affected by the proposed rules in the NPRM, along with the uncertainty around the implementation of the NPRM proposals, at this time the Department intends to commit its limited operational resources to helping at-risk borrowers return to repayment successfully. The Department has also concluded that withdrawing the NPRM will assure agency flexibility in re-examining the issues and exploring options and alternatives with stakeholders in the future. For all of these independently sufficient reasons, the Department is withdrawing this NPRM.

Importantly, the Department is not withdrawing this NPRM and terminating this rulemaking proceeding based upon a changed view of the Secretary's authority under section 432(a) of the HEA, or based upon any preliminary determination about the limitations of such authority. *See Missouri v. Biden*, No. 24-cv-1316, ECF No. 57 (granting preliminary injunction). Rather, the Department continues to believe that the NPRM is authorized by the Secretary's longstanding and existing authority under the HEA, as explained in the NPRM. *See* 89 FR 27564.

We do not intend for a final rule to be issued on this NPRM. Were the Department to issue a regulation in this area in the future, it would be bound by the requirements of Section 492(a) and (b) of the HEA, 20 U.S.C. 1098a(a) and (b).

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Miguel Cardona,

Secretary of Education.

[FR Doc. 2024-30606 Filed 12-20-24; 8:45 am]

BILLING CODE 4000-01-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52****[EPA–R03–OAR–2024–0512; FRL–12099–01–R3]****Approval and Promulgation of Air Quality Implementation Plans; Maryland; Nitrogen Oxides Ozone Season Emissions Caps for Non-Trading Large Nitrogen Oxides Units; Amendments****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State implementation plan (SIP) revision submitted by the State of Maryland. This revision (Maryland Submittal #24–01) pertains to the re-allocation of nitrogen oxides (NO_x) ozone season emission caps for large non-electric generating units (non-EGUs, affected units). The amendment also updates a cross reference to the Cross State Air Pollution Rule (CSAPR). This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before January 27, 2025.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2024–0512 at www.regulations.gov, or via email to talley.david@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

www.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT:

Amber Iglesias, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (202) 564–3175. Ms. Iglesias can also be reached via electronic mail at iglesias.amber@epa.gov.

SUPPLEMENTARY INFORMATION: On June 10, 2024, the State of Maryland, through the Maryland Department of the Environment (MDE), submitted for approval into the Maryland SIP amendments to the Code of Maryland Regulation (COMAR) 26.11.40–NO_x Ozone Season Emission Caps for Non-Trading Large NO_x Units to EPA.

I. Background

On October 27, 1998 (63 FR 57356), EPA finalized the “Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone”—commonly called the NO_x SIP Call. The NO_x SIP Call, issued pursuant to section 110 of the CAA, was designed to mitigate significant transport of NO_x one of the precursors of ozone. EPA developed the NO_x Budget Trading Program, an allowance trading program that States could adopt to meet their obligations under the NO_x SIP Call. The NO_x Budget Trading Program allowed electric generating units (EGUs) greater than 25 megawatts and industrial non-electric generating units, such as boilers and turbines, with a rated heat input greater than 250 million British thermal units per hour (MMBtu/hr), referred to as “large non-EGUs,” to participate in a regional NO_x cap and trade program. Of specific relevance to this action, the NO_x SIP Call also established specific reduction requirements for other non-EGUs, including cement kilns and stationary internal combustion (IC) engines. On January 10, 2001 (66 FR 1866), EPA approved into the Maryland SIP two Maryland regulations, COMAR 26.11.29–NO_x Reduction and Trading Program, and COMAR 26.11.30–Policies and Procedures Relating to Maryland’s NO_x Reduction and Trading Program, to meet the requirements of the NO_x SIP Call. Under the approved trading program, large EGUs and large non-EGUs in Maryland participated in a regional cap and trade program that was administered by EPA.

On May 12, 2005 (70 FR 25162), EPA promulgated the Clean Air Interstate

Rule (CAIR), to address transported emissions that significantly contributed to downwind States’ nonattainment and maintenance of the 1997 ozone and fine particulate matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS). CAIR required 28 States, including Maryland, to reduce emissions of NO_x and sulfur dioxide (SO₂), which are precursors to ozone and PM_{2.5}. Under CAIR, EPA developed separate cap and trade programs for annual NO_x, ozone season NO_x, and annual SO₂ emissions. On April 28, 2006 (71 FR 25328), EPA also promulgated Federal implementation plans (FIPs) requiring the EGUs in each affected State, but not large non-EGUs, to participate in the CAIR trading programs. Subsequent to these actions, States needed to assess their NO_x SIP Call requirements and take other regulatory action as necessary to ensure that their obligations for the large non-EGUs continued to be met either through submission of a CAIR SIP or other NO_x regulation. States could comply with the requirements of CAIR by either remaining on the FIP, which applied only to EGUs, or by submitting a CAIR SIP revision that included EGUs as trading sources and the NO_x SIP Call covered non-EGUs either as trading sources, or subject to non-trading NO_x control regulations. EPA discontinued administration of the NO_x Budget Trading Program in 2009 upon the start of the CAIR trading programs.¹ The NO_x SIP Call requirements continued to apply, however, and EGUs that were formerly trading under the NO_x Budget Trading Program continued to meet their NO_x SIP Call requirements under the generally more stringent requirements of the CAIR ozone season trading program. EPA has implementing regulations for the NO_x SIP Call at 40 Code of Federal Regulations (CFR) 51.121.

In Maryland, Luke Paper Mill (formerly the Westvaco pulp and paper mill) had the only non-EGUs sources that had been covered under the NO_x SIP Call and participated in the NO_x Budget Trading Program. When the CAIR NO_x Ozone Season trading program replaced the NO_x Budget Trading Program, Maryland adopted the

¹ CAIR was subsequently vacated and remanded. See *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), modified by 550 F.3d 1176 (remanding CAIR). CAIR was replaced with the Cross-State Air Pollution Rule, or CSAPR (76 FR 48208, August 8, 2011), which, after legal challenges, was implemented starting in January 2015. The NO_x Ozone Season Trading Program under CSAPR was replaced in Maryland and most other States by a new trading program for ozone season NO_x under the CSAPR Update rule in January 2017 (81 FR 74504, October 26, 2016).

CAIR program as it applied to large EGUs, but chose not to include the non-EGU sources at Luke as participants in the CAIR NO_x Ozone Season trading program.² Instead, in 2010, Maryland adopted COMAR 26.11.14.07—*Control of Emissions from Kraft Pulp Mills*, which, among other requirements, included provisions that address the NO_x SIP Call non-EGU requirements in Maryland through a NO_x ozone season tonnage cap of 947 tons for the Luke non-EGU sources and monitoring, recordkeeping, and reporting in accordance with 40 CFR part 75. EPA conditionally approved COMAR 26.11.14.07 into the Maryland SIP on August 30, 2016 (81 FR 59486) and took final approval on July 17, 2017 (82 FR 32641).

In October 2018, Maryland adopted a COMAR 26.11.40—*NO_x Ozone Season Emission Caps for Non-Trading Large NO_x Units*. This regulation established NO_x ozone season tonnage caps and NO_x monitoring requirements for large non-EGUs in the State that were not covered under the CSAPR NO_x Ozone Season Group 2 Trading Program. The purpose of COMAR 26.11.40 is to meet requirements of the NO_x SIP Call. NO_x emissions caps that were specified for non-EGUs located at four facilities: American Sugar Refining, Dominion Energy Cove Point LNG, Luke Paper Mill, and the National Institutes of Health. A portion of the Statewide cap is set aside for new units or modified existing units that may become subject to the NO_x SIP Call in the future. The NO_x annual emissions cap for Maryland established for the NO_x SIP Call is 1013 tons per year of NO_x, as established by EPA in 40 CFR part 97, subpart E,

appendix C. This regulation also requires 40 CFR part 75, subpart H monitoring of NO_x emissions at non-EGUs in accordance with 40 CFR 51.121(i)(4). EPA approved the SIP revision that included the new COMAR 26.11.40 in October 2018. On June 30, 2019, Luke Paper Mill was shut down by its owner, Verso, and surrendered all of its CAA operating permits for the facility to Maryland on May 8, 2020.

II. Summary of SIP Revision and EPA Analysis

On June 10, 2024, Maryland submitted for inclusion in the Maryland SIP regulation COMAR 26.11.40—*NO_x Ozone Season Emission Caps for Non-trading Large NO_x Units*. The revisions to sections .02 and .03 of COMAR 26.11.40 reallocate NO_x ozone season emission caps from affected source that have shutdown to new or modified SIP Call covered non-EGUs and in addition updates its regulatory cross-reference of the Federal ozone season trading programs to automatically incorporate by reference any future changes to those programs.

Section .02 lists the currently affected non-EGUs meeting the definition of “non-trading large NO_x unit” in table 1 of this document and includes a provision that any new unit installed after May 1, 2018, or an existing unit that is modified such that it meets the definition of a large non-EGU, will become subject to the requirements of COMAR 26.11.40. Section .02 updates the way the State references the EPA’s CSAPR Rule and removes Luke Paper Mill as an affected source. Prior to the update to section .02 of COMAR 26.11.40 the State referred to the CSAPR

Rule that was in effect in 2018, “the Federal Cross State Air Pollution Rule NO_x Ozone Season Group 2 Trading Program established under 40 CFR part 97, subpart EEEEE.” In 2019, EPA updated the CSAPR Rule and created the CSAPR NO_x Group 3 Trading Program. In this submission, the State of Maryland updates the CSAPR reference in section .02 COMAR 26.11.40 to a more generic trading program reference that will incorporate future changes in the rule. The updated language in COMAR 26.11.40.02 refers to “a Federal trading program for ozone season emissions of NO_x established under 40 CFR part 97 to address interstate transport of ozone and NO_x in accordance with 40 CFR 52.38(b), or a State trading program for ozone season emissions of NO_x approved by the EPA Administrator as meeting the requirements of 40 CFR 52.38(b).”

Section .03 of COMAR 26.11.40 establishes the NO_x annual tonnage caps for each source. This submission removes the NO_x ozone season emission caps from the shutdown Luke Paper Mill. Prior to the amendments of section .02 of COMAR 26.11.40, the State of Maryland allocated a cap of 656 tons to of NO_x Luke Paper Mill with 96 tons to set aside for new units or modified existing units. This submission reallocates the 656-ton cap from Luke Paper Mill to the set-aside cap for new and modified sources giving the set-aside a new cap of 752 tons of NO_x. The total of all sources in the State, which can be seen in the table below, remains at the cap of 1013 tons of NO_x and is consistent with the portion of the overall Maryland NO_x Budget Trading Program budget for large non-EGUs.

TABLE 1—MD LARGE NON EGU O3 SEASON EMISSION CAPS

Facility	Unit	NO _x ozone season cap (tons)
American Sugar Refining	C6	24
Dominion Energy Cove Point LNG	Frame 5–1 (Turbine S009), Frame 5–2 (Turbine S010), Frame 7–A, Frame 7–B, Aux. A, Aux B.	214
National Institutes of Health	5–1156	23
New unit set-aside .....	.....	752
Total .....	.....	1,013

EPA finds that this June 2024 SIP submittal meets Maryland’s NO_x SIP Call obligations (including requirements in CAA section 110 and 40 CFR 51.121) for non-EGUs because the revisions to regulation COMAR 24.11.40 removes

Luke Paper Mill as an affected source and reallocates the NO_x emission cap for that facility to a set aside for new and modified sources. This reallocation does not change or alter the specified State-wide ozone season NO_x emissions

cap of 1013 tons which is consistent with the portion of the overall Maryland NO_x emissions budget under the NO_x Budget Trading Program attributable to non-EGUs. This revision does not change the 40 CFR part 75 monitoring,

² CAIR was superseded upon implementation of the CSAPR program. Maryland rescinded its CAIR regulation (COMAR 26.11.28) and submitted a SIP

revision to EPA that sought removal of the regulation in its entirety from the approved Maryland SIP. On July 17, 2017 (82 FR 32641), EPA

approved the SIP revision removing the CAIR regulation from Maryland’s SIP.

recordkeeping and reporting requirements of the original 2018 submission. Finally, the changes to the CSAPR reference are to ensure that the State is using a term that will be an applicable reference in the State's SIP if the EPA is to update the rule in the future.

The June 10, 2024 Maryland SIP submittal does not result in increased NO_x emissions, and therefore has no impact on any requirements related to attainment, reasonable further progress, or any other NAAQS requirements under the CAA. The submittal therefore meets section 110(l) of the CAA.

III. Proposed Action

EPA's review of this material indicates that Maryland's June 10, 2024 SIP revision submittal (Maryland SIP Revision #24–01) is approvable in accordance with CAA section 110. EPA is proposing to approve the Maryland SIP revision that reallocates the NO_x ozone season emission cap from Luke Paper Mill to the new source set-aside and updates its regulatory cross-reference of the Federal ozone season trading programs to automatically incorporate by reference any future changes to those programs EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the revised Maryland regulation COMAR 26.11.40.02 and the revised COMAR 26.11.40.03, as described in section II of this preamble. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not

impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
 - Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
 - Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
 - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
 - Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
 - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
 - Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act;
- Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

In addition, this proposed rulemaking, that amends Maryland's NO_x Ozone Season Emissions Caps for Non-Trading Large NO_x Units, does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Catherine A. Libertz,

Acting Regional Administrator, Region III.

[FR Doc. 2024–30534 Filed 12–23–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2024–0417; FRL–12279–03–R9]

Air Plan Conditional Approval; California; Bay Area Air Quality Management District; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for a proposed rule published November 29, 2024, and corrected on December 11, 2024. The corrected comment period end date for the proposed rule was December 30, 2024. In response to commenter request, the EPA is now extending the comment period for the proposed rule to January 29, 2025.

DATES: The comment period for the proposed rule published on November

29, 2024, at 89 FR 94633, and corrected on December 11, 2024 (89 FR 99790), is extended. Comments must be received on or before January 29, 2025.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2024–0417 at <https://www.regulations.gov>. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Allison Kawasaki, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; phone: (415) 972–3922; email: kawasaki.allison@epa.gov.

SUPPLEMENTARY INFORMATION: On November 29, 2024 (89 FR 94633), the EPA published the proposed rule “Air Plan Conditional Approval; California; Bay Area Air Quality Management District” in the **Federal Register**. The comment period end date for the proposed rule, as published, was December 30, 2025, which established a 395-day comment period. A correction was published on December 11, 2024

(89 FR 99790), that corrected the comment period end date in the proposed rule to December 30, 2024, which corresponds to a 30-day public comment period from the original publication date of November 29, 2024. In response to commenter request, the EPA is now extending the comment period for the proposed rule to January 29, 2025. Comments must be received on or before January 29, 2025.

Dated: December 16, 2024.

Matthew Lakin,

Director, Air and Radiation Division, Region IX.

[FR Doc. 2024–30464 Filed 12–23–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2024–0563; FRL–12442–01–R9]

Air Plan Approval; California; Mojave Desert Air Quality Management District; Oxides of Nitrogen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Mojave Desert Air Quality Management District (MDAQMD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO_x) from industrial, institutional, and commercial boilers, steam generators, and process heaters. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before January 27, 2025.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2024–0563 at <https://www.regulations.gov>. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public

docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: La Kenya Evans-Hopper, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; phone: (415) 972–3245; email: evanshopper.lakenya@epa.gov.

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

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I. The State’s Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the California Air Resources Control Board (CARB).

TABLE 1—SUBMITTED RULE

Local Agency	Rule No.	Rule title	Amended	Submitted
MDAQMD	1157	Boilers and Process Heaters	09/25/23	01/10/24

On July 10, 2024, the submittal for MDAQMD Rule 1157 was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 appendix V.

B. Are there other versions of this rule?

On June 16, 2023, (88 FR 39366), we finalized a limited approval and limited disapproval of Rule 1157 as adopted on January 22, 2018. The MDAQMD adopted revisions to the SIP-approved version on September 25, 2023, and CARB submitted them to us on January 10, 2024. If we take final action to approve the September 25, 2023 version of Rule 1157, this version will replace the previously approved version of this rule in the SIP.

C. What is the purpose of the submitted rule revision?

Emissions of NO_x contribute to the production of ground-level ozone, smog, and particulate matter (PM), which harm human health and the environment. Section 110(a) of the CAA requires States to submit plans that provide for implementation, maintenance, and enforcement of the national ambient air quality standards (NAAQS). In addition, CAA section 182(b)(2) requires that SIPs for ozone nonattainment areas classified as “Moderate” or higher implement RACT for sources covered by a control techniques guidelines (CTG) document. The MDAQMD relies on Rule 1157 to establish RACT level controls for covered sources within the MDAQMD portion of the West Mojave Desert ozone nonattainment area.

Revised Rule 1157 establishes emission limits of NO_x and carbon monoxide (CO) for boilers, steam generators, and process heaters (units) with rated heat inputs of greater than or equal to 5 million Btu per hour (MMBtu/hr). Rule 1157 is applicable to new and existing boilers, steam generators, and process heaters within the Mojave Desert portion of the West Mojave Desert ozone nonattainment area. The updated rule removed section (E)(1)(b)(iii), allowing the rule to be consistent with EPA’s startup, shutdown, and malfunction (SSM) policy and the Credible Evidence Rule. The rule revisions also made several clarifying and enforceability-enhancing edits. The updated rule added a definition for “Gas Curtailment” to clarify that the rule exempts times of unexpected gaseous fuel delivery prevention and does not include increases in the market prices of gaseous fuel. The rule also corrected the sample calculation in section (C)(3)(a)(iv) to reflect the current rule’s emission limits

that would be used to calculate a weighted average. Finally, Rule 1157 was revised to update test methods for the determination of the higher heating value to the most recent EPA-approved methods.

The EPA’s technical support document (TSD) has more information about this rule.

II. The EPA’s Evaluation and Action

A. How is the EPA evaluating the rule?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)).

Generally, SIP rules must require reasonably available control technology (RACT) for each major source of NO_x in ozone nonattainment areas classified as “Moderate” or above (see CAA section 182(b)(2) and (f)). The MDAQMD regulates ozone nonattainment areas classified as Severe for the 1979 1-hour ozone standard (the Southeast Desert Modified Air Quality Management Area) as well as for the 1997, 2008, and 2015 8-hour ozone NAAQS (the Western Mojave Desert ozone nonattainment area) (see 40 CFR 81.305). Therefore, this rule must implement RACT.

In our June 16, 2023 action, we found that Rule 1157 was largely consistent with the relevant CAA requirements, including RACT. However, in that rulemaking we identified certain deficiencies that prevented full approval of Rule 1157. As a result, in this rulemaking, we focus our analysis primarily on the revisions that have recently been made to Rule 1157.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation, and rule stringency requirements for the applicable criteria pollutants include the following:

1. “Issues Relating to VOC [volatile organic compound] Regulation Cutpoints, Deficiencies, and Deviations,” EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
2. “Guidance Document for Correcting Common VOC & Other Rule Deficiencies,” EPA Region 9, August 21, 2001 (the Little Bluebook).
3. “NO_x Emissions from Industrial/Commercial/Institutional (ICI) Boilers,” EPA 453/R–94–022, March 1994.
4. “Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy,” EPA, September 30, 2021.
5. “State Implementation Plans: Response to Petition for Rulemaking;

Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,” EPA, June 12, 2015, 80 FR 33839.

6. “Inclusion of Provisions Governing Periods of Startup, Shutdown, and Malfunctions in State Implementation Plans,” EPA October 9, 2020.

7. “Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters,” CARB, July 18, 1991.

B. Does the rule meet the evaluation criteria?

In our 2023 action, we determined that section (E)(1)(b)(iii) of Rule 1157, which provided that “[n]o compliance determination shall be established based on data obtained from compliance testing, including integrated sampling methods, during a start-up period or shut-down period,” was not consistent with the EPA’s SSM policy and Credible Evidence Rule because it forbids the use of credible evidence (compliance testing data generated during startup and shutdown periods) in establishing violations of the applicable emissions limit. In addition, the rule revision removed the definitions of “start-up period” and “shut-down period,” making the scope of this provision unclear. The District has corrected this deficiency by removing section (E)(1)(b)(iii) from Rule 1157. In addition, the District made other improvements to Rule 1157 based on EPA’s prior recommendations. The TSD has more information on our evaluation.

Considering the most recent revisions to Rule 1157, we propose to fully approve Rule 1157 because it meets all applicable CAA requirements and is consistent with relevant guidance regarding enforceability, RACT, and SIP revisions. If we finalize this rulemaking as proposed, MDAQMD will have corrected the deficiencies identified in our prior action, and all sanction and Federal implementation plan clocks started by our June 16, 2023 action would be permanently stopped. We are concurrently making an interim final determination to defer CAA section 179 sanctions associated with our June 16, 2023 rulemaking finalizing a limited approval and limited disapproval of Rule 1157. Consistent with our order of sanction regulations,¹ this

¹ 40 CFR 52.31.

determination is based on this proposal to approve SIP revisions from the District that resolve the deficiencies that were the basis of our prior disapproval that triggered sanctions under section 179 of the CAA.

C. Proposed Action and Public Comment

As authorized in section 110(k)(3) of the Act, the EPA proposes to approve the submitted rule because it fulfills all relevant requirements. We will accept comments from the public on this proposal until January 27, 2025. If we take final action to approve the submitted rule, our final action will incorporate this rule into the federally enforceable SIP. In addition, it will permanently stop the sanctions and Federal implementation plan (FIP) clocks started by our June 16, 2023 final action.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the MDAQMD Rule 1157, “Boilers and Process Heaters,” amended on September 25, 2023, which regulates NO_x and CO emissions from industrial, institutional, and commercial boilers, steam generators, and process heaters, as described in section I of this document. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve State choices, provided that they meet the criteria of the Act. Accordingly, this proposed action merely proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735,

October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it proposes to approve a State program;

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation’s Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements Executive Order 12898 and defines EJ as, among other things, “the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment.”

The State did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Orders 12898 and 14096 of achieving EJ for communities with EJ concerns.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: December 13, 2024.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2024–30413 Filed 12–23–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2023–0242; FRL 12441–01–R2]

Approval of Source-Specific Air Quality Implementation Plan; New York; Lehigh Cement Company LLC

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the State of New York’s State Implementation Plan (SIP) for the ozone National Ambient Air Quality Standard (NAAQS) related to a Source-specific SIP (SSSIP) revision for Lehigh Cement Company LLC, located at 313 Warren Street, Glens Falls, New York (the Facility). The EPA is proposing to find that the control options in this SSSIP revision implement Reasonably Available Control Technology (RACT) with respect to nitrogen oxide (NO_x) emissions from the relevant Facility source, which is identified as one Portland cement kiln (the Kiln). This SSSIP revision is intended to implement NO_x RACT for the relevant Facility source in accordance with the requirements for implementation of the 2008 and 2015 ozone NAAQS. This

proposed action will not interfere with ozone NAAQS requirements and meets all applicable requirements of the Clean Air Act (CAA).

DATES: Comments must be received on or before January 27, 2025.

ADDRESSES: Submit your comments, identified by Docket Number EPA-R02-OAR-2023-0242, at <https://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be 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, such as 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: Stephanie Lin, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866, 212-637-3711, or by email at lin.stephanie@epa.gov.

SUPPLEMENTARY INFORMATION:

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- I. Background
- II. The EPA's evaluation of New York's submission and RACT analysis
- III. Environmental Justice Considerations
- IV. Proposed Action
- V. Incorporation by Reference
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I. Background

Ground Level Ozone Formation

Ground level ozone is predominantly a secondary air pollutant created by chemical reactions that occur when ozone precursors, including nitrogen oxides (NO_x) and volatile organic compounds (VOC), chemically react in the presence of sunlight.¹ Emissions from industrial facilities are anthropogenic sources of ozone precursors. The potential for ground-level ozone formation tends to be highest during months with warmer temperatures and stagnant air masses. Ozone levels are thus generally higher during the summer months, which is often referred to as "the ozone season." In New York, the ozone season is generally considered to be between April 15 and October 15, while the non-ozone season is generally considered to be between October 16 and April 14.

Ozone Nonattainment

A geographic area of the United States that is not meeting the primary or secondary National Ambient Air Quality Standard (NAAQS) for ozone is described as a nonattainment area. Nonattainment areas are classified as either Marginal, Moderate, Serious, Severe, or Extreme. With respect to this proposed action, there are two relevant ozone NAAQS standards. First, on March 12, 2008, the EPA promulgated a revision to the ozone NAAQS, setting both the primary and secondary standards at 0.075 parts per million (ppm) averaged over an 8-hour time frame (2008 8-hour Ozone Standard). See 73 FR 16436 (March 27, 2008). Second, on October 1, 2015, the EPA lowered these standards to 0.070 ppm averaged over an 8-hour time frame (2015 8-hour Ozone Standard). See 80 FR 65292 (October 26, 2015).

The State of New York has two ozone nonattainment areas: (1) Jamestown, and (2) the New York Metro Area,² consisting of the Bronx County, Kings County, Nassau County, New York County, Queens County, Richmond County, Rockland County, Suffolk County, Westchester County. Under CAA section 184, the State of New York is located within the Ozone Transport Region (OTR), which means that it is subject to statewide RACT

¹ Primary standards provide public health protection, including protecting the health of "sensitive" populations such as asthmatics, children, and the elderly. Secondary standards provide public welfare protection, including protection against decreased visibility and damage to animals, crops, vegetation, and buildings.

² The New York Metro Area is part of the greater nonattainment area New York-N. New Jersey-Long Island, NY-NJ-CT.

requirements. This Facility is not located in an ozone nonattainment area, but it is still required to implement RACT because it is located within the OTR.

Federal RACT Requirements

RACT is defined as the lowest emission limit that a source is capable of meeting through the application of control technology that is reasonably available considering technological and economic feasibility. The CAA section 182, Plan Submissions and Requirements, requires States with ozone nonattainment areas to include in their statewide SIPs, among other things, provisions to require the implementation of RACT. CAA section 184(b)(2)³ sets forth the requirement to establish control measures to implement RACT for major sources of VOC located in the OTR. For major sources of NO_x, the CAA section 182(f)(1) also applies, "The plan provisions required under this subpart for major stationary sources of volatile organic compounds shall also apply to major stationary sources (as defined in section 7602 of this title and subsections (c), (d), and (e) of this section) of oxides of nitrogen." The State of New York is located within the OTR, and thus the State is required to implement RACT for all major sources of NO_x within the State. RACT for a particular source is determined on a case-by-case basis, considering the technological and economic circumstances of the individual source.

NYSDEC RACT Requirements

The New York State Department of Environmental Conservation (NYSDEC) RACT regulations require applicable facilities to meet certain requirements, referred to as "presumptive RACT requirements." These presumptive requirements generally require sources to implement emission limits, control efficiency requirements, specific control technologies, averaging plans, and/or fuel/raw material switching practices. In some instances, the presumptive RACT requirements may not be technologically or economically feasible for a certain source, and the State can make a source-specific RACT determination, which is submitted to the EPA as a SSSIP. The SSSIP should include the facility's RACT plan that demonstrates how the facility will implement RACT. The SSSIP will also

³ CAA 182(f)(1) also states:

The plan provisions required under this subpart for major stationary sources of volatile organic compounds shall also apply to major stationary sources (as defined in section 7602 of this title and subsections (c), (d), and (e) of this section) of oxides of nitrogen.

include the applicable CAA title V operating permit conditions that address RACT requirements. These permit conditions for the Facility will become part of the Federally enforceable SIP upon the EPA's final approval of this SSSIP.

Under existing NYSDEC RACT regulations, facilities are required to assess all technologically feasible control options that meet the State's cost threshold. The cost threshold for NYSDEC RACT requirements is found under NYSDEC 2013 policy, "DAR-20 Economic and Technical Analysis for Reasonably Available Control Technology (RACT)." Under this policy, facilities must consider in their RACT determinations control technologies that remove VOC or NO_x emissions up to a certain cost threshold, expressed in a dollar amount per ton of VOC or NO_x removed, which includes an inflation-adjusted economic threshold.⁴

II. The EPA's Evaluation of New York's Revision and RACT Analysis

This action relates to a SSSIP revision that concerns a Portland cement manufacturing and quarry facility operated by Lehigh Cement Company LLC, located in Glens Falls, New York. This Lehigh Cement SSSIP was submitted by NYSDEC on July 1, 2022, and is intended to implement NO_x RACT for the Kiln for purposes of the 2008 and 2015 ozone NAAQS. This Lehigh Cement SSSIP replaces and withdraws the Lehigh Cement SSSIPs that were submitted by the State on September 16, 2008, and December 18, 2013. In this SSSIP submittal, the EPA has reviewed the RACT determination for the Kiln for consistency with the CAA and the EPA regulations, as interpreted through EPA actions and guidance.

The source at issue in this action is a short, dry preheater Kiln. NYSDEC RACT regulations establish RACT requirements for this source in 6 NYCRR Subpart 220-1, "Portland Cement Plants," last approved in the New York SIP by the EPA on July 12, 2013. However, 6 NYCRR Subpart 220-1 does not establish presumptive NO_x RACT emission limits for cement kilns due to the uniqueness of cement manufacturing operations. Instead, under 6 NYCRR Subpart 220-1.6(b), the Facility must submit a RACT analysis along with the Air Title V Facility Permit application that proposes a RACT emission limit(s) and identifies

the procedures and monitoring equipment to be used to demonstrate compliance with the proposed RACT emission limit(s). Here, NYSDEC determined that the Facility's analysis adequately evaluated RACT. Such source-specific determinations must be submitted to the EPA as a SSSIP.

In November 2010, the Facility conducted a NO_x RACT analysis for the Kiln (Emission Unit 0-UKILN) specifically applicable under the Federally approved 6 NYCRR Subpart 220-1.6(b). The RACT analysis included the following: (1) An identification of available NO_x control technologies; (2) projected effectiveness of each control technology identified; (3) costs for installation and operation of each technology; and (4) determination of the control technology and emission limit selected as RACT.

Lehigh installed and is currently operating a selective non-catalytic reduction (SNCR) system to meet NO_x RACT as a result of their 2010 NO_x RACT analysis.⁵ In addition, the Federally approved version of 6 NYCRR Subpart 220-1.7(d) requires owners or operators of a Portland cement kiln to install and operate a CEMS to monitor NO_x emissions from the cement kiln in accordance with the provisions of 40 CFR part 75, and to demonstrate compliance with the NO_x RACT emission limit on a 30-day rolling average basis.

A nationwide Federal consent decree (CD), Civil Action #5:19-cv-05688, was executed on November 18, 2020, due to violations that occurred, in pertinent part, at one or more of Lehigh Cement Company LLC's (Lehigh) Portland cement plants. The obligations of the CD were negotiated between Lehigh and the U.S. Department of Justice (on behalf of EPA as well as non-federal jurisdictions, including the State of New York), and are binding.

The terms of the CD imposed a lower emission limit (2.5 lbs NO_x/ton clinker (30-day rolling average)) upon the Kiln that meets Best Available Control Technology (BACT), which is based on the maximum degree of control that can be achieved. The NO_x emission controls and associated cost analysis from the November 2010 RACT analysis for the Kiln were determined to be acceptable

as RACT by the NYSDEC. EPA is proposing to conclude that an August 27, 2021, NO_x RACT evaluation to support Lehigh's Title V permit renewal application has successfully demonstrated that the emissions limit continues to be acceptable as RACT, with the RACT emission limit for the Kiln calculated as 2.9 lbs NO_x/ton clinker (30-day rolling average). Since BACT is the maximum degree of control that can be achieved, BACT generally imposes more stringent requirements than RACT. Given that the BACT emission limit imposed by the CD is lower than the previously calculated RACT limit, the EPA is proposing to find that the BACT limit now represents RACT for this source. Here, the CD requires the Facility, beginning on or before May 18, 2021, to: (1) limit NO_x emissions from the Kiln to 2.5 lbs per ton of clinker produced with an 30-day rolling average; (2) install and commence continuous operation of an Selective Non-Catalytic Reduction (SNCR) NO_x control technology; and (3) install and operate a NO_x Continuous Emissions Monitoring System (CEMS) at each stack, which collects emissions from the applicable kiln in accordance with the requirements of 40 CFR part 60.

To comply with the requirements outlined in the CD, Lehigh revised its Air Title V Facility Permit to contain two permit conditions (permit conditions 85 and 86) that include the NO_x monitoring requirements and emission limitations as non-expiring obligations. A copy of the CD is located in the docket of this rulemaking, Docket Number EPA-R02-OAR-2023-0242, at <https://www.regulations.gov>.

The intended effect of this source-specific SIP revision is to: establish the source-specific emission limit by incorporating the NO_x emission limit imposed by the CD and associated monitoring requirements into the Facility's source-specific SIP.

The EPA is proposing to determine through this SSSIP action that the NO_x emission limit submitted by the State in this SSSIP for the Kiln is the lowest emission limit with the application of control technology that is reasonably available given technological and economic feasibility considerations. The respective NO_x RACT emission limit is contained in the Facility's Title V operating permit, 5-5205-00013/00058, under Conditions 85 and 86. This renewal permit was issued by the State on February 28, 2022, and expires on February 27, 2027.

The Facility submitted a RACT plan for the emission limit requirements and

⁴ The DAR-20 cost threshold is based on 1994 dollars. State of New York relies on the U.S. Department of Labor, Bureau of Labor Statistics inflationary calculator to adjust the RACT economic feasibility threshold over time for inflation. See https://www.bls.gov/data/inflation_calculator.htm.

⁵ On September 9, 2010, the EPA published the New Source Performance Standards for Portland Cement Plants (NSPS Subpart F). In that proposal, the EPA determined that SNCR was deemed to be the Best Demonstrated Technology (BDT) for NO_x in cement plants. . . . we [the EPA] determined SNCR to be BDT and applied a control efficiency for the SNCR to the baseline uncontrolled level to determine the appropriate NO_x level consistent with application of BDT. . . . SNCR performance has been shown to range from 20 to 80 percent NO_x removal." See 75 FR 54970.

NYSDEC reviewed and approved the emission limit as adequately implementing RACT for the source. NYSDEC then submitted the source-specific SIP revision package at issue in this action for EPA approval, and the EPA is proposing to approve the respective emission limit as implementing RACT for this source. The emission limit for the Facility will become part of the Federally enforceable SIP upon the EPA's final approval of this SSSIP.

The EPA is proposing to determine that the proposed limit for Emission Unit 0–UKILN implements RACT because the Facility's more stringent BACT NO_x emissions limit imposed by the consent decree of 2.5 lbs NO_x/ton clinker (30-day rolling average) is more stringent than the 2.9 lbs NO_x/ton clinker (30-day rolling average) limit required to implement RACT for this source.

III. Environmental Justice Considerations

The CAA and applicable implementing regulations neither prohibit nor require an evaluation of environmental justice (EJ) considerations and/or concerns, and so the State of New York did not evaluate EJ concerns as part of its SSSIP submittal. The EPA evaluated EJ concerns for informational purposes only and is providing the following details for transparency about this rulemaking to the public. The EPA did not rely on this information to reach any decisions described in this action. The EPA created a Community Report (Report) using its EJ Screen, Version 2.3. The Report is contained in the EPA docket assigned to this **Federal Register** document.

The Report addresses a 1-mile ring centered at the Facility. All thirteen EJ Screen environmental indexes were considered for the Report: (1) Particulate matter; (2) ozone; (3) nitrogen dioxide; (4) diesel particulate matter; (5) toxic releases to air; (6) traffic proximity; (7) lead paint; (8) superfund proximity; (9) risk management plan (RMP) facility proximity; (10) hazardous waste proximity; (11) underground storage tanks; (12) wastewater discharge; and (13) drinking water noncompliance. Both the EJ Indexes and the Supplemental Indexes were verified using the thirteen environmental indexes. The difference between the EJ and Supplemental indexes is that the EJ Indexes combine data on low income and people of color populations, whereas the Supplemental Indexes combine data on percent low-income, percent persons with disabilities,

percent limited English speaking, and low life expectancy. We analyze both EJ Indexes and Supplemental Indexes because they offer different perspectives on community level vulnerability based on different factors. The EPA uses the National percentile for the Report results and not the State percentile since this SSSIP action is a Federal action. The EPA notes that any environmental index result that is 80 percentile or greater is relatively high compared to the United States population. The “percentile” is what EJ Screen uses to compare the area of study to national figures.

The results of the EPA's environmental justice analysis indicated that the following National Supplemental Indexes were above the 80th percentile: Superfund Proximity and RMP Facility Proximity.

In addition, via EJScreen, the Facility was determined to be in a Justice40 area. In January 2021, President Joe Biden issued Executive Order (E.O.) 14008, Tackling the Climate Crisis at Home and Abroad. Section 223 of the E.O. established the Justice40 Initiative which directs 40 percent of certain Federal investments to flow to disadvantaged communities.

To understand the indexes that are at or higher than 80th percentile, and the Justice40 categories that represent Glens Falls, NY, refer to *Lehigh Cement Environmental Justice Considerations* and *Lehigh Cement EJ Screen Community Report June 4, 2024* in docket assigned to this **Federal Register** document.

IV. Proposed Action

The EPA is proposing to approve this current source-specific revision because the limit included in the SSSIP is demonstrated to implement RACT for the Kiln. Based on an analysis of this source-specific SIP revision, the EPA proposes to approve Lehigh Cement Company LLC's operation under the NO_x emission limit approved by NYSDEC for the Facility's Kiln.

V. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference revisions to Lehigh Cement Company LLC Title V operating permit conditions 85 and 86 as described in section II of this preamble. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 2 Office (please contact the

person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
 - Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
 - Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
 - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
 - Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
 - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
 - Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.
- In addition, 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 rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation’s Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements E.O. 12898 and defines EJ as, among other things, the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, or Tribal affiliation, or disability in agency decision-making and other Federal activities that affect human health and the environment.

The New York State Department of Environmental Conservation did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA performed an EJ analysis, as is described earlier in the section titled, “EJ Considerations.” The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898/14096 of achieving EJ for communities with EJ concerns.

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements.

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

Lisa Garcia,

Regional Administrator, Region 2.

[FR Doc. 2024–30582 Filed 12–23–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2022–0134;
FXES1111090FEDR–256–FF09E21000]

RIN 1018–BG93

Endangered and Threatened Wildlife and Plants; Significant Portion of the Range for the Northern Distinct Population Segment of the Southern Subspecies of Scarlet Macaw

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Prior analysis and determination; opening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, are opening a public comment period on a 2023 analysis regarding the significant portion of the range for the northern distinct population segment of the southern subspecies of the scarlet macaw (*Ara macao macao*). The analysis was conducted as part of a listing determination under the Endangered Species Act for the distinct population segment. Previously submitted comments related to the analysis need not be resubmitted, as they are already incorporated into the public record and will be fully considered.

DATES: We will accept comments received or postmarked on or before January 27, 2025. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS–HQ–ES–2022–0134, which is the docket number for documents related to the analysis and listing determination. Then click on the Search button. You may submit a comment by clicking on “Comment.”

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–HQ–ES–2022–0134, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Public Comments, below, for more information).

FOR FURTHER INFORMATION CONTACT:

Rachel London, Manager, Branch of Delisting and Foreign Species, Ecological Services Program, U.S. Fish and Wildlife Service, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (telephone 703–358–2171). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

On February 26, 2019, we, the U.S. Fish and Wildlife Service (Service), published in the **Federal Register** a final rule under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*) (84 FR 6278; hereafter referred to as “the 2019 rule”). The 2019 rule was the outcome of a rulemaking proceeding that began with a proposed rule (77 FR 40222, July 6, 2012) and a revised proposed rule (81 FR 20302, April 7, 2016).

The 2019 rule revised the List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations (at 50 CFR 17.11(h)) to add the northern subspecies of scarlet macaw (*A. m. cyanoptera*) as an endangered species, the northern distinct population segment (DPS) of the southern subspecies (*A. m. macao*) as a threatened species, and the southern DPS of the southern subspecies (*A. m. macao*) and subspecies crosses (*A. m. cyanoptera* and *A. m. macao*) as threatened species due to similarity of appearance. The 2019 rule also added protective regulations to 50 CFR 17.41 pursuant to section 4(d) of the Act for the northern and southern DPSs of the southern subspecies and for subspecies crosses (hereafter, “the 4(d) rule”). For a more thorough discussion of the taxonomy, life history, distribution, and the determination of listing status for scarlet macaws under the Act, please refer to the Species Information section in the 2019 rule.

In the 2019 rule, we determined that the northern DPS of the southern subspecies of scarlet macaw meets the definition of a threatened species because it was likely to become in danger of extinction within the foreseeable future throughout all of its range. At that time, we followed our Final Policy on Interpretation of the Phrase “Significant Portion of Its Range” in the Endangered Species Act’s

Definitions of “Endangered Species” and “Threatened Species” (Final Policy; 79 FR 37578, July 1, 2014), which provided that if the Service determined that a species was threatened throughout all of its range, the Service would not analyze whether the species was endangered in a significant portion of its range. Therefore, we did not conduct an evaluation of whether the northern DPS of the southern subspecies (*A. m. macao*) should be listed as an endangered species due to its status in a significant portion of its range (SPR).

After the 2019 rule was published, the portion of the Final Policy that we had relied upon in the 2019 rule was vacated in *Center for Biological Diversity v. Everson*, 435 F. Supp. 3d 69 (D.D.C. Jan. 28, 2020) (*Everson*). Therefore, we sought a voluntary remand of the 2019 rule and the 4(d) rule in an ongoing lawsuit that challenged both rules (*Friends of Animals v. Williams* (No. 1:21-cv-02081-RC, Doc. 22) (*Friends of Animals*)). On August 29, 2022, the U.S. District Court for the District of Columbia (Court) granted our motion for voluntary remand without vacatur of the threatened finding and section 4(d) rule for the northern DPS of the southern subspecies of scarlet macaw.

In response to the Court’s decision, we published a document in the **Federal Register** stating that we were reexamining our 2019 SPR analysis and reconsidering it based on the plain language of the Act and the implications of *Everson* (87 FR 66093, November 2, 2022). In that document (hereafter, “the 2022 reconsideration”), we sought public comment on how the decision in *Everson* and the Act’s plain language may affect the 2019 rule. Specifically, we were interested in public input on whether and how the *Everson* opinion affects the SPR analysis in the threatened determination.

Taking into consideration all public comments received on the 2022 reconsideration and based on our additional analysis, on April 3, 2023, we published a new SPR analysis and final threatened species determination for the northern DPS of the southern subspecies of scarlet macaw (88 FR 19549; hereafter, “the 2023 SPR analysis”).

In the 2023 SPR analysis, we assessed four portions of the northern DPS of the southern subspecies of scarlet macaw: the Pacific slope of Costa Rica, mainland Panama, Colombia west of the Andes, and Panama and Colombia combined. We concluded that none of the portions in the northern DPS are both in danger of extinction and significant. Having completed the SPR analysis for the northern DPS and

having determined that the northern DPS is not in danger of extinction in any significant portion of its range, we did not propose to revise the current status of the southern subspecies of scarlet macaw in the northern DPS. Therefore, we affirmed the listing of the scarlet macaw as set forth in the 2019 rule.

For a description of previous Federal actions concerning the scarlet macaw, please refer to the 2022 reconsideration (87 FR 66093, November 2, 2022) and the 2023 SPR analysis (88 FR 19549, April 3, 2023).

This Action

In response to an amended complaint filed by Friends of Animals, the Court found that we inappropriately limited the scope of public comments in the 2022 reconsideration. On July 10, 2024, the Court vacated the 2023 SPR analysis and remanded it to us to reconduct that analysis after soliciting and considering public comments on the relevant, substantive issues. Accordingly, with this document, we hereby open a 30-day public comment period on the 2023 SPR analysis with no limitations on the comments requested.

Public Comments

We will accept written comments and information during this comment period on our 2023 SPR analysis for the northern DPS of the southern subspecies of scarlet macaw (88 FR 19549, April 3, 2023). Consistent with the Court’s order in *Friends of Animals*, we will reconduct that SPR analysis after considering all comments and information that we receive. Our consideration of the comments and information may have different outcomes: Our final SPR analysis and listing determination may differ from the 2023 SPR analysis and, therefore, we may need to revise and repropose the northern DPS listing determination; alternatively, we may affirm our conclusion in the 2023 SPR analysis, and no reproposal of the northern DPS listing determination may be necessary. In either a final SPR analysis and determination or any repropose northern DPS listing determination, we will clearly explain our rationale and the basis for our determination, including why we made changes, if any, that differ from the 2023 SPR analysis.

Comments should be as specific as possible. Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include. Please note that section 4(b)(1)(A) of the Act directs that determinations as to whether any

species is an endangered species or a threatened species must be made solely on the basis of the best scientific and commercial data available. Comments or information already submitted on the proposed rule (77 FR 40222, July 6, 2012); revised proposed rule (81 FR 20302, April 7, 2016); or the 2022 reconsideration of the 2019 rule (87 FR 66093, November 2, 2022) need not be resubmitted. Any such comments are already incorporated as part of the public record of the rulemaking proceeding, and we will fully consider them as part of this action.

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**. If you submit information via <https://www.regulations.gov>, your entire submission—including your personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, 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. We will post all hardcopy submissions on <https://www.regulations.gov>. Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on <https://www.regulations.gov> at FWS-HQ-ES-2022-0134.

Authors

The primary authors of this document are the staff members of the Fish and Wildlife Service’s Species Assessment Team and the Branch of Delisting and Foreign Species.

Authority

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), is the authority for this action.

Signing Authority

Martha Williams, Director of the U.S. Fish and Wildlife Service, approved this action on December 3, 2024. Acting Director Steve Guertin approved these packages December 15, 2024. On December 16, 2024, the acting Director authorized the undersigned to sign the document electronically and submit it to the Office of the Federal Register for

publication as an official document of the U.S. Fish and Wildlife Service.

Madonna Baucum,

Regulations and Policy Chief, Division of Policy, Economics, Risk Management, and Analytics of the Joint Administrative Operations, U.S. Fish and Wildlife Service.

[FR Doc. 2024–30381 Filed 12–23–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2023–0033; FXES1113090FEDR–256–FF09E22000]

RIN 1018–BH98

Endangered and Threatened Wildlife and Plants; Endangered Species Status for the Blue Tree Monitor

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the blue tree monitor (*Varanus macraei*), a lizard species from Indonesia, as an endangered species under the Endangered Species Act of 1973, as amended (Act). This determination also serves as our 12-month finding on a petition to list the blue tree monitor. After a review of the best scientific and commercial information available, we find that listing the species is warranted. If we finalize this rule as proposed, it would add this species to the List of Endangered and Threatened Wildlife and extend the Act's protections to the species. A temporary rule (emergency action) listing this species as endangered for 240 days is published concurrently in this issue of the **Federal Register**.

DATES: We will accept comments received or postmarked on or before February 24, 2025. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by February 10, 2025.

ADDRESSES: *Written comments:* You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS–HQ–ES–2023–0033, which

is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on “Comment.”

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–HQ–ES–2023–0033, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: Supporting materials, such as the species status assessment report, are available on <https://www.regulations.gov> at Docket No. FWS–HQ–ES–2023–0033.

FOR FURTHER INFORMATION CONTACT:

Rachel London, Manager, Branch of Delisting and Foreign Species, Ecological Services Program, U.S. Fish and Wildlife Service, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–2171.

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. Please see Docket No. FWS–HQ–ES–2023–0033 on <https://www.regulations.gov> for a document that summarizes this proposed rule.

SUPPLEMENTARY INFORMATION:

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including

habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns and the locations of any additional populations of this species;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Threats and conservation actions affecting the species, including:

(a) Factors that may be affecting the continued existence of the species, which may include habitat destruction, modification, or curtailment; overutilization; disease; predation; the inadequacy of existing regulatory mechanisms; or other natural or manmade factors;

(b) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species; and

(c) Existing regulations or conservation actions that may be addressing threats to this species.

(3) Additional information concerning the historical and current status of this species.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support a determination. Section 4(b)(1)(A) of the Act (16 U.S.C. 1533(b)(1)(A)) directs that determinations as to whether any species is an endangered or a threatened species must be made solely on the basis of the best scientific and commercial data available.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via <https://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, 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.

We will post all hardcopy submissions on <https://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <https://www.regulations.gov>.

Our final determination may differ from this proposal because we will consider all comments we receive during the comment period as well as any information that may become available after this proposal. Based on the new information we receive (and, if relevant, any comments on that new information), we may conclude that the species is threatened instead of endangered, or we may conclude that the species does not warrant listing as either an endangered species or a threatened species. In our final rule, we will clearly explain our rationale and the basis for our final decision, including why we made changes, if any, that differ from this proposal.

Public Hearing

Section 4(b)(5) of the Act (16 U.S.C. 1533(b)(5)) provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** at least 15 days before the hearing. We may hold the public hearing in person or virtually via webinar. We will announce any public hearing on our website, in addition to the **Federal Register**. The use of virtual public hearings is consistent with our regulations in title 50 of the Code of Federal Regulations (CFR) at section 424.16(c)(3) (50 CFR 424.16(c)(3)).

Previous Federal Actions

On April 15, 2022, we received a petition from the Center for Biological Diversity to list the blue tree monitor as an endangered species under the Act (16 U.S.C. 1531 *et seq.*). On August 17, 2023, we published in the **Federal Register** (88 FR 55991) a 90-day finding that the petition presented substantial scientific and commercial information indicating that the petitioned action may be warranted; that document initiated a status review for the blue tree monitor.

Peer Review

A species status assessment (SSA) team prepared an SSA report for the blue tree monitor. The SSA report currently is undergoing peer review and

will be finalized before a final listing decision is made. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review in listing and recovery actions under the Act (<https://www.fws.gov/sites/default/files/documents/peer-review-policy-directors-memo-2016-08-22.pdf>), we will solicit independent scientific review of the information contained in the blue tree monitor SSA report. The SSA report and other materials related to this proposed rule can be found at <https://www.regulations.gov> under Docket No. FWS-HQ-ES-2023-0033.

Background

The blue tree monitor (*Varanus macraei*) is a medium-sized monitor lizard that is distinguished by a unique bright blue spotted pattern on its head, body, and legs (Böhme and Jacobs 2001, pp. 7–9; Auliya and Koch 2020, p. 72). The species has sharp claws, smooth and unkeeled neck scales, and a long prehensile tail with alternating blue and black bands (Böhme and Jacobs 2001, pp. 7–9; Auliya and Koch 2020, p. 72). The blue tree monitor was first described in 2001 (Böhme and Jacobs 2001, entire), and genetic testing confirms it is a distinct species (Ziegler et al. 2007, p. 16) that occupies the *V. prasinus* species complex (subgenus *Hapturosaurus*; Bucklitsch et al. 2016, pp. 37–38). Adults average a snout vent length of 31 centimeters (cm) (12.2 inches (in)) and total length of 88 cm (34.6 in) (Arida et al. 2021, p. 115; Del Canto 2013, p. 19; Ziegler et al. 2009, p. 123).

The blue tree monitor is endemic to the island of Batanta, within the Raja Ampat Islands of Papua, Indonesia (Böhme and Jacobs 2004, p. 214). Batanta has a total area of 455 square kilometers (sq km) (174.9 square miles (sq mi)), with a maximum length of 61 kilometers (km) (37.9 miles (mi)) and a maximum width of 13 km (8.1 mi) (Ziegler et al. 2009, p. 122). The species is rarely encountered on Batanta, so there is little detail available on the species' life-history and habitat requirements (Philipp and Philipp 2007, p. 867; Auliya and Koch 2020, p. 72).

The blue tree monitor is diurnal and arboreal (Böhme and Jacobs 2004, p. 214; Del Canto 2013, p. 19; Ziegler et al. 2009, p. 122), primarily feeds on invertebrates (Auliya and Koch 2020, p. 72; Del Canto 2013, p. 20), and occupies low-lying forested habitats with an ambient humidity that ranges from 65 to 100 percent (Del Canto 2013, p. 19; Sprackland 2011, unpaginated).

No published studies describe the reproductive biology of the blue tree monitor in the wild; however, experts suggest that breeding activity coincides with periods of reduced rainfall, such as the post-monsoonal dry season (Rahmanto et al. 2022, p. 20; Ziegler et al. 2009, p. 130). Blue tree monitors are capable of laying up to four clutches of 2 to 7 eggs (average of 3.9 ± 1.2 eggs per clutch) per year, and the shortest interval between subsequent clutches was recorded at 95 days (Ziegler et al. 2009, p. 130). Because blue tree monitors take approximately 2 years to reach sexual maturity (Rauhaus et al. 2014, p. 33), we estimate the average generation time for the species to be approximately 2.5 years.

No quantitative population information for the species exists (Bennett 2015, p. 50), though there is evidence of declines in the wild population on Batanta as a result of overcollection for the pet trade (Arida et al. 2021, pp. 113–114; Del Canto 2013, p. 19; see *Threats*, below).

A thorough review of the taxonomy, life history, and ecology of the blue tree monitor is presented in the SSA report (version 1.1; Service 2024, pp. 1–7).

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species.

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

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

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

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

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

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

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

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

The Act does not define the term "foreseeable future," which appears in the statutory definition of "threatened species." Our implementing regulations

at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis, which is further described in the 2009 Memorandum Opinion on the foreseeable future from the Department of the Interior, Office of the Solicitor (M-37021, January 16, 2009; "M-Opinion," available online at <https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/M-37021.pdf>). The foreseeable future extends as far into the future as the U.S. Fish and Wildlife Service and National Marine Fisheries Service (hereafter, the Services) can make reasonably reliable predictions about the threats to the species and the species' responses to those threats. We need not identify the foreseeable future in terms of a specific period of time. We will describe the foreseeable future on a case-by-case basis, using the best available data and taking into account considerations such as the species' life-history characteristics, threat projection timeframes, and environmental variability. In other words, the foreseeable future is the period of time over which we can make reasonably reliable predictions. "Reliable" does not mean "certain"; it means sufficient to provide a reasonable degree of confidence in the prediction, in light of the conservation purposes of the Act.

Analytical Framework

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

To assess the blue tree monitor's viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years); redundancy is the ability of the species to withstand catastrophic events (for example, droughts, large pollution events); and representation is the ability of the species to adapt to both near-term and long-term changes in its physical and biological environment (for

example, climate conditions, pathogens). In general, species viability will increase with increases in (and decrease with decreases in) resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

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

The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS-HQ-ES-2023-0033 on <https://www.regulations.gov>.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

Species Needs

Based on the species' biology described above and in the SSA report (version 1.1; Service 2024, pp. 1–7), the blue tree monitor requires an adequate supply of invertebrates for food; undisturbed, humid, lowland forests with good canopy cover and continuity; and sufficient conspecific individuals to find a mate. Owing to the limited data available, our assessment of species-level needs is developed further based on general principles as they apply to lizard biology.

Threats

Deforestation

Deforestation causes habitat loss that directly contributes to the decline of native reptile species in Indonesia

(Iskandar and Erdelen 2006, p. 72), and Indonesia has one of the highest deforestation rates in the world (Newman and Valentinus 2005, p. 1). Illegal logging is contributing to the decline of forested areas on Batanta (Webb 2005, p. 10; Newman and Valentinus 2005, p. 19; Takeuchi 2003, p. 105), and much of the island's northern coast below 300 meters of elevation has already been logged (Webb 2005, p. 25). Because blue tree monitors occupy low-lying forested habitats, this substantial logging of low-lying forests has resulted in significant habitat loss for the species. Deforestation not only directly removes blue tree monitor habitat, but it also increases the ecosystem's vulnerability to catastrophic events such as fires, landslides, and floods (Newman and Valentinus 2005, p. 2). The blue tree monitor exists in a single population that is restricted in range to low-lying forested habitat within one small (455 sq km (174.9 sq mi)) island, so deforestation places the species at even greater risk of extirpation due to stochastic and catastrophic events.

Climate Change

The Intergovernmental Panel on Climate Change predicts that continued greenhouse gas emissions will likely increase global temperatures to 1.5 degrees Celsius (°C) (2.7 degrees Fahrenheit (°F)) above pre-industrial levels by 2040, even under optimistic low-emissions scenarios (Lee et al. 2023, p. 12). Extreme wet and dry events in Indonesia are expected become more frequent (Kurniadi et al. 2024, p. 160), which will increase the likelihood of natural disasters, such as landslides (Ahmad et al. 2019, p. 2) and tropical cyclones (Christensen et al. 2007, p. 879). Natural disasters ultimately exacerbate habitat loss, and each additional catastrophic event increases extirpation risk for the blue tree monitor. Considering the life history and biology of the blue tree monitor, habitat loss and climate change will continue to decrease the species' viability because of the species' specialized habitat requirements and narrow distribution.

Collection for International Pet Trade

Blue tree monitors are valuable on the international pet market, and collecting and selling them is a source of income for local residents on Batanta (Arida et al. 2021, pp. 112–115). Newly described species that are popular in the pet trade are often overcollected to the point that they become extirpated from their type locality (Stuart et al. 2006, p. 1137), and blue tree monitors are already

undetectable or extirpated from Pulau Ayem, the collection site of the original type specimen (Del Canto 2013, p. 19; Arida et al. 2021, pp. 112–114). Furthermore, lizard hunters in Amdui Village have reported they now find fewer blue tree monitors during week-long hunting sessions than they found historically, and they can no longer find the species within the vicinity of their village and must travel by boat to more remote areas of Batanta to collect the species (Arida et al. 2021, pp. 114–116). Despite the indication that overcollection likely is causing unsustainable population declines, the blue tree monitor continues to be heavily collected from the wild for the international pet trade (Arida et al. 2021, pp. 114–115).

It is illegal to export wild blue tree monitors from Indonesia (wild includes specimens taken from the wild and held in captivity, specimens born in captivity where the parents mated in the wild such as from fertilized eggs or gravid females collected from the wild, and any specimens for which there is insufficient evidence that the specimen meets the requirements for captive-bred or bred in captivity); however, it is legal to export individuals bred in captivity (CITES source code C) with a permit (see *Conservation Efforts and Regulatory Mechanisms*, below). This effectively creates a loophole through which wild-caught blue tree monitors enter international trade when they are deliberately mislabeled as captive-bred (Bennett 2015, p. 56). Many of the facilities in Indonesia that claim to engage in captive breeding of blue tree monitors possess only wild-caught blue tree monitors (Auliya 2009, as cited in Koch et al. 2013, pp. 27–28), and a large percentage of these institutions lack the capability to successfully breed reptiles (Nijman and Shepherd 2009, p. 7). While it is possible that a small captive-breeding population of blue tree monitors has been established in Indonesia, there is no evidence that any such captive population has the capacity to be self-sustaining. To be self-sustaining, a population must produce offspring of F2 (the second generation of offspring that results from breeding two members of the first filial generation) and subsequent generations, resulting from the breeding between parents that mated in captivity, and without continued introduction of wild caught specimens. There is no evidence to suggest that the individuals being exported out of the country are legitimately captive-bred, because captive reproduction in blue tree monitors is sporadic and claims of

subsequent generations are rare (Rauhaus et al. 2014, as cited in Bennett 2015, p. 56). Nevertheless, the majority of blue tree monitors exported out of Indonesia are declared bred in captivity even though they are likely sourced from the wild (Shepherd 2022, pp. 48–49; Bennett 2015, p. 56), and blue tree monitors that are legitimately bred in captivity represent less than 1 percent of worldwide trade (Bennett 2015, p. 50). This laundering of wild-caught lizards through captive-breeding facilities creates a false sense of sustainability. In reality, wild populations are declining (Janssen and Chng 2018, p. 24) and many monitor lizards do not survive long in captivity.

Monitor lizards are often subject to stressful, unhygienic, and inhumane conditions along the trade route (Koch et al. 2013, p. 48), and many specimens are injured or die before they are exported from Indonesia (Natusch and Lyons 2012, p. 2902; Marshall and Beehler 2007, as cited in Koch et al. 2013, p. 48). Those blue tree monitors that survive the trade route often do not survive long in captivity because tree monitors are particularly susceptible to chronic dehydration and require specialized care (Mendyk 2015, p. 10). Between 22.5 and 26.4 percent of monitor lizards die before their second year in captivity, regardless of the specimen's origins (e.g., wild-caught or captive-born; Mendyk 2015, p. 3). Because monitor lizards have a high mortality rate along the trade route and in captivity, wild-caught blue tree monitors will likely continue to be illegally exported out of Indonesia to meet the demand of the international pet market. Illegal trade not only disguises the true number of blue tree monitors that are taken from the wild, it also contributes to the underestimation of individuals present in the international pet market.

According to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Trade Database, between 2003 and 2022, a total of 5,502 individual blue tree monitors were exported from Indonesia for commercial purposes (Service 2024, p. 12). The United States is the largest importer of blue tree monitors and imported 1,455 live blue tree monitors from 2003 to 2022, which accounts for approximately 45 percent of the 3,225 global importations reported by CITES (Service 2024, pp. 11–13). In 2023, the Service's Law Enforcement Management Information System (LEMIS) recorded the importation of 153 individual blue tree monitors, the largest annual importation total to date, and more than double the

yearly importation average prior to 2023. LEMIS consistently underreports the number of blue tree monitors imported into the United States when compared to the CITES trade database (Service 2024, p. 13), and the CITES trade database underestimates international trade numbers (Slábová et al. 2021, p. 2), because some specimens that are not reported in the CITES trade database are sometimes found advertised for sale (Bennett 2015, p. 51). This suggests that the true number of blue tree monitors that were imported into the United States in 2023 is likely higher than the figure reported by LEMIS.

Because reptile collectors often desire to keep rare and brightly colored species in their collection (Altherr and Lameter 2020, p. 6), the market demand for blue tree monitors will likely remain high. Overcollection for the pet trade is known to cause extirpations in newly described reptile species (Stuart et al. 2006, p. 1137). Overcollection represents an immediate threat to the blue tree monitor's viability because unsustainable exploitation will likely lead to the species becoming a rarer and more valuable commodity on the pet market, and thus a more appealing target for collection (Janssen and Krishnasamy 2018, p. 2). The average declared value of individual blue tree monitors in LEMIS has steadily increased from approximately \$300 in 2003 to \$540 in 2024 (U.S. dollars; Service 2024, p. 9), which is likely a reflection of the increasing rarity of the species, and the increasing demand for the species driving further pressure on the species in the wild. Ultimately, the unsustainable collection of blue tree monitors increases the species' risk of extinction.

Conservation Efforts and Regulatory Mechanisms

The blue tree monitor is not listed as a protected species in Indonesia (Regulation of the Republic of Indonesia No. 7/1999 on Preserving Flora and Fauna Species). Indonesia may establish a harvest and export quota for specifically listed non-protected species, which would allow for a purposeful, sustainable harvest of a species that benefits the local economy and ensures the long-term conservation of the species (Regulation of the Minister of Forestry No. 447/Kpts-11/2003). However, the blue tree monitor has no established harvest quota that allows for commercial trade, and, therefore, trade of wild-caught specimens is illegal under Indonesian law. Despite Indonesia having restrictions and guidelines in place to

regulate the wildlife trade, few individuals abide by them (Natusch and Lyons 2012, p. 2905), and these laws and regulations are easily circumvented when trading protected species or species without commercial harvest quotas (Lyons and Natusch, 2011 p. 3; Natusch and Lyons, 2012 p. 2902).

Indonesia has been party to CITES since 1979, and the trade of CITES-listed wildlife from Indonesia is internationally monitored and regulated (Nijman 2019, pp. 197–198). All *Varanus* lizards have been listed under CITES Appendix II since 1975 (Shepherd 2022, p. 48). Under Indonesian law as a CITES Appendix-II species, it is illegal to export wild-caught specimens; however, individuals bred in captivity may be exported from Indonesia with a permit (Shepherd 2022, p. 48; Nijman 2019, p. 198). The Indonesian government regulates captive breeding through a “captive-breeding production plan,” which calculates a quota of animals allowed to be produced by registered captive-breeding facilities and exported with a permit (Janssen and Chng 2018, p. 19). These production quotas are based on inaccurate or unrealistic biological parameters, and often exceed a species' maximum possible reproductive output, or are allocated for species with no registered breeding stock (Janssen and Chng 2018, pp. 23–24). Furthermore, many registered companies claiming to be commercially breeding wildlife often lack facilities suitable for captive breeding, and there are often large discrepancies between reported breeding stock and the actual breeding stock present at these facilities (Nijman and Shepherd 2009, pp. 7–8). It is through this loophole that CITES regulations are circumvented in Indonesia, and wild-caught blue tree monitors are mislabeled as bred in captivity, exported from Indonesia through registered captive-breeding facilities, and enter the international pet trade (see *Threats*, above).

Batanta has one protected area, Pulau Batanta Barat, that covers 170.95 sq km (66 sq mi), but it is unlikely that this area offers effective protection to blue tree monitors, because logging has been observed within the protected area (Newman and Valentinus 2005, p. 19; Takeuchi 2003, p. 105), and the laws protecting the area are not adhered to by locals or corporations (Koch 2016, p. 40).

Current Condition

The best available scientific and commercial data indicate the blue tree monitor is a narrow endemic with low genetic diversity comprised of a single

population that occupies one island with an area of approximately 455 sq km (174.9 sq mi) (Ziegler et al. 2009, p. 122). While no quantitative population data are available to definitively assess the population status and population trends of the blue tree monitor (Bennett 2015, p. 50), we are able to assess the resiliency of the species based on a multitude of factors. Ecological traits alone leave the blue tree monitor prone to extinction, because the risk of extinction is highest in monitor lizards that are arboreal, endemic to small islands, and associated with pristine tropical rainforest habitats (Koch et al. 2013, p. 46). The blue tree monitor satisfies all three of these criteria, and the greatest threats to the species' viability are habitat loss and overcollection for the pet trade.

Much of the blue tree monitor's limited habitat has already been lost due to deforestation, and illegal logging is expected to continue on Batanta due to the island's remoteness and lack of legal enforcement (Webb 2005, p. 25; Newman and Valentinus 2005, p. 19; Takeuchi 2003, p. 105). Habitat loss reduces the amount of space that blue tree monitors are able to occupy, which leaves the population more vulnerable to catastrophic events (e.g., fire, landslides, floods; Newman and Valentinus 2005, p. 2), and habitat loss diminishes the resiliency of a population that is also declining because of overcollection for the pet trade (see *Threats*, above). Because blue tree monitors are a valuable commodity on the international pet market (Arida et al. 2021, pp. 112), and have a high mortality rate along the trade route and in captivity (Natusch and Lyons 2012, p. 2902; Mendyk 2015, p. 3), it is likely that overcollection will continue, and together with habitat loss and other threats is likely to lead to the extirpation of the species if overcollection continues unabated (Janssen and Krishnasamy 2018, p. 2). Overcollection of newly described reptiles has previously resulted in their extirpation from type localities (Stuart et al. 2006, p. 1137), and this is already true for the blue tree monitor, as it is now undetectable or extirpated from its type locality (Del Canto 2013, p. 19; Arida et al. 2021, pp. 112–114). Furthermore, lizard hunters report that the remaining blue tree monitor population on Batanta is declining (Arida et al. 2021, pp. 114–116), and the species is becoming more valuable in the pet trade (Service 2024, p. 9), which is likely a reflection of their increasing rarity in the wild. The blue tree monitor has always been rare on Batanta (Philipp and Philipp 2007, p.

867), and because the single remaining population is declining and occupies a narrow range, the species has low resiliency to adapt to and withstand environmental and demographic stochasticity.

Species with high redundancy are less vulnerable to random catastrophic events because they have many populations that are geographically dispersed over a wide area. Because the blue tree monitor exists in a single population that is dispersed over an area that amounts to less than 455 sq km (174.9 sq mi) (Ziegler et al. 2009, p. 122), the species is vulnerable to extinction caused by catastrophic events and, therefore, has low redundancy.

Representation is improved in species with high genetic variability or that inhabit a wide range of ecological settings; both of these characteristics facilitate adaptation to future environmental changes, whether natural or anthropogenic. Blue tree monitors do not occupy a wide range of ecological settings and are restricted to low-lying, humid forests on a single island (Ziegler et al. 2009, p. 122; Del Canto 2013, p. 19; Sprackland 2011, unpaginated). Climate change further threatens the viability of the single blue tree monitor population because an increased frequency of extreme dry events threatens to decrease ambient humidity (Kurniadi et al. 2024, p. 160), which may increase blue tree monitor mortality resulting from dehydration (Mendyk 2015, p. 10). Because the blue tree monitor only has one population that occupies a single narrow ecological setting and the species has a low capacity to adapt to future environmental changes, the species has low representation.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have analyzed the cumulative effects of identified threats and conservation actions on the species. To assess the current and future condition of the species, we evaluate the effects of all the relevant factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative-effects analysis.

Determination of Blue Tree Monitor's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50

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

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we determined that the blue tree monitor population has been reduced across its range because of the loss of its limited habitat and overcollection for the international pet trade. Because the blue tree monitor is threatened by overcollection for the international pet trade and only exists in a single population that is endemic to a small island that is threatened by historical and current habitat loss, the species is at increased risk of extirpation due to stochastic and catastrophic events, and is immediately at risk of extinction. The blue tree monitor currently maintains insufficient resiliency, redundancy, and representation for its continued existence to be secure.

Thus, after assessing the best scientific and commercial data available, we determine that the blue tree monitor is in danger of extinction throughout all of its range. The species does not meet the statutory definition of a threatened species because it is currently in danger of extinction, whereas threatened species are those likely to become in danger of extinction within the foreseeable future.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of its range. We have

determined that the blue tree monitor is in danger of extinction throughout all of its range and accordingly did not undertake an analysis of any significant portion of its range. Because the blue tree monitor warrants listing as an endangered species throughout all of its range, our determination does not conflict with the decision in *Center for Biological Diversity v. Everson*, 435 F. Supp. 3d 69 (D.D.C. 2020), because that decision related to significant portion of the range analyses for species that warrant listing as threatened, not endangered, throughout all of their range.

Determination of Status

Based on the best scientific and commercial information available, we determine that the blue tree monitor meets the Act's definition of an endangered species. Therefore, we propose to list the blue tree monitor as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

The purposes of the Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in the Act. Under the Act, a number of steps are available to advance the conservation of species listed as endangered or threatened species. As explained further below, these conservation measures include: (1) recognition, (2) recovery actions, (3) requirements for Federal protection, (4) financial assistance for conservation programs, and (5) prohibitions against certain activities.

Recognition through listing results in public awareness, as well as in conservation by Federal, State, Tribal, and local agencies, foreign governments, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species.

Section 7 of the Act is titled, "Interagency Cooperation," and it mandates all Federal action agencies to use their existing authorities to further the conservation purposes of the Act and to ensure that their actions are not likely to jeopardize the continued existence of listed species or adversely modify critical habitat. Regulations implementing section 7 are codified at 50 CFR part 402.

Section 7(a)(2) states that each Federal action agency shall, in consultation with the Secretary, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat.

A Federal “action” that is subject to the consultation provisions of section 7(a)(2) of the Act is defined in our implementing regulations at 50 CFR 402.02 as all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas. With respect to the blue tree monitor, no known actions would require consultation under section 7(a)(2) of the Act. Given the regulatory definition of “action,” which clarifies that it applies to activities or programs “in the United States or upon the high seas,” the blue tree monitor is unlikely to be the subject of section 7 consultations, because the entire life cycle of this species occurs in terrestrial areas outside of the United States and the species is unlikely to be affected by U.S. Federal actions. Additionally, no critical habitat will be designated for this species because, under 50 CFR 424.12(g), we will not designate critical habitat within foreign countries or in other areas outside of the jurisdiction of the United States.

Section 8(a) of the Act (16 U.S.C. 1537(a)) authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered or threatened species in foreign countries. Sections 8(b) and 8(c) of the Act (16 U.S.C. 1537(b) and (c)) authorize the Secretary to encourage conservation programs for foreign listed species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, and the Service’s implementing regulations codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or to cause to be committed any of the following acts with regard to any endangered wildlife: (1) import into, or export from, the United States; (2) take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct) within the United States,

within the territorial sea of the United States, or on the high seas; (3) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such wildlife that has been taken illegally; (4) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity; or (5) sell or offer for sale in interstate or foreign commerce. Certain exceptions to these prohibitions apply to employees or agents of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits for endangered wildlife are codified at 50 CFR 17.22, and general Service permitting regulations are codified at 50 CFR part 13. With regard to endangered wildlife, a permit may be issued: for scientific purposes, for enhancing the propagation or survival of the species, or for take incidental to otherwise lawful activities. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

The Service may also register persons subject to the jurisdiction of the United States through its captive-bred wildlife (CBW) program if certain established requirements are met under the CBW regulations (see 50 CFR 17.21(g)). Through a CBW registration, the Service may allow a registrant to conduct certain otherwise prohibited activities under certain circumstances to enhance the propagation or survival of the affected species, including take; export or re-import; delivery, receipt, carriage, transport, or shipment in interstate or foreign commerce in the course of a commercial activity; or sale or offer for sale in interstate or foreign commerce. A CBW registration may authorize interstate purchase and sale only between entities that both hold a registration for the taxon concerned. The CBW program is available for species having a natural geographic distribution not including any part of the United States and other species that the Service Director has determined to be eligible by regulation. The individual specimens must have been born in captivity in the United States.

The provisions in section 9(b)(1) of the Act (16 U.S.C. 1538(b)(1)) provide a limited exemption from certain otherwise prohibited activities regarding wildlife specimens held in captivity or in a controlled environment on the pre-Act date (for species first listed after the

enactment of the Endangered Species Act, the pre-Act date is the date of publication in the **Federal Register** of the final regulation adding such species to the List of Endangered and Threatened Wildlife for the first time), provided that such holding and any subsequent holding or use of the wildlife was not in the course of a commercial activity (commonly referred to as “pre-Act” specimens) (96 Stat. 1426–27 (1982); H.R. Rep. No. 97–835, 97th Cong., 2nd Sess., at 35 (1982) (Conf. Rep.); S. Rep. No. 97–418, 97th Cong., 2nd Sess., at 24–25 (1982)). Specifically, section 9(b)(1) of the Act states that the prohibitions of sections 9(a)(1)(A) and 9(a)(1)(G) shall not apply to any fish or wildlife which was held in captivity or in a controlled environment on (A) December 28, 1973, or (B) the date of the publication in the **Federal Register** of a final regulation adding such fish or wildlife to any list of species published pursuant to section 4(c) of the Act (as relevant to listed wildlife, the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h)) that such holding and any subsequent holding or use of the fish or wildlife was not in the course of a commercial activity.

Therefore, for pre-Act wildlife, there is a limited exemption from the prohibitions associated with: (1) import into, or export from, the United States of any endangered wildlife, or (2) violation of regulations pertaining to endangered or threatened wildlife. Other prohibitions of section 9—including those at section 9(a)(1)(B)–(F), regarding take of endangered wildlife, possession and other acts with unlawfully taken wildlife, interstate or foreign commerce in endangered wildlife, and sale or offer for sale of endangered wildlife—continue to apply to activities with qualifying endangered pre-Act wildlife specimens. Specimens born after the pre-Act date and specimens taken from the wild after the pre-Act date do not qualify as “pre-Act” wildlife under the text of section 9(b)(1) of the Act. If a person engages in any commercial activity with a “pre-Act” specimen on or after the pre-Act date, the wildlife would immediately cease to qualify as pre-Act wildlife and become subject to the relevant prohibitions, because it has been held or used in the course of a commercial activity.

Additional requirements apply to activities with all blue tree monitors, separate from their listing or proposed listing as an endangered species or threatened species. As a CITES-listed species, all international trade of any blue tree monitor by persons subject to the jurisdiction of the United States

must also comply with CITES requirements pursuant to section 9, paragraphs (c) and (g), of the Act (16 U.S.C. 1538(c) and (g)) and to 50 CFR part 23. As “fish or wildlife” (16 U.S.C. 1532(8)), blue tree monitor imports and exports must also meet applicable wildlife import/export requirements established under section 9, paragraphs (d), (e), and (f), of the Act (16 U.S.C. 1538(d), (e), and (f)); the Lacey Act Amendments of 1981 (16 U.S.C. 3371 *et seq.*); and 50 CFR part 14. Questions regarding whether specific activities with blue tree monitor would constitute a violation of section 9 of the Act should be directed to the Service’s Division of Management Authority (managementauthority@fws.gov; 703–358–2104).

Related Temporary Emergency Listing

Published concurrently in the Rules and Regulations section of this issue of the **Federal Register**, we are exercising our authority pursuant to section 4(b)(7) of the Act to emergency list for 240 days the blue tree monitor (*Varanus macraei*) as an endangered species due to the imminent risk of extinction resulting from habitat loss and overcollection for the pet trade. For the reasons discussed in the preamble of that temporary rule and in this proposed rule, we propose in this document to make the emergency listing permanent. Please refer to the Regulation Promulgation section of the temporary rule for the amendment to add the blue tree monitor to the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h) that we are proposing to make permanent in this document.

Required Determinations

Clarity of the Rule

We are required by E.O.s 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too

long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this proposed rulemaking is available on the internet at <https://www.regulations.gov> and upon request from the Branch of Delisting and Foreign Species (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service’s Species Assessment Team and the Branch of Delisting and Foreign Species.

List of Subjects in 50 CFR Part 17

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

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Signing Authority

Martha Williams, Director of the U.S. Fish and Wildlife Service, approved this action on December 3, 2024. Acting Director Steve Guertin approved these packages December 15, 2024. On December 16, 2024, the acting Director authorized the undersigned to sign the document electronically and submit it to the Office of the Federal Register for publication as an official document of the U.S. Fish and Wildlife Service.

Madonna Baucum,

Regulations and Policy Chief, Division of Policy, Economics, Risk Management, and Analytics of the Joint Administrative Operations, U.S. Fish and Wildlife Service.

[FR Doc. 2024–30376 Filed 12–23–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 241216–0328]

RIN 0648–BN41

Pacific Halibut Fisheries of the West Coast; 2025 Catch Sharing Plan and Recreational Fishery Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to approve changes to the Pacific Halibut Catch Sharing Plan for the International Pacific Halibut Commission’s regulatory Area 2A off Washington, Oregon, and California. In addition, NMFS proposes to implement new management measures for the 2025 recreational fisheries in Area 2A that are not implemented through the International Pacific Halibut Commission (IPHC). These measures include the recreational fishery seasons and subarea allocations for Area 2A. This action would also add a new inseason management provision to transfer anticipated uncaught recreational fishery allocation from the Northern California subarea to the South of Point Arena subarea. These actions are intended to conserve Pacific halibut and provide angler opportunity where available.

DATES: Comments on the proposed rule must be received on or before January 27, 2025.

ADDRESSES: A plain language summary of this proposed rule is available at <https://www.regulations.gov/docket/NMFS-2024-0139>. You may submit comments on this document, identified by NOAA–NMFS–2024–0139, by either of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Visit <https://www.regulations.gov> and type NOAA–NMFS–2024–0139 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Jennifer Quan, Regional Administrator, c/o Melissa Mandrup, West Coast Region, NMFS, 501 W Ocean Blvd., Long Beach, CA 90802.

Instructions: Comments sent by any other method, to any other address or

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

Docket: This rule is accessible via the internet at the Office of the Federal Register website at <https://www.federalregister.gov>. Background information and documents are available at the NMFS West Coast Region Pacific Halibut Recreational Fishery website at <https://www.fisheries.noaa.gov/action/2024-pacific-halibut-recreational-fishery> and at the Council’s website at <https://www.pcouncil.org>. Other comments received may be accessed through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Melissa Mandrup, phone: 562–980–3231 or email: melissa.mandrups@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The Northern Pacific Halibut Act of 1982 (Halibut Act), 16 U.S.C. 773–773k, gives the Secretary of Commerce responsibility for implementing the provisions of the Convention between Canada and the United States for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Halibut Convention, signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention, (signed at Washington, DC, on March 29, 1979), including adopting regulations to carry it out (16 U.S.C. 773c). Additionally, the regional fishery management councils having authority for the geographic area concerned may develop, and the Secretary of Commerce may implement, regulations governing Pacific halibut fishing in U.S. waters that are in addition to, and not in conflict with, approved IPHC regulations (*id.* 773c(c)).

As provided in the Halibut Act at 16 U.S.C. 773b, the Secretary of State, with the concurrence of the Secretary of Commerce, may accept or reject, on behalf of the United States, regulations recommended by the IPHC in accordance with the Convention. Following acceptance by the Secretary of State, the annual management

measures promulgated by the IPHC are published in the **Federal Register** to provide notice of their immediate regulatory effectiveness and to inform persons subject to the regulations of their restrictions and requirements (50 CFR 300.62). The IPHC will hold its annual meeting January 27–31, 2025, where it is anticipated that they will recommend the Area 2A catch limit, also known as the Fishery Constant Exploitation Yield (FCEY). This FCEY is derived from the total constant exploitation yield (TCEY) for Pacific halibut, which includes commercial discards and bycatch estimates calculated using a formula developed by the IPHC. The 2025 TCEY and FCEY for Area 2A, as well as other applicable Area 2A allocations that are established by the IPHC in accordance with the Area 2A Catch Sharing Plan (CSP), will be published as part of a separate rulemaking. These allocations, in net weight,¹ will be based on IPHC’s recommended 2025 Area 2A FCEY and will be subject to acceptance by the Secretary of State with concurrence by the Secretary of Commerce.

Since 1988, the Pacific Fishery Management Council (Council) has developed a CSP that allocates the IPHC regulatory Area 2A Pacific halibut FCEY between treaty Tribal and non-Tribal harvesters and among non-Tribal commercial and recreational (sport) fisheries. NMFS has implemented at 50 CFR 300.63 *et seq.* certain provisions of the CSP and implemented annual rules containing annual management measures consistent with the CSP. In 1995, the Council recommended and NMFS approved a long-term Area 2A CSP (60 FR 14651, March 20, 1995). NMFS has been approving adjustments to the Area 2A CSP based on Council recommendations each year to address the changing needs of these fisheries. While the full CSP is not published in the **Federal Register**, it is made available on the Council website.

This rule proposes to approve the changes the Council recommended at its November 2024 meeting to the 2025 Area 2A CSP. The recommended changes to the 2025 CSP were developed through the Council’s public process over multiple meetings. This rule also proposes to implement recreational Pacific halibut fishery

management measures for 2025, which include season opening and closing dates consistent with 2025 CSP as modified by the Council’s November 2024 recommendations.

Proposed Changes to the 2025 Area 2A Catch Sharing Plan

Each year at the Council’s September meeting, members of the public have an opportunity to propose changes to the CSP for consideration by the Council. At the September 2024 Council meeting, per the typical annual process, the Washington Department of Fish and Wildlife (WDFW), Oregon Department of Fish and Wildlife (ODFW), and California Department of Fish and Wildlife (CDFW) proposed changes to the CSP for the fisheries that occur off of their respective coasts.

At its November 2024 meeting, the Council considered the results of State-sponsored workshops on the proposed changes to the CSP, along with public input provided at the September and November 2024 Council meetings, and made its recommendations for modifications to the CSP. NMFS proposes to approve all the Council’s recommended changes to the CSP, which are discussed below.

1. The Council recommended changes to Section 5.6.4 of the Catch Sharing Plan regarding the notice and timing of non-tribal directed commercial fishery sequential season openings. Specifically, the Council recommended that NMFS notice the dates for the first three openers in the **Federal Register** prior to the start of the season for the non-Tribal directed commercial fishery, with two weeks between first and second opener and no more than 3 weeks between any following openers.

2. In section 6.9.2(d) of the CSP, the Council recommended that NMFS revise the season structure in the Washington North Coast subarea to allow for fishing on the Saturday of Memorial Day Weekend if the 2A FCEY is at least 1.3 million pounds (lb) or 589.7 metric tons (mt) and up to 3 days per week in June if the Area 2A FCEY is less than 1.3 million lb (589.7 mt).

2. In section 6.9.3(d) of the CSP, the Council recommended that NMFS revise the season structure in the Washington South Coast subarea to include the Sunday of Memorial Day Weekend.

3. In section 6.10(d) of the CSP, the Council recommended that NMFS revise the season structure in the Columbia River subarea to allow for 2 additional days be added to the 3-day opener in June depending on the remaining allocation for the subarea.

¹ “Net weight” of a Pacific halibut means the weight of Pacific halibut that is without gills and entrails, head-off, washed, and without ice and slime. If a Pacific halibut is weighed with the head on or with ice and slime, the required conversion factors for calculating net weight are a 2 percent deduction for ice and slime and a 10 percent deduction for the head (IPHC Fisheries Regulations, 2024).

4. In section 6.11(d) of the CSP, the Council recommended that NMFS revise the allocations and season structure in the Oregon Central Coast subarea to allow more of the Central Coast allocation to be for the all-depth fisheries (*i.e.*, spring and summer) as opposed to the nearshore fishery, additional flexibility in the number of days per opener, and for the summer all-depth fishery to be open beginning August 1 every week or every other week depending on the remaining allocation for the subarea.

5. In sections 6.8.1 and 6.12 of the CSP, the Council recommended that NMFS allow for inseason transfers of the Northern California allocation to the South of Point Arena subarea. Specifically, in section 6.8.1(f), the Council recommended that NMFS allow for an inseason transfer of any projected unused Northern California subarea allocation by the season ending date of November 15 from the Northern California subarea to the South of Point Arena subarea. For section 6.12(f), the Council recommended that NMFS allow for an inseason transfer (*i.e.*, any time prior to November 15) of any projected unused Northern California subarea allocation to the South of Point Arena subarea.

Additional discussion of these changes is included in the materials submitted to the Council at its September and November meetings, available at <https://www.pcouncil.org/council-meetings/previous-meetings/>. A version of the CSP including these changes can be found at https://www.pcouncil.org/managed_fishery/pacific-halibut/.

Proposed 2025 Recreational Fishery Management Measures

As described above, NMFS proposes to implement recreational fishery management measures, including season dates for the 2025 fishery, consistent with the Council's recommendations. The CSP includes a framework for setting days open for fishing by subarea; under this framework, each State submits final recommended season dates annually to NMFS during the proposed rule comment period. In addition, the final dates will be based on the 2025 FCEY Area 2A allocation, which is issued as described above. However, this proposed rule contains preliminary dates based on the CSP framework and/or recommendations received to date.

After the opportunity for public comment, including comments from WDFW, ODFW, and CDFW, and after each State has concluded its public meetings gathering input on season

dates, NMFS will publish a final rule approving the CSP and promulgating the annual management measures for the Area 2A recreational fishery, as appropriate and required by implementing regulations at 50 CFR 300.63(c)(1). If there is any discrepancy between the CSP and Federal regulations, Federal regulations take precedence.

2025 Annual Recreational Management Measures

NMFS proposes recreational fishing subareas, allocations, and fishing dates as described below. Fishery and subarea allocations are provided in net weight. These provisions may be modified through inseason action consistent with 50 CFR 300.63(c). Inseason actions taken by NMFS will be published in the **Federal Register**. In addition to publication in the **Federal Register**, NMFS will make the public aware of inseason management actions by a telephone hotline, (206) 526-6667 or (800) 662-9825, and fishery bulletins administered through email by NMFS West Coast Region. Since provisions of these regulations may be changed by inseason actions, recreational anglers are encouraged to monitor the telephone hotline and subscribe to receive fishery bulletin emails for current information for the area in which they are fishing. All recreational fishing in Area 2A is managed on a "port of landing" basis, whereby any Pacific halibut landed into a port counts toward the allocation, in net weight, for the area in which that port is located, and the regulations governing the area of landing apply regardless of the specific area of catch.

Washington Puget Sound and the U.S. Convention Waters in the Strait of Juan de Fuca

The subarea allocation for landings into ports in Puget Sound and the U.S. waters in the Strait of Juan de Fuca will be provided in the final rule based on the allocation formula in the CSP.

(a) If the 2025 Area 2A FCEY is 1.3 million lb (589.7 mt) or greater, NMFS is proposing to open the Puget Sound and the U.S. Convention Waters in the Strait of Juan de Fuca fishery on April 3 through June 30, 7 days a week. If the subarea allocation remains for at least another full day of fishing after June 30, NMFS may take inseason action to reopen the fishery in August, up to 7 days per week, through September. The area will be closed when there is not sufficient subarea allocation for another full day of fishing. If the Puget Sound subarea season is closed prior to September 30 and there is insufficient allocation for an additional fishing day,

then any remaining Puget Sound subarea allocation may be transferred inseason to another Washington coastal subarea by NMFS.

If the 2025 Area 2A FCEY is less than 1.3 million lb (589.7 mt), then NMFS proposes to open the fishery every Thursday, Friday, Saturday, Sunday, and Monday from April 3 through June 30. If the subarea allocation remains for at least another full day of fishing after June 30, NMFS may take inseason action to reopen the fishery in August, up to 7 days per week, through September. The area will be closed when there is not sufficient subarea allocation for another full day of fishing. If the Puget Sound subarea season is closed prior to September 30 and there is insufficient allocation for an additional fishing day, then any remaining Puget Sound subarea allocation may be transferred inseason to another Washington coastal subarea by NMFS.

Any inseason action, including closures and intrastate subarea allocation transfers, will be announced in accordance with Federal regulations at 50 CFR 300.63(c) and on the NMFS hotline at (206) 526-6667 or (800) 662-9825.

(b) The daily bag limit is one Pacific halibut of any size per person.

Washington North Coast Subarea

The allocation for landings into ports in the Washington North Coast subarea will be provided in the final rule based on the allocation formula in the CSP.

(a) If the Area 2A 2025 FCEY is greater than 1.3 million lb (589.7 mt), NMFS is proposing to open the Washington North Coast fishery:

- May 1, 2, 3, 8, 9, 10, 15, 16, 17 (Thursday, Friday, Saturday),
- May 23, 24, 25 (Friday, Saturday, Sunday—Memorial Day weekend),
- May 29, 30, 31 (Thursday, Friday, Saturday),
- June 1, 5, 6, 7, 8, 12, 13, 14, 15, 19, 20, 21, 22, 26, 27, 28, 29 (Thursday, Friday, Saturday, Sunday).

If the subarea allocation remains for at least another full day of fishing after June 30, NMFS may take inseason action to reopen the fishery in August, up to 7 days per week, through September. The area will be closed when there is not sufficient subarea allocation for another full day of fishing. If the fishery is closed prior to September 30 and there is insufficient allocation remaining to reopen for another fishing day, then any remaining allocation may be transferred inseason to another Washington coastal subarea by NMFS. Any inseason action, including closures, will be announced

in accordance with Federal regulations at 50 CFR 300.63(c) and on the NMFS hotline at (206) 526-6667 or (800) 662-9825.

If the 2025 Area 2A FCEY is less than 1.3 million lb (589.7 mt), then NMFS is proposing to open the fishery:

- May 1, 3, 8, 10, 15, 17 (Thursday, Saturday),
- May 23 and May 25 (Friday, Sunday—Memorial Day weekend),
- May 29, 31 (Thursday, Saturday),
- June 5, 6, 7, 12, 13, 14, 19, 20, 21, 26, 27, 28 (Thursday, Friday, Saturday).

If the subarea allocation remains for at least another full day of fishing after June 30, NMFS may take inseason action to reopen the fishery in August, up to 7 days per week, through September. The area will be closed when there is not sufficient subarea allocation for another full day of fishing. If the fishery is closed prior to September 30 and there is insufficient allocation remaining to reopen for another fishing day, then any remaining allocation may be transferred inseason to another Washington coastal subarea by NMFS.

Any inseason action, including closures and intrastate subarea allocation transfers, will be announced in accordance with Federal regulations at 50 CFR 300.63(c) and on the NMFS hotline at (206) 526-6667 or (800) 662-9825.

(b) The daily bag limit is one Pacific halibut of any size per person.

Washington South Coast Subarea

The allocation for landings into ports in the South Coast subarea will be provided in the final rule based on the allocation formula in the CSP. The South Coast subarea has a primary and a nearshore fishery.

(a) NMFS is proposing to open the Washington South Coast primary fishery:

- May 1, 4, 6, 8, 11, 13, 15, 18, 20, 22, 25, 27, 29 (Thursday, Sunday, Tuesday),
- June 12, 15, 17, 19, 22, 24, 26, 29 (Thursday, Sunday, Tuesday).

The fishery will close when there is not sufficient subarea allocation for another full day of fishing. If the subarea allocation remains for at least another full day of fishing after June 30, NMFS may take inseason action to reopen the fishery in August, up to 7 days per week, through September. The area will be closed when there is not sufficient subarea allocation for another full day of fishing. Any inseason action, including closures and intrastate subarea allocation transfers, will be announced in accordance with Federal regulations at 50 CFR 300.63(c) and on the NMFS

hotline at (206) 526-6667 or (800) 662-9825.

When the South Coast subarea primary fishery does not have sufficient allocation to open for at least another full day of fishing, any remaining primary fishery allocation will be used to open a nearshore fishery. The nearshore fishery will open the first Saturday after the closure of the primary fishery and will be open 7 days per week until there is not sufficient nearshore fishery allocation remaining for another full day of fishing, at which point the area will be closed.

If the primary fishery is closed prior to September 30 and there is not sufficient allocation remaining for at least a full day of fishing in the nearshore fishery, NMFS may take inseason action to transfer any remaining subarea allocation to another Washington coastal subarea.

Any inseason action, including closures and intrastate subarea allocation transfers, will be announced in accordance with Federal regulations at 50 CFR 300.63(c) and on the NMFS hotline at (206) 526-6667 or (800) 662-9825.

(b) The daily bag limit is one Pacific halibut of any size per person.

Columbia River Subarea

The allocation for landings into ports in the Columbia River subarea will be provided in the final rule based on the allocation formula in the CSP. The Columbia River subarea has an all-depth fishery and a nearshore fishery.

If the 2025 2A FCEY is at least 1.3 million lb (589.7 mt), NMFS proposes to open the all-depth fishery as follows:

- May 1, 2, 4, 8, 9, 11, 15, 16, 18, 22, 23, 25, 29, 30 (Thursday, Friday, Sunday),
- June 1, 5, 6, 8, 12, 13, 15, 19, 20, 22, 26, 27, 29 (Thursday, Friday, Sunday).

If at least 55 percent of the Columbia River subarea allocation remains as of May 25, 2025, then NMFS may take inseason action to allow the all-depth fishery open the following additional days:

- June 9, 10, 16, 17, 30 (Monday and Tuesday).
- If the 2025 2A FCEY is less than 1.3 million lb (589.7 mt), NMFS proposes to open the all-depth fishery as follows:
- May 1, 2, 4, 8, 9, 11, 15, 16, 18, 22, 23, 25, 29, 30 (Thursday, Friday, Sunday),
 - June 1, 5, 6, 8, 12, 13, 15, 19, 20, 22, 26, 27, 29 (Thursday, Friday, Sunday).

The nearshore fishery will be open Monday through Wednesday following the opening of the all-depth fishery

until the nearshore allocation is taken or September 30, whichever is earlier. On days when the all-depth halibut fishery is closed, taking, retaining, possessing, or landing halibut on groundfish trips is only allowed in the nearshore area.

If the subarea allocation remains for at least another full day of fishing after June 30, NMFS may take inseason action to reopen the nearshore fishery in August, up to 7 days per week, through September. The area will be closed when there is not sufficient subarea allocation for another full day of fishing. Any remaining subarea allocation may be transferred inseason to other Washington or Oregon subareas by NMFS in proportion to the allocation formula in the CSP, in accordance with Federal regulations at 50 CFR 300.63(c). Any inseason action, including closures and reallocation, will be announced in accordance with Federal regulations at 50 CFR 300.63(c) and on the NMFS hotline at (206) 526-6667 or (800) 662-9825.

(b) The daily bag limit is one Pacific halibut of any size per person.

Oregon Central Coast Subarea

The allocation for landings into ports in the Oregon Central Coast subarea will be provided in the final rule based on the allocation formula in the CSP. The Oregon Central Coast subarea has a nearshore, a spring all-depth, and a summer all-depth fishery.

(a) If the FCEY is 1.2 million lb (544.3 mt) or greater, NMFS proposes 10,000 lb (4.5 mt) of the Central Coast subarea allocation be allocated to the nearshore fishery. If the FCEY is between 700,000 lb (317.5 mt) and 1.2 million lb (544.3 mt), NMFS proposes to allocate 25 percent of the Central Coast subarea allocation to the nearshore fishery. If the FCEY is less than 700,000 lb (317.5 mt), NMFS proposes to allocate 12 percent of the Central Coast subarea allocation to the nearshore fishery. For the season structure, NMFS proposes to open the nearshore fishery 7 days per week from May 1 through October 31 if the nearshore fishery allocation is 25,000 lb (11.3 mt) or more, or from June 1 through October 31 if the nearshore fishery allocation is less than 25,000 lb (11.3 mt). The area will be closed when there is not sufficient subarea allocation for another full day of fishing. Any closure will be announced in accordance with Federal regulations at 50 CFR 300.63(c)(3) and on the NMFS hotline at (206) 526-6667 or (800) 662-9825.

If the FCEY is 1.2 million lb (544.3 mt) or greater, NMFS proposes 75 percent of the Central Coast subarea allocation be allocated to the spring all-

depth fishery. If the FCEY is between 700,000 lb (317.5 mt) and 1.2 million lb (544.3 mt), NMFS proposes to allocate 63 percent of the Central Coast subarea allocation to the spring all-depth fishery. If the FCEY is less than 700,000 lb (317.5 mt), NMFS proposes to allocate 75 percent of the Central Coast subarea allocation to the spring all-depth fishery. NMFS is proposing to open the spring all-depth fishery up to 7 days per week from May 1 through July 31. The area will be closed when there is not sufficient subarea allocation for another full day of fishing. Any closure will be announced in accordance with Federal regulations at 50 CFR 300.63(c)(3) and on the NMFS hotline at (206) 526-6667 or (800) 662-9825.

If the FCEY is 700,000 lb (317.5 mt) or greater, NMFS proposes 25 percent of the Central Coast subarea allocation be allocated to the summer all-depth fishery. If the FCEY is less than 700,000 lb (317.5 mt) the summer all-depth fishery will not open. Should the summer all-depth fishery receive an allocation, NMFS is proposing to open the summer all-depth fishery from August 1 through October 31. The area will close when there is not sufficient subarea allocation for another full day of fishing. At the close of the spring all-depth fishery (July 31), if there is 50,000 lb (22.7 mt) or more allocation remaining, NMFS proposes to open the summer all-depth fishery 7 days a week, every week, from August 1 through October 31. If there is less than 50,000 lb (22.7 mt) allocation remaining, NMFS proposes to open the summer all-depth fishery 7 days a week, every other week, from August 1 through October 31. If the entire Central Oregon Coast subarea allocation is 30,000 lb (13.6 mt) or more following Labor Day Weekend, the summer all-depth season will be open every week. The subarea will close when the remaining combined spring all-depth fishery and summer all-depth fishery allocations in the Oregon Central Coast subarea is not sufficient for another full day of fishing. Any closure will be announced in accordance with Federal regulations at 50 CFR 300.63(c)(3) and on the NMFS hotline at (206) 526-6667 or (800) 662-9825.

(b) The daily bag limit is two Pacific halibut of any size per person.

Southern Oregon Coast Subarea

The allocation for landings into ports in the Southern Oregon subarea will be provided in the final rule based on the allocation formula in the CSP.

(a) NMFS is proposing to open the fishery May 1 through October 31 or until there is not sufficient subarea

allocation for another full day of fishing, at which point the area will be closed. Any closure will be announced in accordance with Federal regulations at 50 CFR 300.63(c)(3) and on the NMFS hotline at (206) 526-6667 or (800) 662-9825.

(b) The daily bag limit is two Pacific halibut of any size per person.

Northern California Coast Subarea

The allocation for landings into ports in the Northern California Coast subarea will be provided in the final rule based on the allocation formula in the CSP.

(a) NMFS is proposing to open the fishery May 1 through November 15 or until there is not sufficient subarea allocation for another full day of fishing, at which point the area will be closed. NMFS will announce any closure in accordance with Federal procedures at 50 CFR 300.63(c) and on the NMFS hotline (206) 526-6667 or (800) 662-9825.

(b) The daily bag limit is one Pacific halibut of any size per person.

South of Point Arena Subarea

The allocation for landings into ports in the South of Point Arena subarea will be provided in the final rule based on the allocation formula in the CSP.

(a) NMFS is proposing to open the fishery May 1 through December 31 or until there is not sufficient subarea allocation for another full day of fishing, at which point the area will be closed. NMFS will announce any closure in accordance with Federal procedures at 50 CFR 300.63(c)(3) and on the NMFS hotline (206) 526-6667 or (800) 662-9825.

(b) The daily bag limit is one Pacific halibut of any size per person.

Additional Recreational Management Measures

In addition to the State-specific recreational fishing measures described above, NMFS also proposes to add an inseason provision for the California recreational subareas to provide for transfer of any projected unused Northern California subarea allocation to the South of Point Arena subarea prior to or by the end of the Northern California fishing season (November 15). The transfer of projected unused recreational fishery subarea allocation within a State is not a new concept in Area 2A as both Oregon and Washington have similar provisions. These changes are primarily intended to provide more opportunities for anglers to achieve but not exceed applicable allocations and were widely supported by stakeholders at multiple Council meetings.

While each year, in working with the Council and States, NMFS establishes State-specific season structures and management measures intended to fully attain the State's recreational fishery allocation and management objectives, partial attainment of a State recreational fishery allocation may occur, which contributes to lower attainment of the overall Area 2A FCEY. Certain existing inseason action provisions were intended as tools to achieve full attainment, such as modifying bag limits or the transfer of uncaught allocations within the Washington subareas and from the Columbia River subarea to other Washington and Oregon subareas as specified at 50 CFR 300.63(c)(6). However, under-attainment of the State recreational fishery allocations has still occurred despite these efforts to modify management measures inseason to meet the needs of the fishery.

As a way to address potential under-attainment of the State recreational fishery allocations in future years, the Council recommended adding an inseason provision for the California recreational subareas to transfer any projected unused Northern California subarea allocation to the South of Point Arena subarea. Therefore, through this action, NMFS proposes an inseason provision, through consultation with CDFW, where if NMFS determines that the Northern California subarea will be unable or unlikely to attain their originally established recreational subarea allocation for that fishing year, then NMFS may transfer any projected unused Northern California subarea allocation to the South of Point Arena subarea prior to or by the end of the Northern California fishing season (November 15). NMFS will announce any inseason action in accordance with Federal procedures at 50 CFR 300.63(c)(6) and on the NMFS hotline (206) 526-6667 or (800) 662-9825.

In previous years, the California recreational fishery has closed in late July/early August due to the fishery attaining their allocation from catches in what is now the Northern California subarea. However, in 2024, the Northern California subarea allocation was approximately 50 percent attained by the end of the season (November 15). During the summer, Pacific halibut are known to be encountered in other non-Pacific halibut directed recreational fisheries in the south of Point Arena subarea. Allowing the transfer of any projected unused Northern California subarea allocation to the South of Point Arena subarea prior to or by the end of the season could provide additional opportunities for anglers and charter operations across more of the State and

later in the season. The inseason transfer of allocation among a State's subareas is seen as valuable tool in attaining the State recreational fishery allocations and the full Area 2A allocation.

Classification

Under section 773 of the Halibut Act, the Pacific Fishery Management Council may develop, and the Secretary of Commerce may implement, regulations governing Pacific halibut fishing by U.S. fishermen in Area 2A that are in addition to, and not in conflict with, approved IPHC regulations (16 U.S.C. 773c(c)). The proposed rule is consistent with the Council and NMFS's authority under the Halibut Act.

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

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

For Regulatory Flexibility Act (RFA) purposes only, NMFS has determined that charter vessels targeting Pacific halibut are all small businesses. Charter fishing operations are classified under NAICS code 487210, with a corresponding Small Business Association size standard of \$14 million in annual receipts (13 CFR 121.201).

This proposed rule would open the 2025 Area 2A Pacific halibut recreational fishery and establish season dates and subarea allocations. Additionally, this proposed rule would add an inseason management provision for the California recreational fishery to transfer any projected unused Northern California subarea allocation to the South of Point Arena subarea. These changes were uncontroversial throughout the Council's public process, and overall participation in the

recreational fisheries is not expected to change.

This action would affect anglers, charter vessels (which are small entities), and small businesses relying on recreational fishing across all of Area 2A. There are no large entities involved in the Pacific halibut fisheries off the West Coast, and no commercial fishing entities are directly affected by this rule. None of these changes will have a disproportionately negative effect on small entities versus large entities. Private vessels used for recreational fishing are not businesses and are therefore not included in the RFA analysis.

In 2024, NMFS issued 77 permits to the charter vessel fleet for Area 2A. NMFS anticipates a similar number of permits to be issued in 2025 and assumes a majority of permit holders may be affected by these regulations as those vessels operate in Area 2A. The major effect of Pacific halibut management on small entities (i.e., profitability) will be from the catch limit decisions (i.e., FCEYs) made by the IPHC at its annual meeting January 27–31, 2025, a decision independent from this proposed action. This proposed action would implement non-controversial management measures that NMFS believes will provide increased recreational opportunities under the IPHC allocations with minimal positive economic effects. Therefore, the proposed rule is unlikely to affect the profitability of the recreational fishery or the small charter fishing businesses that target Pacific halibut.

For the reasons described above, the proposed action, if adopted, will not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements

under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

Dated: December 16, 2024.

Samuel D. Rauch, III,
Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 300, subpart E, as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

■ 1. The authority citation for part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

■ 2. In § 300.63, redesignate paragraphs (c)(6)(i)(E) and (F) to (c)(6)(i)(F) and (G) and add new paragraph (c)(6)(i)(E), to read as follows:

§ 300.63 Catch sharing plan and domestic management measures in Area 2A.

* * * * *
(c) * * *
(6) * * *
(i) * * *

(E) If the Northern California recreational (sport) subarea is not projected to utilize its respective allocation prior to or by the season ending date, NMFS may take inseason action to transfer any projected unused allocation to the South of Point Arena subarea.

* * * * *

[FR Doc. 2024–30430 Filed 12–23–24; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 89, No. 247

Thursday, December 26, 2024

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 January 27, 2025 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: Supplemental Nutrition Assistance Program: Demonstration Projects.

OMB Control Number: 0584–NEW.
Summary of Collection: This information collection is for activities associated with SNAP demonstration projects and the SNAP State Options Report, respectively. Demonstration projects are pilot or experimental projects that waive requirements of the Food and Nutrition Act of 2008 (the Act) (7 U.S.C. 2011 *et seq.*) and SNAP regulations to test program changes to increase efficiency and improve the delivery of benefits to eligible households. Section 17(b) of the Act authorizes the Food and Nutrition Service (FNS) to approve demonstration projects. SNAP State agencies must request approval to operate demonstration projects and submit data reports to evaluate its impact. FNS may approve demonstration projects for a maximum five-year term and the projects must maintain cost neutrality and include an evaluation component. The SNAP State Options Report summarizes each State agency's policy choices concerning approximately 20 SNAP policy options and waivers. FNS produces the report on an annual basis and posts it on its public website.

Need and Use of the Information: State agencies voluntarily conduct demonstration projects that waive any requirements of the Act and any SNAP regulations to test program changes to improve program administration, increase the self-sufficiency of SNAP recipients, or improve the delivery of benefits to eligible households.

To operate a demonstration project, State agencies must prepare and submit new project requests, project modifications, and project renewal requests to FNS for approval. After review, FNS may issue a demonstration project approval, outlining the terms and conditions of the demonstration project. States must also prepare and submit data reports as part of the evaluation component to measure the project's intended outcomes and benefits.

State agencies must complete and submit new, modification, and extension requests in the SNAP Waiver Information Management System (WIMS). FNS uses the information provided by State agencies to evaluate

and determine whether to approve or deny the demonstration project.

After the demonstration project is approved, State agencies must submit data reports to assess the project's overall performance. Data report requirements are detailed in the evaluation section of the demonstration project approval and may include, but is not limited to, selecting a case sample, conducting case reviews, and validating the findings. States complete demonstration project data reports using a combination of caseload-level data, SNAP Quality Control (QC) case review data, and, if needed, additional case reviews of client circumstances. Additional case reviews may be necessary if the minimum sample size for statistical analysis is not met through other means and involves a State reaching out to a household using the QC review process.

Annual reports allow FNS to monitor demonstration project trends such as average caseload size, demographic data (e.g., older adults and people with disabilities) of the population participating in the demonstration project, timeliness, and payment error rates. Cost neutrality reports ensure that the implementation of a demonstration project does not significantly increase SNAP benefit costs. FNS must analyze program costs associated with demonstration projects to determine if any offsets are needed to protect Federal spending and maintain cost neutrality as required by OMB Memorandum 05–13.

Description of Respondents: States.
Number of Respondents: 6,330.

Frequency of Responses: Reporting: Occasionally; Annually.

Total Burden Hours: 19,797.

Rachelle Ragland-Greene,
Departmental Information Collection Clearance Officer.

[FR Doc. 2024–30643 Filed 12–23–24; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Request for Information: Grain-Based Desserts and High-Protein Yogurt Crediting in Child Nutrition Programs

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice; Request for Information.

SUMMARY: The U.S. Department of Agriculture's (USDA) Food and Nutrition Service (FNS) requests comments from the public to help inform future policymaking, guidance, and technical assistance related to grain-based desserts and high-protein yogurt (which may include Greek and Greek-style yogurt) crediting in the Child Nutrition Programs. FNS welcomes comments from all interested partners, including child nutrition professionals, State agencies, the food industry, the research community, and other individuals and organizations with an interest in the Child Nutrition Programs.

DATES: Written comments must be received on or before March 26, 2025.

ADDRESSES: USDA invites the submission of the requested information through one of the following methods:

- *Federal eRulemaking Portal* (preferred method): Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Send written comments to the Child Nutrition Programs, USDA Food and Nutrition Service, Braddock Metro Center II, 1320 Braddock Place, Alexandria, VA 22314.

All comments submitted in response to this Request for Information will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. USDA will make the comments publicly available via <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Heather Hopwood, School Meals Policy Division, Child Nutrition Programs, USDA Food and Nutrition Service, 703–305–2054.

SUPPLEMENTARY INFORMATION:

Child Nutrition Programs: Meal Patterns & Food Crediting

The U.S. Department of Agriculture's (USDA's) Child Nutrition Programs (CNPs) help to ensure that participants have access to nutritious meals and snacks in schools, summer food service programs, child and adult care centers and homes, afterschool programs, and emergency shelters. Program operators plan meals and snacks that meet participants' nutrition and energy requirements by following meal patterns that are consistent with the goals of the "Dietary Guidelines for Americans"

(hereafter referred to as "*Dietary Guidelines*").¹

CNP meal patterns establish the types of foods and minimum serving sizes that Program operators must offer to receive Federal reimbursement for meals or snacks served.² The meal patterns are based on food groups (meal components), rather than individual nutrients. CNP meal patterns require daily and, in some cases, weekly amounts of certain meal components for breakfasts, lunches, suppers, and snacks. While the component groupings and requirements differ slightly by Program, they generally include some combination of fruits, vegetables, grains, meats/meat alternates, and fluid milk. Each CNP has unique meal patterns specific to the nutrient needs of the various age and grade groups served by each Program. In addition to the required meal components, National School Lunch Program (NSLP) and School Breakfast Program (SBP) meals must, on average, meet weekly dietary specifications for calories, sodium, and saturated fat. Beginning in school year (SY) 2027–2028, school lunches and breakfasts must also meet, on average, a weekly added sugars limit of less than 10 percent of calories across the week.³ This change better aligns school meals with the *Dietary Guidelines* recommendation to limit added sugars intake to fewer than 10 percent of calories per day, starting at age 2.⁴

Crediting is the process established by FNS to determine how individual foods and beverages contribute toward meal pattern requirements. Menu planners comply with meal pattern requirements by designing menus that offer foods and beverages that "credit" toward meal

component requirements. A food is "creditable" when it meets the minimum standards that count toward a reimbursable meal or snack. Generally, this means foods are grouped into categories of similar foods that are credited in a similar way. FNS' crediting system intends to provide simple information that allows Program operators to (1) easily plan menus with foods and beverages in quantities that meet meal pattern requirements, and (2) offer foods and beverages in a way that encourages healthy habits and teaches participants how to build well-balanced meals. Crediting information is conveyed to Program operators through regulations, resources such as FNS' *Food Buying Guide for Child Nutrition Programs*, and other guidance and technical assistance materials.

Several factors impact how foods and beverages credit toward CNP meal pattern requirements. Crediting decisions are made on the fullest range of factors possible to ensure transparency and consistency. The overall nutrient profile of a food is a primary consideration. Generally, foods in each meal component are based on a range of nutrients, rather than an individual product's specific nutrient profile. Another important factor is the usual and customary function of the food in a meal or a snack. One example of this principle is coffee cake offered at breakfast. In school breakfast, all cake varieties are prohibited from being offered to meet the grains requirement, except for coffee cake. Coffee cake has historically been allowed to contribute toward the grains requirement at school breakfast given its "usual and customary" function as a popular grain item served at breakfast in the United States. Foods and beverages that credit toward reimbursable meals and snacks sometimes have a Federal standard of identity. Federal standards of identity are established by the U.S. Food and Drug Administration (FDA) and the USDA Food Safety and Inspection Service (FSIS). They are mandatory requirements that determine what a food must contain to be marketed and sold under a certain name. FNS relies on FDA's and FSIS' standards of identity because they provide a common Federal standard under which specific foods are made. This allows FNS to establish crediting policy with confidence that products from all manufacturers will have the same characteristics and make consistent contributions to Program meal patterns.

FNS first considers Federal standards of identity when making crediting decisions. There are some commercial products on the market that do not have

¹ U.S. Department of Agriculture and U.S. Department of Health and Human Services. *Dietary Guidelines for Americans*, 2020–2025. 9th Edition. December 2020. Available at: <http://www.DietaryGuidelines.gov>.

² National School Lunch Program: 7 CFR 210.10, available at: <https://www.ecfr.gov/current/title-7/section-210.10>. School Breakfast Program: 7 CFR 220.8, available at: <https://www.ecfr.gov/current/title-7/subtitle-B/chapter-II/subchapter-A/part-220#220.8>. Child and Adult Care Food Program: 7 CFR 226.20, available at: <https://www.ecfr.gov/current/title-7/subtitle-B/chapter-II/subchapter-A/part-226#226.20>. Summer Food Service Program: 7 CFR 225.16, available at: <https://www.ecfr.gov/current/title-7/subtitle-B/chapter-II/subchapter-A/part-220#220.8>.

³ Final Rule, *Child Nutrition Programs: Meal Patterns Consistent With the 2020–2025 Dietary Guidelines for Americans* (89 FR 31962, April 25, 2024). Available at: <https://www.govinfo.gov/content/pkg/FR-2024-04-25/pdf/2024-08098.pdf>.

⁴ U.S. Department of Agriculture and U.S. Department of Health and Human Services. *Dietary Guidelines for Americans*, 2020–2025. 9th Edition. December 2020. Available at [DietaryGuidelines.gov](https://www.dietaryguidelines.gov/resources/2020-2025-dietary-guidelines-online-materials). Available at: <https://www.dietaryguidelines.gov/resources/2020-2025-dietary-guidelines-online-materials>.

an FDA or FSIS standard of identity but have industry-defined standards. When a Federal standard of identity does not exist, FNS may use industry standards for production to better understand the manufacturing process. Finally, when making crediting decisions, FNS considers the role of CNPs in teaching participants healthy eating habits.

FNS evaluates the CNPs' food crediting system on an ongoing basis to keep pace with the evolving food and nutrition environment, ensure participants have access to the nutrition they need, and offer excellent customer service to those operating, and benefitting from, the Programs. It is important that FNS' crediting system balances the nutritional needs of participants, as recommended by the *Dietary Guidelines*, and the need to offer flexibility and a wide range of choices to Program operators. In this Request for Information, FNS seeks public input in two areas: grain-based desserts and high-protein yogurt (which may include Greek and Greek-style yogurt), including how those terms are defined and how those foods should credit toward meal pattern requirements.

Grain-Based Desserts

Grains play an important role in CNPs, helping Program operators offer a variety of food options for participants to enjoy as part of their meals and snacks. Products that are considered grain-based desserts may be offered to meet part of the grains requirement in some CNPs. Menu planners may offer grain-based desserts to encourage whole grains consumption and/or provide participants with foods they enjoy while still meeting nutritional standards. Under current policy, grain-based desserts include foods that are typically considered desserts, such as cakes, cookies and brownies, as well as other foods such as breakfast bars and toaster pastries. *The Food Buying Guide for Child Nutrition Programs, Exhibit A: Grain Requirements for Child Nutrition Programs* designates examples of grain-based desserts with superscripts 3, 4, and 5.⁵ Nutritionally, grains are important sources of many nutrients, including complex carbohydrates, dietary fiber, several B vitamins, and minerals (e.g., iron, magnesium, and selenium); however, while their added sugars content varies, grain-based desserts are also often higher in added

sugars than other grains typically offered at breakfast, such as bagels, English muffins, oatmeal, or toast.

The FDA defines the term "high" in its nutrient claim regulations (21 CFR 101.54(b)) as a food with 20 percent or more of the Reference Daily Intake (RDI) or Daily Reference Value (DRV) for a nutrient per Reference Amount Customarily Consumed (RACC), as established in 21 CFR 101.9(c)(8)(iv) or 21 CFR 101.9(c)(9), respectively.⁶ The DRV for added sugars for adults and children ages four years and older is 50 grams per day,⁷ and 25 grams per day for children ages one to three years old.⁸ Under that definition, a grain food would be "high in added sugars" if it contains 10 or more grams of added sugars per RACC for adults and children ages four and older; or 5 or more grams of added sugars per RACC for children ages one to three years. FNS could consider using FDA's definition of "high" for use on food label nutrient content claims to define "grains high in added sugars" and develop resources related to "grains high in added sugars" to reduce added sugars in meals and snacks.

Given this context, FNS is gathering additional public input on how to make its guidance related to grain-based desserts (and other grains high in added sugars) more effective at reducing added sugars in CNP menus, while also providing Program operator flexibility in menu planning, maintaining participant satisfaction, and continuing to make investments in the healthy, balanced diets of Program participants.

Consistent with the *Dietary Guidelines'* recommendation to reduce intakes of cakes, cookies, brownies, and other grain-based desserts, FNS has implemented limits for grain-based desserts to reduce added sugars in some Programs:⁹

- **SBP Kindergarten—Grade 12:** Schools are prohibited from offering cookies, dessert pies, cobbler, brownies, and all cake varieties (except coffee

cake) toward the grains requirement at breakfast.¹⁰

- **NSLP Kindergarten—Grade 12:** Schools may offer up to two ounce equivalents of grain-based desserts per week at lunch.¹¹

- **NSLP/SBP Preschool:** Grain-based desserts do not credit toward grains requirements.¹²

- **NSLP afterschool snack service:** Grain-based desserts will not credit toward grains requirements, beginning in SY 2025–2026.¹³

- **Child and Adult Care Food Program:** Grain-based desserts do not credit toward grains requirements.¹⁴

On February 7, 2023, FNS issued a proposed rule to update CNP meal pattern requirements: *Child Nutrition Programs: Revisions to Meal Patterns Consistent With the 2020 Dietary Guidelines for Americans*.¹⁵ The rule included a proposal to limit grain-based desserts in the SBP to no more than two ounce equivalents per week, consistent with the NSLP. However, based on public comments, FNS did not finalize that proposed limit in the final rule, *Child Nutrition Programs: Meal Patterns Consistent With the 2020–2025 Dietary Guidelines for Americans*.¹⁶ Some of those comments noted that the definition of grain-based desserts does not explicitly focus on the amount of added sugars; some products high in added sugars are not classified as grain-based desserts; and some products that are included may have lower amounts of added sugars, depending on their formulation. In addition, commenters

¹⁰ For additional information, see *SP 19–2024, CACFP 07–2024, SFSP 12–2024, Initial Implementation Memorandum: Child Nutrition Programs: Meal Patterns Consistent With the 2020–2025 Dietary Guidelines for Americans*, published May 14, 2024, available at: <https://www.fns.usda.gov/cn/initial-implementation-meal-patterns-dga>.

¹¹ 7 CFR 210.10(c)(2)(iv)(C), available at: [https://www.ecfr.gov/current/title-7/part-210#p-210.10\(c\)\(2\)\(iv\)\(C\)](https://www.ecfr.gov/current/title-7/part-210#p-210.10(c)(2)(iv)(C)).

¹² 7 CFR 210.10(o)(3)(ii), Table 5, available at: [https://www.ecfr.gov/current/title-7/part-210#p-210.10\(o\)\(3\)\(ii\)](https://www.ecfr.gov/current/title-7/part-210#p-210.10(o)(3)(ii)).

¹³ For additional information, see Final Rule, *Child Nutrition Programs: Meal Patterns Consistent With the 2020–2025 Dietary Guidelines for Americans* (89 FR 31962, April 25, 2024). Available at: <https://www.govinfo.gov/content/pkg/FR-2024-04-25/pdf/2024-08098.pdf>.

¹⁴ 7 CFR 226.20(a)(4)(iii), available at: [https://www.ecfr.gov/current/title-7/part-226/section-226.20#p-226.20\(a\)\(4\)\(iii\)](https://www.ecfr.gov/current/title-7/part-226/section-226.20#p-226.20(a)(4)(iii)).

¹⁵ Proposed Rule, *Child Nutrition Programs: Revisions to meal patterns consistent with the 2020 Dietary Guidelines for Americans*. (88 FR 8050, February 7, 2023). Available at: [https://www.ecfr.gov/current/title-7/part-210#p-210.10\(o\)\(3\)\(ii\)](https://www.ecfr.gov/current/title-7/part-210#p-210.10(o)(3)(ii)).

¹⁶ Final Rule, *Child Nutrition Programs: Meal Patterns Consistent With the 2020–2025 Dietary Guidelines for Americans* (89 FR 31962, April 25, 2024). Available at: <https://www.govinfo.gov/content/pkg/FR-2024-04-25/pdf/2024-08098.pdf>.

⁵ U.S. Department of Agriculture, *Food Buying Guide for Child Nutrition Programs*. Available at: <https://foodbuyingguide.fns.usda.gov/Appendix/DownloadFBG>. See: Section 4—Grains, Exhibit A: Grain Requirements for Child Nutrition Programs, for a non-exhaustive list of grain-based dessert examples.

⁶ See 21 CFR 101.54 Nutrient content claims for "good source," "high," "more," and "high potency." Available at: <https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-101/subpart-D/section-101.54>

⁷ Based on the reference caloric intake of 2,000 calories for adults and children aged 4 years and older, and for pregnant women and lactating women.

⁸ Based on the reference caloric intake of 1,000 calories for children 1 through 3 years of age.

⁹ U.S. Department of Agriculture and U.S. Department of Health and Human Services, *Dietary Guidelines for Americans, 2020–2025*. 9th Edition. December 2020. p. 33. Available at: <https://www.dietaryguidelines.gov/>.

expressed concerns that the proposal would limit options at school breakfast, particularly for grab-and-go breakfasts, and recommended that FNS re-evaluate. As a result, FNS is seeking targeted public input on how to assist partners in considering the role of grain-based desserts and potentially other grain products high in added sugars to help inform next steps.

To make progress toward reducing added sugars in CNPs, the final rule referenced above gradually phases in product-based and weekly added sugars limits. Product-based limits will be required for breakfast cereals, yogurt, and flavored milk by July 1, 2025, and added sugars will be limited to no more than 10 percent of total calories, per week, by July 1, 2027. FNS expects that the weekly limits will lead menu planners to choose grains that are lower in added sugars as they adjust their menu offerings to meet the limits. However, weekly limits also give menu planners flexibility to occasionally offer grains higher in added sugars, provided they are balanced with foods that are lower in added sugars throughout the week. While FNS recognizes that many partners prefer consistent requirements across the CNPs, the weekly limits for added sugars only apply to SBP and NSLP. Therefore, this approach would only be applicable to the school meals programs (SBP and NSLP).

FNS is considering how to best support schools as they work to meet the aforementioned added sugars requirements and is interested in understanding what guidance and technical assistance Program operators needed to help them identify grains high in added sugars and consider them in menu planning. FNS is also interested in partner input on how to improve and simplify its current grain-based desserts requirements, including whether changes would support efforts to reduce added sugars in the CNPs.

FNS welcomes public input on this topic and invites the public to submit other ideas to simplify current guidance, assist CNP operators in managing the use of grain-based desserts and other grain products high in added sugars, support schools in meeting the forthcoming added sugars limits, and reduce children's consumption of added sugars in the CNPs.

High-Protein Yogurt Crediting

In addition to seeking input on grain-based desserts, FNS also seeks public input related to high-protein yogurt (which may include Greek and Greek-style yogurt), including how such yogurt is defined, if a definition separate from regular yogurt is warranted, and how

high-protein yogurt should credit toward CNP meal pattern requirements.

Yogurt is a popular menu item and may credit toward all or part of the meats/meat alternates component in the CNPs.¹⁷ Nutritionally, yogurt is a source of calcium, zinc, potassium, and probiotics.¹⁸ Yogurt may be offered in a variety of forms: plain or flavored, unsweetened or sweetened, strained or non-strained, or high-protein or regular. It can be offered as a standalone option, or in different menu items, such as yogurt parfaits or smoothies. Current regulations establish that four ounces (weight) or ½ cup (volume) of yogurt credits in the CNPs as one ounce equivalent of meat alternate.¹⁹ FDA maintains a single standard of identity for all yogurt; there is not a separate standard of identity for high-protein yogurt, nor for Greek or Greek-style yogurt.²⁰

Yogurt crediting in the CNPs was established in 1997. Since then, the variety of yogurt available at retail and in the K–12 market has grown and evolved significantly. Manufacturers offer a range of flavors and varieties, including high-protein yogurt (which may include Greek and Greek-style yogurt) and plant-based yogurt, to cater to diverse consumer preferences. High-protein yogurt (including some Greek and Greek-style yogurt) continues to expand in availability and popularity; it differs from regular yogurt due to its unique manufacturing process, which typically involves straining the product to remove liquid whey, resulting in a thicker yogurt with higher protein content. Yogurt can also be thickened

without straining, by ultrafiltration,²¹ or by adding a thickening agent (e.g., gelatin, pectin, agar, guar gum, starch) or optional dairy ingredients.

Thickening agents can be made from proteins, polysaccharides, or optional dairy ingredients, and their use can increase a food's protein content. Straining, ultrafiltration, and the addition of dairy ingredients can result in a thicker, higher protein yogurt, compared to regular yogurt.

FNS collaborates with industry partners to ensure that products are available for menu planners to offer nutritious foods and beverages that participants enjoy. In 2013, USDA operated a pilot program designed to test the cost effectiveness of making "Greek-style yogurt" available to schools in four States via USDA Foods in Schools. Greek-style yogurt is popular in school meals and schools expressed interest in procuring such yogurt via USDA Foods in Schools.²² As a result, USDA expanded the pilot in SY 2014–2015, making Greek-style yogurt available via USDA Foods in Schools in eight additional States. Beginning in SY 2015–2016, USDA added high-protein (Greek-style) yogurt as a food available for all schools to order through USDA Foods in Schools. On average, approximately 1.8 million pounds of high-protein yogurt are delivered to schools through USDA Foods annually, including strawberry cups (4 oz.), blueberry cups (4 oz.), vanilla cups (4 oz.), and vanilla tubs (32 oz.).²³

In 2017, FNS issued a Request for Information to solicit public input on a variety of crediting topics, including high-protein yogurt, and received a total of 437 comments. Most comments came from Program operators and individuals, but the food industry, advocacy organizations, and State agencies also submitted comments. In the 2017 Request for Information, FNS asked if a separate crediting standard should be created for high-protein yogurt that is different than the crediting standard for

¹⁷ USDA's School Nutrition and Meal Cost Study found that low-fat or fat-free yogurt was offered in 10 percent of all daily lunch menus and was more frequently offered in daily menus in elementary schools than middle or high school menus. In SBP, Yogurt (mostly low-fat or fat-free) was the most frequently offered meat/meat alternate item and was included in one-quarter (25 percent) of all daily breakfast menus. Additional information is available at: <https://www.fns.usda.gov/school-nutrition-and-meal-cost-study>.

¹⁸ U.S. Department of Agriculture, Agricultural Research Service, Beltsville Human Nutrition Research Center. FoodData Central, available at: <https://fdc.nal.usda.gov/fdc-app.html#/food-details/2647437/nutrients>.

¹⁹ In NSLP, SBP and CACFP, 4 ounces or 12044;2 cup of yogurt equals 1 ounce of the meats/meat alternates requirement, according to 7 CFR 210.10(c)(2)(i)(C), 7 CFR 220.8(c)(2)(i)(C), and 7 CFR 226.20(a)(5)(iii). In the SFSP, 4 ounces or ½ cup of yogurt may credit as 1 ounce of the meats/meat alternates component for breakfast and snack. For lunch and supper, 8 ounces or 1 cup of yogurt may credit as 2 ounces of the meats/meat alternates component, per 7 CFR 225.16(d)).

²⁰ FDA standard of identity for yogurt is at 21 CFR 131.200, available at: <https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-131/subpart-B/section-131.200>.

²¹ Ultrafiltration is a filtration process used to concentrate yogurt and other dairy products, such as Greek and Greek-style yogurt. The process separates the product into two streams, allowing water, acids, salts, and lactose to pass through, while retaining the fat and proteins. This allows manufacturers to produce yogurt varieties with different protein and fat contents.

²² USDA Press release, *Expanding Healthy, American-Produced Food Offerings to Our Schools—USDA's Pilot Program for Greek-Style Yogurt* (March 12, 2014). Available at: <https://www.usda.gov/media/blog/2014/03/12/expanding-healthy-american-produced-food-offerings-our-schools-usdas-pilot#:~:text=These%20states%20were%20able%20to,total%20199%20C800%20pounds%20of%20yogurt>.

²³ FNS Administrative Data.

regular yogurt.²⁴ Some commenters supported changes to yogurt crediting; however, overall, comments were mixed. Many commenters noted that two different yogurt crediting standards could cause confusion and suggested that crediting based on greater or lesser amounts of a single nutrient is inconsistent with food-based menu planning.²⁵ As a result, FNS maintained consistent crediting for all yogurt in the CNPs: four ounces, or ½ cup, of yogurt credits as one ounce equivalent of meat alternate.

As the CNPs and product availability continue to evolve, FNS seeks additional public input regarding high-protein yogurt crediting. This includes whether FNS should allow a lesser volume (*i.e.*, a smaller serving size) of high-protein yogurt to credit toward the meats/meat alternates meal component compared to regular yogurt. Additionally, if different crediting is warranted, FNS seeks input on how to define high-protein yogurt. Similar to “grains high in added sugars,” in the absence of a Federal standard of identity, a definition of “high-protein yogurt” could be informed by FDA’s “high” nutrient claim.²⁶ The DRV for protein for adults and children ages four years and older is 50 grams per day,²⁷ and 13 grams per day for children ages one to three years old.²⁸ Under that definition, a “high-protein yogurt” must have at least 6.7 grams of protein per four ounce serving for adults and children ages four and older; or at least 2.6 grams of protein per four ounce serving for children ages one to three

years.²⁹ FNS could adopt FDA’s definition of “high” for use on food label nutrient content claims to define “high-protein yogurt” as yogurt that provides at least 6.7 grams of protein per four ounce serving for ages four and older, and 2.6 grams of protein per four ounce serving for ages one to three years.

USDA has already adopted FDA’s definition of “high” for nutrient claims in high-protein yogurt in some Programs. USDA Foods began using FDA’s definition of “high” for nutrient claims in high-protein yogurt in 2013. The most recent USDA Commodity Requirements—Yogurt Products specification references the USDA Agricultural Marketing Service’s Commercial Item Description for Yogurt, which includes the following: “6.1.2. High protein. Shall conform to the Standard of Identity for yogurt (21 CFR 131.200), lowfat yogurt (21 CFR 131.203), or nonfat yogurt (21 CFR 131.206) and shall meet the FDA requirements for a “high” nutrient content claim for protein (21 CFR 101.54(b)(1)).”³⁰ In addition, USDA’s Agricultural Marketing Service is currently updating the yogurt specification to include added sugars limits, and the specifications are expected to continue directly referencing FDA’s definition of “high” for nutrient content claims.

Public input in response to this Request for Information may inform future FNS policymaking related to how high-protein yogurt (including some Greek and Greek-style yogurt) credits toward meal pattern requirements (*i.e.*, if a separate standard from regular yogurt is warranted) and, if so, how Program operators can identify high-protein yogurt.

List of Questions for Commenters

FNS is committed to finding ways to ease menu planning for Program operators and ensure that children and adult participants have access to a wide

array of nutritious food and beverage choices. Staying up to date with the evolving food environment through ongoing conversations with stakeholders helps FNS learn about additional food options that could improve Program menus. With these general interests in mind, FNS is seeking information on the following questions:

Grain-Based Desserts

Although FNS has taken recent action to reduce added sugars in school meals,³¹ the Agency appreciates the importance of providing more guidance and support to CNP menu planners working to reduce added sugars. FNS welcomes input on the questions below, as well as other suggestions and strategies to help reduce added sugars on CNP menus.

Current Policies and Potential Alternatives for Grain-Based Desserts

Certain grain products, including cookies, cakes, cereal bars, and toaster pastries, are categorized as grain-based desserts based on their characteristics. FNS’ current policy related to grain-based desserts is detailed in *The Food Buying Guide for Child Nutrition Programs, Exhibit A*. FNS is interested in public input on its current grain-based desserts policies and other approaches that partners recommend for reducing added sugars in the CNPs.

1. What challenges do Program operators face in identifying grain-based desserts, under the current policies?
2. Is the current NSLP policy that permits up to two ounce equivalents of grain-based desserts per week effective at reducing added sugars in school lunches?

a. The weekly added sugars limit for NSLP will be implemented by July 1, 2027. Will the current grain-based dessert limit for NSLP lunch still be helpful for menu planning purposes, once the weekly added sugars limit is implemented?

3. Should FNS adjust its current grain-based desserts policies, such as changing which grain products are categorized as grain-based desserts?

³¹ The final rule, *Child Nutrition Programs: Meal Patterns Consistent With the 2020–2025 Dietary Guidelines for Americans* (89 FR 31962, April 25, 2024) established product-based added sugars limits for milk, yogurt, and breakfast cereals that are effective July 1, 2025. Additionally, a weekly standard limiting added sugars in SBP and NSLP meals to no more than 10 percent of calories takes effect on July 1, 2027. Additional information is available at: <https://www.govinfo.gov/content/pkg/FR-2024-04-25/pdf/2024-08098.pdf>.

²⁴ *Food Crediting in Child Nutrition Programs: Request for Information*. 82 FR 58792. Published December 14, 2017. Available at: <https://www.federalregister.gov/documents/2017/12/14/2017-26979/food-crediting-in-child-nutrition-programs-request-for-information>. All comments are available for review at <https://www.regulations.gov/docket?D=FNS-2017-0044>.

²⁵ A single food-based menu planning approach, required since SY 2012–13, simplifies menu planning, serves as a teaching tool to help children choose a balanced meal, and assures that students nationwide have access to key food groups recommended by the *Dietary Guidelines*. It also makes it easier for schools to communicate meal standards to parents and the broader community.

²⁶ The FDA defines “high” protein in its nutrient claim regulations as food with 20 percent or more of the Reference Daily Intake (RDI) or Daily Reference Value (DRV) for protein, as established in 21 CFR 101.9(c)(8)(iv) or 21 CFR 101.9(c)(9), respectively. See 21 CFR 101.54 Nutrient content claims for “good source,” “high,” “more,” and “high potency.” Available at: <https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-101/subpart-D/section-101.54>.

²⁷ Based on the reference caloric intake of 2,000 calories for adults and children aged 4 years and older, and for pregnant women and lactating women.

²⁸ Based on the reference caloric intake of 1,000 calories for children 1 through 3 years of age.

²⁹ Protein values have been adjusted down proportionately to align with CNP meal pattern requirements which differ slightly from FDA’s Reference Amount Customarily Consumed (RACC) for yogurt, which is 6 ounces for ages 4 years and older. FDA does not currently specify a RACC for yogurt for ages 1–3 years in 21 CFR 101.12; however, FDA suggests a RACC of 4 oz for milk for ages 1–3 years (see question B.9 in Guidance for Industry Food Labeling Serving Sizes of Foods). Yogurt and milk have similar product characteristics (*e.g.*, both are dairy products), which is the one of the three serving size general principles. Based on this guidance from FDA, FNS is using a RACC of four ounces for yogurt for ages one year and older.

³⁰ USDA Agriculture Marketing Service, Commercial Item Description: Yogurt. Available at: <https://www.ams.usda.gov/sites/default/files/media/CID%20Yogurt.pdf>.

Input on Grains High in Added Sugars

In addition to potential changes to its current grain-based desserts policies, FNS is also interested in public input on alternative approaches that partners recommend to reduce added sugars in CNP meals. This includes seeking public input on grain products high in added sugars.

1. Should FNS consider alternative approaches to its current grain-based desserts policies, such as replacing these policies with limits for “grains high in added sugars”?

2. If FNS were to establish limits for “grains high in added sugars,” how should the limits be established?

a. Should FNS adopt FDA’s definition for “high” for nutrient content claims used on food labels to define “grains high in added sugars”? What are the benefits or limitations of this approach?

b. What opportunities and challenges could arise from having different limits for grains offered to children ages one through three, versus children and adults ages four and older?

c. What other approaches should FNS consider to define “grains high in added sugars”?

Strategies To Reduce Added Sugars at School Breakfast

FNS recognizes the specific challenges with reducing added sugars in school breakfast. The Agency invites public input on effective strategies to reduce added sugars at breakfast, including when using alternative school breakfast models.

1. Are there strategies for reducing added sugars in the SBP that would support menu planners offering a variety of grains in alternative SBP service models (e.g., grab-and-go breakfasts, breakfast in the classroom)?

2. What menu items are schools serving to reduce added sugars at breakfast? Examples may include protein foods (e.g., eggs; meat; tofu; beans, peas, and lentils) or others.

a. Please share examples of breakfast menu items lower in added sugars that are popular with students.

3. What additional resources from FNS could help Program operators reduce added sugars in CNP menus, including breakfast? Resources could include marketing ideas/materials, menu planners, online trainings and courses, and others.

High-Protein Yogurt Crediting

Currently, all yogurt credits the same in CNPs: four ounces (weight) or 1/2 cup (volume) of yogurt is one ounce equivalent of meat alternate. FNS invites public comments to determine if

different crediting is warranted for different types of yogurt, including high-protein yogurt, which may include Greek and/or Greek-style yogurt. Responses may help FNS determine how to define and credit high-protein yogurt in the CNPs.

Current Policies

Currently, four ounces (weight) or 1/2 cup (volume) of yogurt credits in the CNPs as one ounce equivalent of meat alternate. High-protein yogurt (which may include Greek and Greek-style yogurt) credits the same as regular yogurt.

1. Are Program operators currently offering Greek or Greek-style yogurt, or other types of yogurt that contain more protein than regular yogurt, as part of reimbursable meals or snacks?

a. To which age groups and in which meals are these types of yogurt offered?

b. How frequently are these types of yogurt offered?

c. Are these types of yogurt popular with participants? Are they more popular than regular yogurt?

2. If Program operators are not offering Greek or Greek-style yogurt, or other types of yogurt that contain more protein than regular yogurt, as frequently as desired, why not? What are the challenges with offering these types of yogurt?

3. Has high-protein yogurt available via USDA Foods in Schools helped school Program operators offer high-protein yogurt to participants?

a. Is high-protein yogurt incorporated into meals, particularly breakfast, in the same manner as traditional yogurt? Please share examples of how high-protein yogurt is used in menus and/or recipes; are traditional and high-protein yogurt used interchangeably or are there novel uses for high-protein yogurt in school meals?

Potential Alternatives

FNS is interested in public input on potential changes to the current yogurt crediting policies, including what changes would be beneficial to Program operators and participants, and any challenges associated with potential changes.

1. Should FNS create a separate crediting standard for high-protein yogurt that is different than the crediting standard for regular yogurt? Why or why not?

2. If high-protein yogurt contributes differently to the CNP meal patterns than regular yogurt, how should high-protein yogurt be credited? Be as specific as possible, such as the volume or weight needed.

3. If high-protein yogurt were to contribute differently to the CNP meal patterns than regular yogurt, should FNS adopt FDA’s definition of “high” for nutrient content claims used on food labels to define high-protein yogurt?

a. What are the benefits or limitations of this approach?

b. What opportunities or challenges could arise from having different limits for high-protein yogurt offered to children ages one through three, versus children and adults ages four and older?

4. If high-protein yogurt contributes differently to the CNP meal patterns than regular yogurt, should USDA place any limits on the types of yogurt that can qualify as high-protein yogurt?

a. Should changes be limited to any specific type of high-protein yogurt?

b. Should yogurt that is thickened by adding thickening agents (e.g., polysaccharides or optional dairy ingredients) credit differently in CNPs?

If yes, what implications might that approach have on the requirement for Program operators to plan CNP menus using food-based menu planning?

c. Should changes include plant-based yogurt alternatives (e.g., soy-based yogurt alternatives)?

5. What other approaches should USDA consider for how to define and credit high-protein yogurt?

Additional Input

FNS welcomes additional input on its current yogurt crediting policies, potential alternatives for high-protein yogurt, and other feedback from partners.

Disclaimers: This is a Request for Information. This is not a Request for Proposals or a Request for Applications and is not to be construed as a commitment by the U.S. Government to issue any solicitation or Notice of Funding Opportunity, or ultimately award a contract or assistance agreement based on this Request for Information, or to pay for any information voluntarily submitted as a result of this request. The USDA posts its competitive business opportunities on www.grants.gov. It is the potential offeror’s/applicant’s responsibility to monitor these sites for announcements of new opportunities. Please note that responding to this Request for Information will not give any advantage to any organization or individual in any subsequent competition. Responses may be used by USDA without restriction or limitation, therefore proprietary information should not be sent. Furthermore, this Request for Information does not mean and should not be construed to suggest that FNS will change meal pattern requirements

or food crediting. The current CNP meal pattern requirements and food crediting were established in alignment with the existing statutory and regulatory framework. FNS seeks public input to properly assess the feasibility of potentially pursuing an update to guidance, technical assistance resources, and food crediting in the future. If data compelling FNS is available, the Agency would take such information into account as it considers the range of factors relevant to meal pattern requirements and food crediting.

Collection of Information

Requirements: This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. However, this document does contain a general solicitation of comments in the form of a request for information. In accordance with implementing regulations of the Paperwork Reduction Act of 1995, specifically 5 CFR 1320.3(h)(4), this general solicitation is exempt from the Paperwork Reduction Act. Facts or opinions submitted in response to general solicitations of comments from the public, published in the **Federal Register** or other publications, regardless of the form or format thereof, provided that no person is required to supply specific information pertaining to the commenter other than that necessary for self-identification, as a condition of the Agency's full consideration, are not generally considered information.

Tameka Owens,

Acting Administrator and Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2024-30710 Filed 12-23-24; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Vegetable Surveys Program. A revision to burden hours will be needed due to changes in

the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by February 24, 2025 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535-0037, by any of the following methods:

- *Email:* ombofficer@nass.usda.gov.

Include docket number above in the subject line of the message.

- *E-fax:* (855) 838-6382.

- *Mail:* Mail any paper, disk, or CD-ROM submissions to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250-2024.

- *Hand Delivery/Courier:* Hand deliver to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250-2024.

FOR FURTHER INFORMATION CONTACT:

Joseph J. Prusacki, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 202-720-2707. Copies of this information collection and related instructions can be obtained without charge from Richard Hopper, NASS—OMB Clearance Officer, at 202-720-2206 or at ombofficer@nass.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Vegetable Surveys Program.

OMB Control Number: 0535-0037.

Expiration Date of Approval: June 30, 2027.

Type of Request: Intent to Seek Approval to Revise and Extend an Information Collection for 3 years.

Abstract: The primary objective of the National Agricultural Statistics Service (NASS) is to collect, prepare, and issue State and national estimates of crop and livestock production, prices, and disposition; as well as economic statistics, environmental statistics related to agriculture and also to conduct the Census of Agriculture. The Vegetable Surveys Program obtains basic agricultural statistics for fresh market and processing vegetables in major producing States. Vegetable statistics are used by the U.S. Department of Agriculture to help administer programs and by growers, processors, and marketers in making production and marketing decisions.

Every 5 years NASS conducts a program review following the completion of the Census of Agriculture. The primary purpose is to ensure that the NASS annual estimating program targets commodities and states most

relevant based on the latest available information. The last program reviewed occurred after the 2022 Census of Agriculture. The supporting statements, burden, questionnaires, and other documents (from 2022) will be revised in this renewal. All questionnaires included in this information collection will be voluntary.

Authority: These data will be collected under authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-113) and Office of Management and Budget regulations at 5 CFR part 1320.

All NASS employees and NASS contractors must also fully comply with all provisions of the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) of 2018, Title III of Public Law 115-435, codified in 44 U.S.C. Ch. 35. CIPSEA supports NASS's pledge of confidentiality to all respondents and facilitates the agency's efforts to reduce burden by supporting statistical activities of collaborative agencies through designation of NASS agents, subject to the limitations and penalties described in CIPSEA.

Estimate of Burden: Public reporting burden for this collection of information is estimated to be between 5 and 20 minutes per respondent per survey.

Respondents: Farms and businesses.

Estimated Number of Respondents: 11,200

Estimated Total Annual Burden on Respondents: 5,000 hours.

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, December 18, 2024.

Joseph J. Prusacki,
Associate Administrator.

[FR Doc. 2024-30750 Filed 12-23-24; 8:45 am]

BILLING CODE 3410-20-P

DEPARTMENT OF AGRICULTURE

Rural Business Cooperative Service

[DOCKET #: RBS-24-BUSINESS-0008]

Notice of Funding Opportunity for the Timber Production Expansion Guaranteed Loan Program for Fiscal Year 2024

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBCS or Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), announces the acceptance of applications and availability of funding under the Timber Production Expansion Guaranteed Loan Program (TPEP) for fiscal year (FY) 2024. These guaranteed funds will be made available to eligible lenders to make loans to eligible borrowers seeking to establish, reopen, retrofit, expand, or improve a sawmill or other wood processing facility, in close proximity to a unit of United States Forest Service (USFS) National Forest System lands, including Indian forest land or rangeland, identified as high priority or very high priority on the map accessible using the following link: www.arcgis.com/apps/dashboards/5d6d9d9922a8486f83d51d40835f1870. This program will have in excess of \$200 million available beginning in FY 2025 utilizing funding provided under the Infrastructure Investment and Jobs Act. All applicants are responsible for any expenses incurred in developing their applications.

DATES: Completed applications may be submitted beginning December 26, 2024. Applications will be accepted until funds are exhausted.

ADDRESSES: Applicants are encouraged to contact the Agency to discuss projects and ask any questions about the program or application process. Entities wishing to apply for assistance may download the application documents and requirements delineated in this notice from: rd.usda.gov/onerdguarantee. Applications will only be accepted electronically.

Applicants are encouraged to contact their respective RD State Office for an email contact to submit an electronic application. A list of the USDA RD State

Office contacts can be found at: rd.usda.gov/about-rd/state-offices.

FOR FURTHER INFORMATION CONTACT:

Shaun Stehr at TPEP@usda.gov, Loan and Grant Analyst, RBCS, USDA, 1400 Independence Avenue SW, Mail Stop 3201, Room 5803-South, Washington, DC 20250-3201; or call 717-675-0038.

SUPPLEMENTARY INFORMATION:

Overview

Federal Awarding Agency Name: Rural Business-Cooperative Service.

Funding Opportunity Title: Timber Production Expansion Guaranteed Loan Program.

Announcement Type: Notice of Funding Opportunity (NOFO).

Assistance Listing: 10.385.

Dates: Applications will be accepted beginning December 26, 2024.

Applications will be accepted until all funds are expended.

Rural Development Key Priorities: The Agency encourages applicants to consider projects that will advance the following key priorities (more details available at www.rd.usda.gov/priority-points):

- Addressing Climate Change and Environmental Justice; Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.
- Advancing Racial Justice, Place-Based Equity, and Opportunity; Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects.
- Creating More and Better Market Opportunities; Assisting rural communities recover economically through more and better market opportunities and through improved infrastructure.

A. Program Description

1. *Purpose of the Program.* The TPEP will provide financial assistance through loan guarantees to lenders providing loans to entities seeking to establish, reopen, retrofit, expand, or improve a sawmill or other wood processing facility in close proximity to a unit of USFS National Forest System lands, including Indian forest land or rangeland, that has been identified as high or very high priority for ecological restoration if the presence of a sawmill or other wood-processing facility would substantially decrease or does substantially decrease the cost of conducting ecological restoration projects involving vegetation removal on the unit of land. These units of USFS National Forest System lands must be classified as being a high or very high

priority for ecological restoration involving vegetation removal, due to the risk of unnaturally severe wildfires, or insect or disease infestation. The Agency will consider a facility to be in close proximity of the requisite unit of land if it is within two hundred fifty (250) miles of the area identified as high or very high priority for ecological restoration. TPEP facilities will purchase and process byproducts from ecosystem restoration projects.

2. Statutory and Regulatory Authority:

The TPEP program is authorized by section 40804(d)(3)—Ecosystem Restoration—of the Infrastructure Investment and Jobs Act (Pub. L. 117-58) which directs USFS to provide financial assistance to entities seeking to establish, reopen, retrofit, expand, or improve a sawmill or other wood processing facility that is in close proximity to a unit of United States Forest Service (USFS) National Forest System lands, including Indian forest land or rangeland, that has been identified as high or very high priority for ecological restoration and that is using ecological byproducts from the unit of land. Further, the TPEP program is in response to White House Executive Order 14081 on advancing the domestic bioeconomy, the USDA report Building a Resilient Biomass Supply, (usda.gov/media/press-releases/2024/03/14/usda-outlines-vision-strengthen-american-bioeconomy-through-more), and the subsequent deliverables outlined in the report's Implementation Framework. The TPEP program is operating as a pilot program and will be administered under 7 CFR part 5001. TPEP is designed and implemented in a manner similar to the Business and Industry (B&I) Guaranteed loan program with minor changes to meet the needs of the timber industry. An interagency agreement between the USFS and RBCS will allow RBCS to implement the TPEP program in the interest of the USFS.

3. *Definitions.* The definitions applicable to this notice are published in 7 CFR 5001.3. For the purpose of this notice only:

(a) *Wood Processing Facility* means a facility that produces solid wood products (including lumber, posts and poles), engineered wood products (including plywood, veneer panels, and mass timber products), biomass energy products (heat, power, combined heat and power, and biochar), and fuel products (firewood, wood pellets, briquettes, and liquid biofuels).

(b) *High Priority for Ecological Restoration* means publicly owned USFS National Forest System lands, including Indian forest land or rangeland, that have been identified by

USFS as high risk for wildfire or insect or disease infestation. USDA Forest Service mapping can be found at www.arcgis.com/apps/dashboards/5d6d9d9922a8486f83d51d40835f1870.

4. *Application of Awards.* The Agency will review, evaluate, and score applications received in response to this notice based on the provisions found in 7 CFR part 5001 Subpart A as indicated in this notice. Awards under TPEP will be made on a first come, first served basis using specific selection criteria contained in 7 CFR part 5001. The Agency advises all interested parties that the applicant bears the full burden in preparing and submitting an application in response to this notice.

5. *Accounting Terms.* Accounting terms not otherwise defined in this notice shall have the definition ascribed to them under Generally Accepted Accounting Principles (GAAP).

B. Federal Award Information

Type of Award: Loan Guarantee.

Available Funds: An excess of \$200 million will be available beginning in FY 2025. RBCS may, at its discretion, increase the total level of funding available from any available source provided the awards meet the requirements of the statute which made the funding available to the Agency.

Award Amounts: The Administrator has established that the maximum loan amount is \$25 million and there is no minimum loan amount.

Due Date for Applications: Applications will be accepted until funds are expended.

Anticipated Award Date: Beginning not earlier than one month post announcement.

Performance Period: Guaranteed loans are governed by the loan terms.

Type of Assistance Instrument: Loan note guarantee.

Loan guarantee limits:

(a) *Loan amount.* The total amount of guaranteed loans under this notice to one borrower, including the aggregate amount of guaranteed loans to affiliate entities dependent upon another's operations and generation of revenue for loan repayment, must not exceed \$25 million.

(b) *Percentage of guarantee.* The percentage of guarantee will be 90 percent.

(c) *Guarantee Fees.* Guarantee fees, as determined under 7 CFR 5001.454, are not applicable to the TPEP program. The guaranteed loan will not have guarantee origination fees or annual guarantee service fees.

C. Eligibility Information

1. *Eligibility Requirements.* The eligibility requirements for the

borrower, lender, and project (as applicable) are clarified in 7 CFR part 5001 and are summarized in this notice.

2. *Eligible Borrowers and Lenders.* To be eligible for a loan guarantee under TPEP, a lender must meet the eligibility requirements in 7 CFR 5001.130. The borrower must meet the requirements specified in 7 CFR 5001.126(a) and (d) at the time of each guaranteed loan's approval and through issuance of the loan note guarantee. In addition, the borrower must be:

(a) An entity engaged in or proposing to engage in establishing, reopening, retrofitting, expanding, or improving a sawmill or other wood-processing facility. For purposes of this notice, an eligible borrower entity may include a forest worker, logger, heavy equipment operator, material handler, or other professional entity responsible for purchasing and processing ecosystem restoration byproducts.

(b) Eligible borrowers must use ecosystem restoration byproducts from Federal or Tribal lands that USFS identified as high or very high priority for ecological restoration involving vegetation removal and must procure a significant amount of raw materials from Federal or Tribal lands. High priority designated lands can be found using the TPEP Priority Areas dashboard at the following link: www.arcgis.com/apps/dashboards/5d6d9d9922a8486f83d51d40835f1870.

3. *Eligible Activities.* Establishing, reopening, retrofitting, expanding, or improving a sawmill or other wood processing facility that is in close proximity to a unit of USFS National Forest System lands identified as high or very high priority for ecological restoration and that uses ecosystem restoration byproducts from an identified unit of USFS National Forest System lands, if the presence of a sawmill or other wood-processing facility would substantially decrease or does substantially decrease the cost of conducting ecological restorations projects involving vegetation removal on the unit of land. The Agency will consider a facility to be in close proximity of the requisite unit of land if it is within two hundred fifty (250) miles of the area identified as high or very high priority for ecological restoration.

4. *Eligible Uses of Funds/Eligible projects.* To be eligible for the program, a project must meet the eligibility requirements of 7 CFR 5001.121(c) and those specified in this notice. Borrowers must demonstrate, to the Agency's satisfaction, that guaranteed loan funds will be used to establish, reopen, retrofit, expand, or improve a sawmill or

other wood processing facility that is in close proximity to a unit of USFS National Forest System lands that USFS identified as high or very high priority for ecological restoration and that uses ecological restoration byproducts from the high or very high priority unit of land. The following are additional eligible uses of guaranteed funds:

(a) Lender fees, as determined under 7 CFR 5001.403.

(b) Professional service fees and charges, provided the Agency approves the amounts as reasonable and customary in the area and fees for construction permits and licenses.

(c) Feasibility studies and business plans.

(d) Interest (including interest on interim financing) during the period before the first principal payment becomes due or when the facility becomes income producing, whichever is earlier.

(e) Refinancing in accordance with 7 CFR 5001.102(d). Unless the amount to be refinanced is owed directly to the Federal Government or is federally guaranteed, no more than 50 percent of loan funds may be used to refinance existing debt.

5. *Cost Sharing or Matching.* There are no cost sharing or matching requirements associated with this guarantee.

6. *Other.*

(a) *Ineligible project costs.* Ineligible project costs are in accordance with 7 CFR 5001.122.

(b) *Approved Lenders.* Lenders that have met the requirements and have received approval under 7 CFR 5001.130 are prequalified to lend under TPEP.

(c) *Debarment and Suspension.* Applicants are not eligible if they have been debarred or suspended or otherwise excluded from, or ineligible for, participation in Federal assistance programs under 2 CFR parts 180 and 417. Applicants will be required to comply with the requirement in 2 CFR 180.335. Lenders are responsible for verification of the borrower's status. Verification can be done at sam.gov.

D. Application and Submission Information

1. *Address to Request Application Package.* The TPEP Application Guide and copies of necessary forms and samples, are available at www.rd.usda.gov/onerdguarantee.

2. *Content and Form of Application Submission.* Applicants seeking to participate in this program must submit an application in accordance with this notice and 7 CFR part 5001, as applicable.

Carefully review this notice, 7 CFR parts 5001.301, 5001.302, 5001.303 and 5001.306, and the TPEP Application Guide, which collectively detail all required items for a complete application. Submitted applications and any accompanying materials become Federal records by law and cannot be returned to you.

Applicants may submit complete applications, until funds are expended, containing all parts necessary for the Agency to determine applicant and project eligibility, and to score the application in order to be considered.

3. *System for Award Management and Unique Entity Identifier.*

(a) At the time of application, each applicant must have an active registration in the System for Award Management (SAM) before submitting its application in accordance with 2 CFR part 25. To register in SAM, entities will be required to obtain a Unique Entity Identifier (UEI). Instructions for obtaining the UEI are available at sam.gov/content/entity-registration.

(b) Applicants must maintain an active SAM registration, with current, accurate and complete information, at all times during which it has an active Federal award or an application under consideration by a Federal awarding agency.

(c) Applicants must ensure they complete the Financial Assistance General Certifications and Representations in SAM.

(d) Applicants must provide a valid UEI in their application, unless determined exempt under 2 CFR 25.110.

(e) The Agency will not make an award until the applicant has complied with all SAM requirements including providing the UEI. If an applicant has not fully complied with the requirements by the time the Agency is ready to make an award, the Agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. *Submission Dates and Times.*

Applications for loan guarantees may be submitted at any time on an ongoing basis and applications will be accepted on a first come first served basis until all funds are expended. RBCS also reserves the right to ask applicants for clarifying information and additional verification of assertions in the application.

5. *Intergovernmental Review.*

Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs, applies to this program. This E.O. requires that Federal agencies provide opportunities for consultation

on proposed assistance with State and local governments, including, a county, municipality, town, township, village, or other unit of general government, including Tribal governments, below the State level. Many states have established a Single Point of Contact (SPOC) to facilitate this consultation. For a list of States that maintain a SPOC, please see the White House website: whitehouse.gov/omb/management/office-federal-financial-management/. If your State has a SPOC, you may submit a copy of the application directly for review. Any comments obtained through the SPOC must be provided to your State Office for consideration as part of your application. If your state has not established a SPOC, you may submit your application directly to the Agency. Applications from federally recognized Indian Tribes are not subject to this requirement.

6. *Funding Restrictions.* Applications must be for eligible purposes as defined in Section C.3. of this notice and must comply with the guaranteed loan fund limitations found in 7 CFR 5001.406(c).

7. *Other Submission Requirements.*

(a) *Approved Multi-State Lenders.*

Lenders will upload all loan guarantee applications and servicing requests, regardless of loan amount to the OneRD Teams Portal.

(b) *Non-Multi-State Lenders.* All other lenders, other than designated Multi-State Lenders, will submit applications to the State Office electronically. State office contacts can be found at www.rd.usda.gov/about-rd/offices/state-offices.

E. *Application Review Information*

1. *Criteria.* All eligible and complete applications will be evaluated and scored based on the selection criteria and weights contained in this notice and in 7 CFR 5001.318. Failure to address any of the application criteria will result in the application being determined ineligible, and the application will not be considered for funding.

In addition to the scoring criteria outlined in 7 CFR 5001.318, there will be an additional 10 points that may be awarded for projects that address wildfire risk reduction or that provide documented justification for the following RD key priority categories:

(a) Assisting rural communities recover economically through more and better market opportunities and through improved infrastructure. An applicant would receive priority points if the project is located in or serving a rural community whose economic well-being ranks in the most distressed tier (distress score of 80 or higher) of the

Distressed Communities Index using the Distressed Communities Look-Up Map available at www.rd.usda.gov/priority-points.

(b) Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects. Using the Social Vulnerability Index (SVI) Look-Up Map (available at www.rd.usda.gov/priority-points), an applicant would receive priority points if:

- The project is located in or serving a community with score 0.75 or above on the SVI;
- The applicant is a federally recognized Tribe, including Tribal instrumentalities and entities that are wholly owned by Tribes; or
- Is a project where at least 50 percent of the project beneficiaries are members of federally Recognized Tribes and non-Tribal applicants include a Tribal Resolution of Consent from the Tribe or Tribes (or other documentation of Consent consistent with the laws, procedures or practices of a Tribe or Tribes) that the applicant is proposing to serve.

• The application is from or benefiting a Rural Partner's Networks (RPN) community network. Currently, RPN networks exist in Alaska, Arizona, Georgia, Kentucky, Mississippi, Nevada, New Mexico, North Carolina, Puerto Rico, West Virginia, and Wisconsin. Use the Community Look-up map (available at www.rd.usda.gov/priority-points) to determine if your project qualifies for priority points.

(c) Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities. Using the Disadvantaged Community and Energy Community Look-Up Map (available at www.rd.usda.gov/priority-points), applicants will receive priority in one of the three ways:

- If the project is located in or serves a Disadvantaged Community as defined by the Climate and Economic Justice Screening Tool (CEJST), from the White House Council on Environmental Quality;
 - If the project is located in or serves an Energy Community as defined by the Inflation Reduction Act (IRA); and
 - If applicants can demonstrate through a written narrative how the proposed climate-impact projects will improve the livelihoods of community residents and meet pollution mitigation or clean energy goals, including benefits calculated using the social cost of carbon estimates developed by the Environmental Protection Agency.
2. *Review and Selection Process.* The Agency will review each complete

application to make a formal determination as to the eligibility of the borrower, lender, project, and guaranteed loan purpose and proposed use of funds; whether there is a reasonable assurance of repayment ability; whether sufficient collateral and equity exists; and whether the proposed guaranteed loan complies with all applicable statutes and regulations. The Agency will comply with provisions in 7 CFR 5001.315, "Application evaluation and award provisions", for the review and selection process.

The Agency reserves the right to offer the applicant less than the funding requested.

F. Federal Award Administration Information

1. Federal Award Notices

Application Outcomes. TPEP loans will be processed in accordance with 7 CFR part 5001. RBCS reserves the right to make no awards if all applications are ineligible, incomplete or do not meet the established program objectives and priorities.

2. Administrative and National Policy Requirements

(a) **Build America, Buy America (BABA).** Awardees that are Non-Federal Entities, defined pursuant to 2 CFR 200.1 as any State, local government, Indian Tribe, Institution of Higher Education, or nonprofit organization, shall be governed by the requirements of section 70914 of the Build America, Buy America Act (BABA) within the Infrastructure Investment and Jobs Act (Pub. L. 117–58), and its implementing regulations at 2 CFR part 184. Any requests for waiver of these requirements must be submitted pursuant to USDA's guidance available online at www.usda.gov/ocfo/federal-financial-assistance-policy/USDABuyAmericaWaiver.

(b) **Geospatial Data.** Awardee, and any and all contracts entered into by the Awardee with respect to the Award, shall ensure that geospatial data required to be collected and provided to the agency, conforms with the requirements of USDA Department Regulation DR–3465–001 and the Geospatial Metadata Standards set forth in DM 3465–001, which can be obtained online at usda.gov/directives/dr-3465-001 and usda.gov/directives/dm-3465-001.

(c) **Exception authority.** The Administrator may, on a case-by-case basis grant an exception to any requirement or provision of this notice, provided that such an exception is in the best financial interests of the Federal

Government. Exercise of this authority cannot be in conflict with applicable law.

(d) **Appeals.** The provisions of 7 CFR 5001.5 will apply to appeals under this notice. Funding of successfully appealed applications will be limited to available funding.

(e) **General lender responsibilities.** The provisions of 7 CFR 5001.6 will apply to general lender responsibilities under this notice.

(f) **Approvals, regulations, and forms.** The provisions of 7 CFR 5001.8 will apply to approvals, regulations and forms under this notice.

(g) **Eligible lenders.** To become a lender under this notice, the lending entity must meet the requirements specified in 7 CFR 5001.130, "Lender eligibility requirements." Lenders approved by the Agency as an eligible lender under 7 CFR 5001.130 and that are in compliance with 7 CFR 5001.132 "Maintenance of approved lender status" and the requirements of this notice, are eligible lenders under this notice. Lenders must continue to comply with the requirements of 7 CFR 5001.132.

(h) **Lender's agreement.** Agency approval of the lender will be evidenced by an outstanding lender's agreement, between the Agency and the lender as referenced in 7 CFR 5001.131. When approved to participate as a lender under this notice, the lender must execute a lender's agreement before the Agency will issue a loan note guarantee.

(i) **Access to records.** The lender must permit representatives of the Agency (or other agencies of the United States) to inspect and make copies of any records of the lender pertaining to Agency guaranteed loans during regular office hours of the lender or at any other time upon agreement between the lender and the Agency. In addition, the lender must cooperate fully with Agency oversight and monitoring of all lenders involved in any manner with any guarantee to ensure compliance with this notice. Such oversight and monitoring will include, but is not limited to, reviewing lender records and meeting with lenders.

(j) **Guarantee provisions.** The provisions of 7 CFR 5001.450 will apply to guarantees provided under this notice.

(k) **Participation or assignment of guaranteed loan.** The provisions of 7 CFR 5001.408 will apply to guarantees provided under this notice.

(l) **Repurchase from holder.** The provisions of 7 CFR 5001.511 will apply to guarantees provided under this notice.

3. Reporting

The provisions of 7 CFR 5001.502 Oversight and Monitoring and the provisions of 7 CFR 5001.504 Financial Reports will apply to guarantees provided under this notice.

G. Federal Awarding Agency Contact(s)

For general questions about this announcement, please contact Shaun Stehr at TPEP@usda.gov or 202–594–6454. Program website also provide up to date contact information at rd.usda.gov/onerdguarantee.

H. Other Information

1. **Paperwork Reduction Act.** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection requirements associated with the programs, as covered in this notice, have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0572–0155.

2. **National Environmental Policy Act.** All recipients under this notice are subject to the requirements of 7 CFR part 1970.

3. **Federal Funding Accountability and Transparency Act.** All applicants, in accordance with 2 CFR part 25, must be registered in SAM and have a UEI number as stated in section D.3 of this notice. All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170.

4. **Civil Rights Impact Analysis.** RD has reviewed this notice in accordance with USDA Regulation 4300–4, Civil Rights Impact Analysis," to identify any major civil rights impacts the notice might have on program participants on the basis of age, race, color, national origin, sex, disability, gender identity (including gender expression), genetic information, political beliefs, sexual orientation, marital status, familial status, parental status, veteran status, religion, reprisal and/or resulting from all or a part of an individual's income being derived from any public assistance program. This notice is within a Guarantee-based program. Guarantees are not covered under title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and title IX of the Education Amendments Act of 1972, as amended, when the Federal assistance does not include insurance or interest credit loans. Lenders must comply with other applicable Federal laws, including Equal Employment Opportunities, the Equal Credit Opportunity Act, the Fair

Housing Act, and the Civil Rights Act of 1964. Guaranteed loans that involve the construction of or addition to facilities must comply with the Architectural Barriers Act Accessibility Standard. The borrower and lender are responsible for ensuring compliance with these requirements.

5. Equal Opportunity for Religious Organizations.

(a) Faith-based organizations may apply for this award on the same basis as any other organization, as set forth at, and subject to the protections and requirements of, this part and any applicable constitutional and statutory requirements, including 42 U.S.C. 2000bb *et seq.* USDA will not, in the selection of recipients, discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization.

(b) A faith-based organization that participates in this program will retain its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law. Religious accommodations may also be sought under many of these religious freedom and conscience protection laws.

(c) A faith-based organization may not use direct Federal financial assistance from USDA to support or engage in any explicitly religious activities except when consistent with the Establishment Clause of the First Amendment and any other applicable requirements. An organization receiving Federal financial assistance also may not, in providing services funded by USDA, or in their outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

6. Nondiscrimination Statement. In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or

retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotope, American Sign Language) should contact the responsible Mission Area, agency, or staff office; or the 711 Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at www.usda.gov/sites/default/files/documents/ad-3027.pdf from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410; or

(2) *Fax:* (833) 256-1665 or (202) 690-7442; or

(3) *Email:* program.intake@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

Kathryn E. Dirksen Londrigan,
Rural Business-Cooperative Service, USDA Rural Development.

[FR Doc. 2024-30651 Filed 12-23-24; 8:45 am]

BILLING CODE 3410-15-P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Current Population Survey, School Enrollment Supplement

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the

Paperwork Reduction Act (PRA) of 1995, invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment on the proposed extension of the Current Population Survey, School Enrollment Supplement, prior to the submission of the information collection request (ICR) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before February 24, 2025.

ADDRESSES: Interested persons are invited to submit written comments by email to the Current Population Surveys Branch email address at dsd.cps@census.gov. Please reference the CPS School Enrollment Supplement in the subject line of your comments. You may also submit comments, identified by Docket Number USBC-2024-0035, to the Federal e-Rulemaking Portal: <https://www.regulations.gov>. All comments received are part of the public record. No comments will be posted to <https://www.regulations.gov> for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Kyra Linse, Survey Director, Current Population Surveys via the internet at dsd.cps@census.gov, or by phone at 301-763-9280.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request clearance from the Office of Management and Budget (OMB) for the collection of data concerning the School Enrollment Supplement to be conducted in conjunction with the October Current Population Survey (CPS). The Census Bureau and the Bureau of Labor Statistics (BLS) sponsor the basic annual school enrollment questions, which have been collected annually in the CPS for over 50 years. The current clearance

expires June 30, 2025. This request is for an extension of a currently approved data collection.

This survey provides information on public/private elementary school, secondary school, and college enrollment, and on characteristics of private school students and their families, which is used for tracking historical trends, policy planning, and support.

This survey is the only source of national data on the age distribution and family characteristics of college students and the only source of demographic data on preprimary school enrollment. As part of the federal government's efforts to collect data and provide timely information to local governments for policymaking decisions, the survey provides national trends in enrollment and progress in school.

II. Method of Collection

The School Enrollment Supplement information will be collected by both personal visit and telephone interviews in conjunction with the regular October CPS interviewing. All interviews are conducted using computer-assisted interviewing.

III. Data

OMB Control Number: 0607–0464.

Form Number(s): None.

Type of Review: Regular submission, Request for an Extension of a Currently Approved Collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 54,000.

Estimated Time per Response: 3 minutes.

Estimated Total Annual Burden Hours: 2,700.

Estimated Total Annual Cost to Public: \$0.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, sections 8(b), 141, and 182 authorize the Census Bureau and 29 U.S.C. 2 authorizes the Bureau of Labor Statistics to collect this information. The Education Sciences Reform Act of 2002 (ESRA, 20 U.S.C. 9543) authorizes the National Center for Education Statistics to collect this information.

IV. Request for Comments

We are soliciting public comments to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) 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; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include, or summarize, each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Departmental PRA Clearance Officer, Office of Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–30658 Filed 12–23–24; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2172]

Approval of Subzone Status; Tallaboa PR, LLC; Peñuelas, Puerto Rico

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for “. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,” and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of subzones for specific uses;

Whereas, CODEZOL, C.D., grantee of Foreign-Trade Zone 163, has made application to the Board for the establishment of a subzone at the facility of Tallaboa PR, LLC, located in Peñuelas, Puerto Rico (FTZ Docket B–42–2024, docketed August 5, 2024);

Whereas, notice inviting public comment has been given in the **Federal Register** (89 FR 64871, August 8, 2024) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's memorandum, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby approves subzone status at the facility of Tallaboa PR, LLC, located in Peñuelas, Puerto Rico (Subzone 163N), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including section 400.13.

Dated: December 19, 2024.

Dawn Shackelford,

Executive Director of Trade Agreements Policy & Negotiations, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2024–30762 Filed 12–23–24; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–47–2024]

Foreign-Trade Zone (FTZ) 72; Authorization of Production Activity; Toyota Material Handling, Inc.; (Forklift Trucks, Work Trucks and Automated Guided Vehicles); Columbus, Indiana

On August 20, 2024, Toyota Material Handling, Inc. submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 72, in Columbus, Indiana.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (89 FR 68390, August 26, 2024). On December 19, 2024, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including section 400.14.

Dated: December 19, 2024.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2024–30761 Filed 12–23–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–904]

Certain Activated Carbon From the People’s Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2022–2023

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 (AD) order on certain activated carbon (activated carbon) from the People’s Republic of China (China) to correct ministerial errors. Based on the amended final results, we find that the companies under review sold activated carbon in the United States at less than normal value during the period of review (POR), April 1, 2022, through March 31, 2023.

DATES: Applicable December 26, 2024.

FOR FURTHER INFORMATION CONTACT: Andrew Hart or Katherine Smith, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1058 or (202) 482–0557, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 25, 2024, Commerce published in the **Federal Register** the final results of the 2022–2023 administrative review of the AD order on activated carbon from China.¹ On November 20, 2024, we received a timely submitted ministerial error allegation from the mandatory respondents, Jilin Bright Future Chemicals Co., Ltd. (Jilin Bright) and Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. (GHC).² On November 25, 2024, Calgon Carbon Corporation and Norit Americas Inc. (the petitioners), submitted comments in response to the ministerial error allegations filed on behalf of GHC and

¹ See *Certain Activated Carbon from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2022–2023*, 89 FR 92893 (November 25, 2024) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

² See Jilin Bright’s Letter, “Ministerial Error Allegations,” dated November 20, 2024 (Jilin Bright’s Ministerial Error Allegation); see also GHC’s Letter, “Ningxia Guanghua Cherishmet Ministerial Error Allegations,” dated November 20, 2024 (GHC’s Ministerial Error Allegation).

Jilin Bright.³ We received no other ministerial error comments from interested parties. Commerce is amending the *Final Results* to correct the ministerial errors.

Legal Framework

Section 751(h) of the Tariff Act of 1930, as amended (the Act), defines 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.”⁴ 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

Commerce reviewed the record, and we agree that the errors alleged by the mandatory respondents constitute ministerial errors within the meaning of section 751(h) of the Act and 19 CFR 351.224(f).⁵ Specifically, we find that we made inadvertent errors related to the inclusion of two selling, general, and administrative (SG&A) expenses in the average financial ratios utilized in the review.⁶ We also agree with GHC’s allegation related to the incorrect surrogate value being applied to a factor of production.⁷ Pursuant to 19 CFR 351.224(e), Commerce is amending the *Final Results* to reflect the correction of the ministerial errors, as described in the Ministerial Error Memorandum.⁸ Based on the corrections, Jilin Bright’s final dumping margin changed from 1.95 dollars per kilogram to 1.90 dollars

³ See Petitioners’ Letter, “Petitioners’ Response to GHC’s Ministerial Error Allegation,” dated November 25, 2024; see also Petitioners’ Letter, “Petitioners’ Response to Jilin Bright’s Ministerial Error Allegation,” dated November 25, 2024.

⁴ See 19 CFR 351.224(f).

⁵ See Memorandum, “Analysis of Ministerial Error Allegation,” dated concurrently with this **Federal Register** notice (Ministerial Error Memorandum).

⁶ See Jilin Bright’s Ministerial Error Allegation at 2–3; see also GHC’s Ministerial Error Allegation at 3–4.

⁷ See GHC’s Ministerial Error Allegation at 2–3.

⁸ See Memorandum, “Analysis of Ministerial Error Allegation,” dated concurrently with, and hereby adopted by, this notice (Ministerial Error Memorandum); see also Memorandum, “Amended Final Analysis Memorandum for Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd.,” Memorandum, “Amended Final Analysis Memorandum for Jilin Bright Future Chemicals Co., Ltd.,” and Memorandum, “Calculation of the Amended Final Margin for Respondents Not Selected for Individual Examination,” all dated concurrently with this notice.

per kilogram and GHC’s final dumping margin changed from 1.21 dollars per kilogram to 1.10 dollars per kilogram. As a result, we are also revising the rate assigned to the non-individually examined separate rate companies, utilizing the same methodology in the *Final Results*,⁹ from 1.44 dollars per kilogram to 1.35 dollars per kilogram. The amended estimated weighted-average dumping margins are listed in the “Amended Final Determination” section below.

For a complete discussion of the ministerial error allegation, as well as Commerce’s analysis, see the accompanying Ministerial Error Memorandum.¹⁰ The Ministerial Error Memorandum is on file electronically via ACCESS. ACCESS is available to registered users at <https://access.trade.gov>.

Amended Final Results of Review

As a result of correcting these ministerial errors described above, Commerce determines that the following estimated weighted-average dumping margins exist for the period April 1, 2022, through March 31, 2023:

Exporter	Weighted-average dumping margin (U.S. dollars per kilogram) ¹¹
Jilin Bright Future Chemicals Co., Ltd	1.90
Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd	1.10
Separate Rate Applicable For Non-Selected Companies Under Review ¹²	1.35

Disclosure

Commerce intends to disclose the calculations performed in connection with these amended final results of review to interested parties within five days after public announcement of the

⁹ See *Certain Activated Carbon from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2022–2023*, 89 FR 35797, (May 2, 2024).

¹⁰ *Id.*

¹¹ In the second administrative review of the Order, Commerce determined that it would calculate per-unit weighted-average dumping margins and assessment amounts for all future reviews. See *Certain Activated Carbon from the People’s Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 75 FR 70208, 70211 (November 17, 2010).

¹² See the appendix for the list of non-individually examined companies receiving a separate rate.

amended final results or, if there is no public announcement, within five days of the date of publication of the notice of amended final results in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act, and 19 CFR 351.212(b)(1), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the amended final results of this review.

For the GHC and Jilin Bright, Commerce will calculate importer-specific assessment rates for antidumping duties, in accordance with 19 CFR 351.212(b)(1). For entries that were not reported in the U.S. sales database submitted by the exporter individually examined during this review, Commerce will instruct CBP to liquidate such entries at the China-wide rate.¹³ For the respondents that were not selected for individual examination in this administrative review but qualified for a separate rate, the per unit assessment rate will be the rate established for these companies in these amended final results of review.

For the six companies identified in the appendix to this notice as part of the China-wide entity, we will instruct CBP to apply the China-wide per-unit assessment rate to all entries of subject merchandise made during the POR which were exported by those companies.

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

Upon publication of this notice in the **Federal Register** the following cash deposit requirements will be effective for all shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) the amended cash deposit rate for GHC and Jilin Bright and the

other companies not individually examined in this review will be equal to the weighted-average dumping margin that is established in the amended final results of this 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 investigated or reviewed Chinese and non-Chinese exporters not listed above or in Appendix I that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate published for the most recently completed segment of this proceeding; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity (*i.e.*, 2.42 USD/kg); and (4) for all non-Chinese exporters of subject merchandise that have not received their own separate rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final 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.

Administrative Protective Order

This notice serves as the final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these amended final results of review in accordance with sections 751(h) and 777(i) of the Act and 19 CFR 351.224(e).

Dated: December 17, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

Separate Rate Applicable for Non-Selected Companies Under Review

1. Bengbu Modern Environmental Co., Ltd.
2. Carbon Activated Tianjin Co., Ltd.
3. Datong Hongdi Carbon Co., Ltd.
4. Datong Juqiang Activated Carbon Co., Ltd.
5. Datong Municipal Yunguang Activated Carbon Co., Ltd.
6. Jacobi Carbons AB; Jacobi Carbons Industry (Tianjin) Co., Ltd.; Tianjin Jacobi International Trading Co. Ltd.; Jacobi Adsorbent Materials
7. Ningxia Huahui Environmental Technology Co., Ltd.
8. Ningxia Mineral & Chemical Limited
9. Shanxi Industry Technology Trading Co., Ltd.
10. Shanxi Sincere Industrial Co., Ltd.
11. Tancarb Activated Carbon Co., Ltd.
12. Tianjin Channel Filters Co., Ltd.

Companies Considered To Be Part of the China-Wide Entity

1. Beijing Pacific Activated Carbon Products Co., Ltd.
2. Shanxi Dapu International Trade Co., Ltd.
3. Shanxi DMD Corp.
4. Shanxi Tianxi Purification Filter Co., Ltd.
5. Sinoacarbon International Trading Co., Ltd.
6. Tianjin Maijin Industries Co., Ltd.

[FR Doc. 2024–30691 Filed 12–23–24; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–714–001]

Phosphate Fertilizers From the Kingdom of Morocco: Notice of Amended Final Results of Countervailing Duty Administrative Review; 2022

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 countervailing duty order on phosphate fertilizers (fertilizers) from the Kingdom of Morocco (Morocco) to correct a ministerial error. The period of review (POR) is January 1, 2022, through December 31, 2022.

DATES: Applicable December 26, 2024.

FOR FURTHER INFORMATION CONTACT:

Faris Montgomery or Jaron Moore, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401

¹³ For a full discussion of this practice, see *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1537 or (202) 482–3640, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(b)(5), on November 7, 2024, Commerce disclosed its calculations to interested parties and provided interested parties with the opportunity to submit ministerial error comments.¹ On November 12, 2024, OCP S.A. (OCP) submitted an allegation of a ministerial error in the *Final Results*.² On November 18, 2024, the Mosaic Company submitted rebuttal comments in response to OCP’s ministerial error allegations.³ On November 12, 2024, Commerce published its final results of administrative review.⁴

Legal Framework

Section 751(h) of the Act, defines 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

Commerce has determined that one of the two errors alleged by OCP constitutes a ministerial error within the meaning of section 751(h) of the Act and 19 CFR 351.224(f). In its ministerial error allegations, OCP alleges that, with regard to the provision of phosphate mining rights for less than adequate remuneration (LTAR) program, Commerce: (1) did not include OCP’s allocated debt costs in OCP’s total cost of production when calculating OCP’s profit for phosphate rock; and (2) should

have calculated a simple average of two datasets provided by different parties for a third-market country from the same business proprietary data source, as Commerce did with two datasets provided from the same business proprietary data source for another third-market country.⁵

For the calculation of the simple average of two datasets, we disagree with OCP and find that not averaging the datasets was a methodological decision and not a ministerial error. However, Commerce agrees that, in the *Final Results*, we did not include the allocated cost of OCP’s debt in OCP’s total cost of production when calculating OCP’s profit to determine the price OCP paid for phosphate rock in the provision of phosphate mining rights for LTAR program as we intended. Commerce determines that this constitutes a ministerial error in the *Final Results* pursuant to section 751(h) of the Act and 19 CFR 351.224(f) and is amending the *Final Results* with respect to the phosphate mining rights for LTAR benefit calculation to correct the ministerial error in the calculation of the *ad valorem* subsidy rate. The revised net subsidy rate is provided below.

For a complete discussion of the ministerial error allegations, as well as Commerce’s analysis, see the accompanying Ministerial Error Memorandum.⁶ The Ministerial Error 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>.

Amended Final Results

As a result of correcting the ministerial error, we determine that the countervailable subsidy rate for the producer/exporter under review to be as follows:

Company	Subsidy rate (percent <i>ad valorem</i>)
OCP S.A. ⁷	16.60

Disclosure

We intend to disclose to parties in this proceeding, under administrative

¹ See Memorandum, “Deadline for Ministerial Error Comments for the Final Results,” dated November 7, 2024.
² See *Phosphate Fertilizers from the Kingdom of Morocco: Final Results of Countervailing Duty Administrative Review*; 2022, 89 FR 88952 (November 12, 2024) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM); see also OCP’s Letter, “Ministerial Error Comments and Comments on Draft Customs Instructions,” dated November 12, 2024 (Ministerial Error Allegations).
³ See Mosaic Company’s Letter, “Rebuttal to OCP’s Ministerial Error Allegations to the Final Determination,” dated November 18, 2024.
⁴ See *Final Results* IDM.

⁵ See generally Ministerial Error Allegations.
⁶ See Memorandum, “Ministerial Error Allegation in the Final Results,” dated concurrently with this notice (Ministerial Error Memorandum).
⁷ Commerce has found the following companies to be cross-owned with OCP S.A.: Jorf Fertilizers Company I; Jorf Fertilizers Company II; Jorf Fertilizers Company III; Jorf Fertilizers Company IV; Jorf Fertilizers Company V; and OCP Nutricrops S.A.

protective order, the calculations performed for these amended final results within five days after publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries of subject merchandise in accordance with the amended final results of this review, for the above-listed company at the applicable *ad valorem* assessment rate. We intend to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the amended final results of this review in the **Federal Register**. However, OCP has filed a summons at the U.S. Court of International Trade challenging the *Final Results*. Therefore, our 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

In accordance with section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amount shown for OCP on shipments of the subject merchandise entered, or withdrawn from warehouse for consumption, on or after the date of publication of the amended final results of this administrative review. The cash deposit requirement, effective upon the publication of the amended final results of this review, shall remain in effect until further notice.

Administrative Protective Order (APO)

This notice also serves as a final reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a 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: December 17, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–30693 Filed 12–23–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–936]

Circular Welded Carbon Quality Steel Line Pipe From the People's Republic of China: Final Results of the Expedited Sunset Review of the Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on circular welded carbon quality steel line pipe (welded line pipe) from the People's Republic of China (China) would be likely to lead to continuation or recurrence of countervailable subsidies at the levels indicated in the “Final Results of the Sunset Review” section of this notice.

DATES: Applicable December 26, 2024.

FOR FURTHER INFORMATION CONTACT: T.J. Worthington, 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) 482–4567.

SUPPLEMENTARY INFORMATION:

Background

On January 23, 2009, Commerce published the *Order* on welded line pipe from China.¹ On June 9, 2016, Commerce implemented its revised countervailable subsidy rates pursuant to the findings in the section 129 proceeding of the Uruguay Round Agreements Act.² On September 3, 2024, Commerce published the notice of initiation of the third sunset review of the *Order*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).³ On September 17, 2024, Commerce received a notice of intent to participate from the American Line Pipe Producers Association Welded Line Pipe Committee⁴ (the domestic interested party), within the deadline specified in 19 CFR 351.218(d)(1)(i).⁵ The domestic interested party claimed interested party status under section 771(9)(C) of the Act and 19 CFR 351.102(b)(29)(viii) as an association whose members are domestic producers of the domestic like product.

On October 3, 2024, Commerce received an adequate substantive response from the domestic interested party within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁶ Commerce did not receive a substantive response from any government or respondent interested party to this proceeding. On October 31, 2024, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.⁷ As a result, Commerce conducted an expedited (120-day) sunset review of the *Order*, pursuant to

section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B)(2) and (C)(2).

Scope of the Order

The merchandise covered by this *Order* is welded line pipe from China. For a complete description of the scope of the *Order*, see the Issues and Decision Memorandum.⁸

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review, including the likelihood of continuation or recurrence of subsidization and the countervailable subsidy rates likely to prevail if the *Order* were to be revoked, is provided in the Issues and Decision Memorandum. A list of the topics discussed in the Issues and Decision Memorandum is attached as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), which is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Final Results of Sunset Review

Pursuant to sections 751(c) and 752(b) of the Act, we determine that revocation of the *Order* would be likely to lead to continuation or recurrence of countervailable subsidies at the following net countervailable subsidy rates:

Producers/exporters	Net countervailable subsidy rate (percent ad valorem)
Huludao Seven-Star Steel Pipe Group Co., Ltd., Huludao Steel Pipe Industrial Co., Ltd., and Huludao Bohai Oil Pipe Industrial Co., Ltd	32.65
Liaoning Northern Steel Pipe Co., Ltd	40.05
All Others	36.35

Administrative Protective Order (APO)

This notice serves as the only reminder to parties subject to an APO of

their responsibility concerning the disposition of proprietary information disclosed under APO in accordance

with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the

¹ See *Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order*, 74 FR 4136 (January 23, 2009) (*Order*).

² See *Implementation of Determinations Pursuant to Section 129 of the Uruguay Round Agreements Act*, 81 FR 37180 (June 9, 2016); see also Memorandum, “Section 129 Proceeding: United States—Countervailing Duty Measures on Certain Products from the People's Republic of China (WTO/DS 437): Final Determination for Pressure

Pipe, Line Pipe, OCTG, Wire Strand, and Solar Panels,” dated May 19, 2016.

³ See *Initiation of Five-Year (Sunset) Reviews*, 89 FR 71252 (September 3, 2024).

⁴ The members of the American Line Pipe Producers Association Welded Line Pipe Committee are American Cast Iron Pipe Company, Axis Pipe & Tube, Dura-Bond Industries, and Welspun Tubular LLC.

⁵ See Domestic Interested Party's Letter, “Notice of Intent to Participate in Sunset Review,” dated September 17, 2024.

⁶ See Domestic Interested Party's Letter, “Substantive Response to Notice of Initiation,” dated October 3, 2024.

⁷ See Commerce's Letter, “Sunset Reviews Initiated on September 3, 2024,” dated October 31, 2024.

⁸ See Memorandum, “Issues and Decision Memorandum for the Final Results of the Expedited Sunset Review of the Countervailing Duty Order on Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

proceeding. Timely 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

Commerce is issuing and publishing these final results and this notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act, and 19 CFR 351.218.

Dated: December 18, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. History of the Order
- V. Legal Framework
- VI. Discussion of the Issues
 1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
 2. Net Countervailable Subsidy Rates Likely To Prevail
 3. Nature of the Subsidies
- VII. Final Results of Sunset Review
- VIII. Recommendation

[FR Doc. 2024–30759 Filed 12–23–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–842, C–331–806, C–533–921, C–552–838]

Frozen Warmwater Shrimp From Indonesia: Antidumping Duty Order; Frozen Warmwater Shrimp From Ecuador, India, and the Socialist Republic of Vietnam: Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC), Commerce is issuing an antidumping duty (AD) order on frozen warmwater shrimp (shrimp) from Indonesia and countervailing duty (CVD) orders on shrimp from Ecuador, India, and the Socialist Republic of Vietnam (Vietnam).

DATES: Applicable December 26, 2024.

FOR FURTHER INFORMATION CONTACT: Benjamin Nathan (CVD India) at (202)

482–3834; Reginald Anadio or Zachary Shaykin (CVD Ecuador) at (202) 482–3166 or (202) 482–5377, respectively; Rachel Jennings or Miranda Bourdeau (AD Indonesia) at (202) 482–1110 or (202) 482–2021, respectively; and Adam Simons (CVD Vietnam) at (202) 482–6172; AD/CVD Operations, Offices II, IV, V, and IX, respectively, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 705(d), 735(d), and 777(i) of the Tariff Act of 1930, as amended (the Act), on October 28, 2024, Commerce published its affirmative final determination of sales at less than fair value (LTFV) of shrimp from Indonesia,¹ and its affirmative final determinations that countervailable subsidies are being provided to producers and exporters of shrimp from Ecuador, India, and Vietnam.²

On December 12, 2024, pursuant to sections 705(d) and 735(d) of the Act, the ITC determined Commerce of its final affirmative determinations that an industry in the United States is materially injured by reason of dumped imports of shrimp from Indonesia, and subsidized imports of shrimp from Ecuador, India, and Vietnam, within the meaning of sections 705(b)(1)(A)(i) and 735(b)(1)(A)(i) of the Act.³ On December 17, 2024, the ITC published its final determinations in the **Federal Register**.⁴

Scope of the Orders

The merchandise covered by these orders is frozen warmwater shrimp from Ecuador, India, Indonesia, and Vietnam. For a complete description of the scope of the orders, see the appendix to this notice.

¹ See *Frozen Warmwater Shrimp from Indonesia: Final Affirmative Determination of Sales at Less-Than-Fair Value*, 89 FR 85498 (October 28, 2024) (*Shrimp from Indonesia Final Results*).

² See *Frozen Warmwater Shrimp from Ecuador: Final Affirmative Countervailing Duty Determination*, 89 FR 85506 (October 28, 2024); see also *Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 89 FR 85502 (October 28, 2024); and *Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 89 FR 85500 (October 28, 2024).

³ See ITC's Letter, "Notification of ITC Final Determination," dated December 12, 2024 (ITC Notification Letter).

⁴ See *Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and Vietnam*, 89 FR 102163 (December 17, 2024).

AD Order

On December 12, 2024, in accordance with section 735(d) of the Act, the ITC notified Commerce of its final determinations that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of imports of shrimp from Indonesia that are sold in the United States at LTFV.⁵ Therefore, in accordance with sections 735(c)(2) and 736 of the Act, Commerce is issuing this AD order. Because the ITC determined that imports of shrimp from Indonesia are materially injuring a U.S. industry, unliquidated entries of such merchandise from Indonesia, entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duty deposits equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise on all relevant entries of shrimp from Indonesia. Antidumping duties will be assessed on unliquidated entries of shrimp entered, or withdrawn from warehouse, for consumption on or after May 30, 2024, the date of publication of the *LTFV Preliminary Determination*,⁶ but will not include entries occurring after the expiration of the provisional measures period and before publication of the ITC's final injury determination, as further described below.

Continuation of Suspension of Liquidation and Cash Deposits—AD

Except as noted in the "Provisional Measures—AD" section of this notice, Commerce intends to instruct CBP to continue to suspend liquidation on all relevant entries of shrimp from Indonesia, in accordance with section 736 of the Act. Because the estimated weighted-average dumping margin calculated for PT Bahari Makmur Sejati (BMS) in the *Final Determination* was zero,⁷ entries of subject merchandise produced and exported by BMS will not be subject to this order. Accordingly, Commerce will direct CBP not to suspend liquidation of, or to require

⁵ See ITC Notification Letter.

⁶ See *Frozen Warmwater Shrimp from Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 89 FR 46861 (May 30, 2024) (*LTFV Preliminary Determination*).

⁷ *Shrimp from Indonesia Final Results*, 89 FR at 85499.

cash deposits of estimated antidumping duties on, entries of subject merchandise produced and exported by BMS. Therefore, in accordance with section 735(a)(4) of the Act and 19 CFR 351.204(e)(1), entries of subject merchandise from this producer/exporter combination will be excluded from the order. However, entries of subject merchandise from BMS in any other producer/exporter combination, or by third parties that sourced subject merchandise from the excluded producer/exporter combination, will be subject to suspension of liquidation and cash deposits of estimated antidumping duties at the all-others rate noted below. These instructions suspending liquidations will remain in effect until further notice.

Commerce also intends to instruct CBP to require cash deposits equal to the estimated weighted-average dumping margins indicated in the tables below. Accordingly, effective on the date of publication in the **Federal Register** of the notice of the ITC's final affirmative injury determination, CBP must require, at the same time as importers would normally deposit estimated customs duties on subject merchandise, a cash deposit equal to the rates listed in the table below.

Estimated Weighted-Average Dumping Margins

The estimated weighted-average dumping margins are as follows:

Exporter/producer	Weighted-average dumping margin (percent)
PT Bahari Makmur Sejati	0.00
PT First Marine Seafoods; PT Khom Foods	3.90
All Others	3.90

Provisional Measures—AD

Section 733(d) of the Act states that suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request that Commerce extend the four-month period to no more than six months. At the request of exporters that accounted for a significant proportion of exports of shrimp from Indonesia, Commerce extended the four-month

period to no more than six months.⁸ In the underlying investigation, Commerce published the *LTFV Preliminary Determination* on May 30, 2024. Therefore, the six-month period beginning on the date of the publication of the *LTFV Preliminary Determination* ended on November 25, 2024. Pursuant to section 737(b) of the Act, the collection of cash deposits at the rates listed above will begin on the date of publication of the ITC's final injury determination. Therefore, in accordance with section 736(a)(1) of the Act and our practice, Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of shrimp from Indonesia entered, or withdrawn from warehouse, for consumption on or after November 26, 2024, the first day provisional measures were no longer in effect, until and through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation and the collection of cash deposits will resume on the date of publication of the ITC's final determination in the **Federal Register**.

CVD Orders

As stated above, based on the above-referenced affirmative final determination by the ITC that an industry in the United States is materially injured within the meaning of section 705(b)(1)(A)(i) of the Act by reason of subsidized imports of shrimp from Ecuador, India, and Vietnam,⁹ in accordance with section 705(c)(2) of the Act, Commerce is issuing these CVD orders. Moreover, because the ITC determined that imports of shrimp from Ecuador, India, and Vietnam are materially injuring a U.S. industry, unliquidated entries of subject merchandise from Ecuador, India, and Vietnam entered, or withdrawn from warehouse, for consumption, are subject to the assessment of countervailing duties.

Therefore, in accordance with section 706(a) of the Act, Commerce intends to direct CBP to assess, upon further instructions by Commerce, countervailing duties on all relevant entries of shrimp from Ecuador, India, and Vietnam, which are entered, or withdrawn from warehouse, for

consumption on or after April 1, 2024, the date of publication of the *CVD Preliminary Determinations*,¹⁰ but will not include entries occurring after the expiration of the provisional measures period and before the publication of the ITC's final injury determination under section 705(b) of the Act, as further described in the "Provisional Measures—CVD" section of this notice.

Suspension of Liquidation and Cash Deposits—CVD

In accordance with section 706 of the Act, Commerce intends to instruct CBP to reinstitute the suspension of liquidation of shrimp from Ecuador, India, and Vietnam, effective on the date of publication of the ITC's final affirmative injury determination in the **Federal Register**, and to assess, upon further instruction by Commerce, pursuant to section 706(a)(1) of the Act, countervailing duties on each entry of subject merchandise in an amount based on the net countervailable subsidy rates below. On or after the date of publication of the ITC's final injury determination in the **Federal Register**, CBP must require, at the same time as importers would normally deposit estimated customs duties on this merchandise, a cash deposit equal to the rates listed in the table below. These instructions suspending liquidation will remain in effect until further notice. The all-others rate applies to all producers or exporters not specifically listed below, as appropriate.

Estimated Countervailing Duty Subsidy Rates

The estimated countervailing duty subsidy rates are as follows:

¹⁰ See *Frozen Warmwater Shrimp from Ecuador: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With the Final Antidumping Duty Determination*, 89 FR 22379 (April 1, 2024); see also *Frozen Warmwater Shrimp from India: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 89 FR 22386 (April 1, 2024); and *Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 89 FR 22374 (April 1, 2024) (collectively, *CVD Preliminary Determinations*). We note that the preliminary determination for Ecuador was subsequently amended. See *Frozen Warmwater Shrimp from Ecuador: Amended Preliminary Determination of Countervailing Duty Investigation*, 89 FR 31722 (April 25, 2024).

⁸ See *LTFV Preliminary Determination*.

⁹ See ITC Notification Letter.

Company	Subsidy rate (percent <i>ad valorem</i>)
Ecuador	
Industrial Pesquera Santa Priscila S.A. ¹¹	3.57
Sociedad Nacional de Galápagos C.A. ¹²	4.41
All Others	3.78
India	
Devi Sea Foods Limited ¹³	5.87
Sandhya Aqua Exports Private Limited ¹⁴	5.63
All Others	5.77
Vietnam	
Soc Trang Seafood Joint Stock Company	2.84
Thong Thuan Company Limited	221.82
All Others	2.84

Provisional Measures—CVD

Section 703(d) of the Act states that the suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months. Commerce published the *CVD Preliminary Determinations* on April 1, 2024.¹⁵ As such, the four-month period beginning on the date of the publication of the *CVD Preliminary Determinations* ended on July 29, 2024.

Therefore, in accordance with section 703(d) of the Act, we instructed CBP to terminate the suspension of liquidation and to liquidate, without regard to countervailing duties, unliquidated entries of shrimp from Ecuador, India, and Vietnam or withdrawn from warehouse, for consumption, on or after July 30, 2024, the date on which the provisional measures expired, until and through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation and the collection of cash deposits will resume on the date of publication of the ITC's final determination in the **Federal Register**.

¹¹ Commerce has found the following companies to be cross-owned with Industrial Pesquera Santa Priscila S.A.: Manesil S.A., Produmar S.A., Egidiosa S.A., and Tropical Packing Ecuador S.A.

¹² Commerce has found the following companies to be cross-owned with Sociedad Nacional de Galápagos C.A.: Naturisa S.A., Holding Sola & Sola Solacciones S.A., and Empacadora Champmar S.A.

¹³ Commerce has found the following companies to be cross-owned with Devi Sea Foods Limited: Devi Sea Foods Inc., Devee Horizon LLP, Devee Power Corporation Limited, and Devee Superior Feeds Limited.

¹⁴ Commerce has found the following company to be cross-owned with Sandhya Aqua Exports Private Limited: Neeli Sea Foods Private Limited, Vijay Aqua Processors Private Limited, and Neeli Aqua Farms.

¹⁵ See *CVD Preliminary Determinations*.

Establishment of the Annual Inquiry Service Lists

On September 20, 2021, Commerce published the *Final Rule* in the **Federal Register**.¹⁶ On September 27, 2021, Commerce also published the *Procedural Guidance* in the **Federal Register**.¹⁷ The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.

In accordance with the *Procedural Guidance*, for orders published in the **Federal Register** after November 4, 2021, Commerce will create an annual inquiry service list segment in Commerce's online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), available at <https://access.trade.gov>, within five business days of publication of the notice of the order. Each annual inquiry service list will be saved in ACCESS, under each case number, and under a specific segment type called "AISL-Annual Inquiry Service List."¹⁸

¹⁶ See *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 FR 52300 (September 20, 2021) (*Final Rule*).

¹⁷ See *Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*, 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

¹⁸ This segment will be combined with the ACCESS Segment Specific Information (SSI) field which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as

Interested parties who wish to be added to the annual inquiry service list for an order must submit an entry of appearance to the annual inquiry service list segment for the order in ACCESS within 30 days after the date of publication of the order. For ease of administration, Commerce requests that law firms with more than one attorney representing interested parties in an order designate a lead attorney to be included on the annual inquiry service list. Commerce will finalize the annual inquiry service list within five business days thereafter. As mentioned in the *Procedural Guidance*,¹⁹ the new annual inquiry service list will be in place until the following year, when the *Opportunity Notice* for the anniversary month of the order is published.

Commerce may update an annual inquiry service list at any time as needed based on interested parties' amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website at <https://access.trade.gov>.

Special Instructions for Petitioner and Foreign Governments

In the *Final Rule*, Commerce stated that, "after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be

the anniversary month. For example, for an order under case number A-000-000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as "AISL-January Anniversary." Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

¹⁹ See *Procedural Guidance*, 86 FR at 53206.

placed on the annual inquiry service list in the years that follow.”²⁰

Accordingly, as stated above, the petitioner and the Governments of Ecuador, India, Indonesia, and Vietnam should submit their initial entries of appearance after publication of this notice in order to appear in the first annual inquiry service lists for these orders. Pursuant to 19 CFR 351.225(n)(3), the petitioner and the Governments of Ecuador, India, Indonesia, and Vietnam will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioner and the Governments of Ecuador, India, Indonesia, and Vietnam are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

Notification to Interested Parties

This notice constitutes the AD order with respect to shrimp from Indonesia and the CVD orders with respect to shrimp from Ecuador, India, and Vietnam, pursuant to sections 706(a) and 736(a) of the Act. Interested parties can find a list of AD and CVD orders currently in effect at <https://www.trade.gov/datavisualization/adcvd-proceedings>.

These orders are issued and published in accordance with sections 706(a) and 736(a) of the Act and 19 CFR 351.211(b).

Dated: December 18, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Orders

The scope of these orders includes certain frozen warmwater shrimp and prawns whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off, deveined or not deveined, cooked or raw, or otherwise processed in frozen form. “Tails” in this context means the tail fan, which includes the telson and the uropods.

The frozen warmwater shrimp and prawn products included in the scope, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some

examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope. In addition, food preparations, which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope.

Excluded from the scope are: (1) breaded shrimp and prawns (HTSUS subheading 1605.21.1020); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.36.0020 and 0306.36.0040); (4) shrimp and prawns in prepared meals (HTSUS subheadings 1605.21.0500 and 1605.29.0500); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.29.1040); and (7) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) that is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and ten percent of the product’s total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (IQF) freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by the scope are currently classified under the following HTSUS subheadings: 0306.17.0004, 0306.17.0005, 0306.17.0007, 0306.17.0008, 0306.17.0010, 0306.17.0011, 0306.17.0013, 0306.17.0014, 0306.17.0016, 0306.17.0017, 0306.17.0019, 0306.17.0020, 0306.17.0022, 0306.17.0023, 0306.17.0025, 0306.17.0026, 0306.17.0028, 0306.17.0029, 0306.17.0041, 0306.17.0042, 1605.21.1030, and 1605.29.1010. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope is dispositive.

[FR Doc. 2024–30694 Filed 12–23–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No. 241219–0332]

Request for Public Comment on MBDA Information Clearinghouse

AGENCY: Minority Business Development Agency, Department of Commerce.

ACTION: Request for comments.

SUMMARY: The Minority Business Development Agency (MBDA) is accepting written comments from the public regarding the MBDA Information Clearinghouse, through February 28, 2025. The comments will inform MBDA of the types of data and other information sought, best practices or recommendations for studies, analysis and data about Minority Business Enterprises (MBEs) to be published, and ways to improve the user experience.

ADDRESSES: Please submit all comments in response to the questions presented in this notice at www.regulations.gov. To access the docket where comments may be submitted, please enter “MBDA–2024–0004” in the search bar. Written comments must be submitted no later than 11:59 p.m. EST, February 28, 2025. Comments received after the deadline will not be considered. For comments to be considered, they must include the following identification of the commenter: name; title (if applicable); organization or business (if applicable); and city and state.

FOR FURTHER INFORMATION CONTACT: Mr. Efrain Gonzalez, Jr., Associate Director, Office of Data, Research and Evaluation, Minority Business Development Agency, at (202) 482–1079; or by email at egonzalez@mbda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Minority Business Development Act of 2021, 15 U.S.C. 9513, mandates MBDA to develop and implement an Information Clearinghouse that will collect and disseminate demographic, economic, financial, managerial, and technical data relating to MBEs. In conjunction with this Request for Public Comment, MBDA will launch the Information Clearinghouse and allow the public an opportunity to review, and comment based on the initial deployment. The Information Clearinghouse is being released as a beta version hosting data, research, and reports about MBEs, with on-going improvements to its technical functionality and content planned

²⁰ See *Final Rule*, 86 FR at 52335.

during the year. Public feedback will help MBDA identify user interests and priorities related to data, information, and system usability.

II. Information Clearinghouse

The purpose of this request for comment is to inform MBDA on user preferences related to the content type, maintenance, collection and dissemination to relevant parties (including business owners and researchers).

III. Requests for Public Comment

Members of the general public are invited to submit responses to the following:

(1) The types of data and information MBDA should have available in the Information Clearinghouse (www.mbd.gov/research).

(2) Provide examples of how the data and information could be used.

(3) Provide preferences for how data and information is made available, including but not limited to preferences on file formats, 3rd party access & software integration, visualization of data sets, and language.

(4) Provide best practices and/or recommendations, which may include examples, of evidentiary-based studies, analysis and data related to Minority Business Enterprises (MBEs) for publication through the Information Clearinghouse.

(5) Provide feedback on overall use of the system including challenges in

finding specific data and/or information.

All comments must be submitted in written form at www.regulations.gov. To access the docket where comments may be submitted, please enter “MBDA–2024–0004” in the search bar.

Comments must be received no later than 11:59 p.m., EST, Friday, February 28, 2025.

Dated: December 19, 2024.

Eric Morrisette,

Deputy Under Secretary for Minority Business Development, U.S. Department of Commerce.

[FR Doc. 2024–30765 Filed 12–23–24; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE537]

Fisheries of the Exclusive Economic Zone Off Alaska; Alaska Pollock Workshop

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

ACTION: Notice of public meeting.

SUMMARY: NMFS will convene a workshop on walleye pollock in Alaska for the purposes of synthesizing ongoing research, building and strengthening collaborations, and highlighting topics which need more attention. The focus

will be on biological and ecological scientific research.

DATES: The workshop is open to the public from January 14, 2025–Jan 16, 2025 from 9 a.m. to 5 p.m. Pacific standard time. Please see

SUPPLEMENTARY INFORMATION for the daily meeting agenda.

ADDRESSES: The meeting will be a hybrid format with the in-person component in Room 2076, Building 4, Alaska Fisheries Science Center, Western Regional Center, Seattle, WA. The virtual component will be held on Google Meet at: <https://meet.google.com/www-yxuo-usf>.

Or dial: (US) +1 636–649–4229 PIN: 118 376 198; **FOR FURTHER INFORMATION CONTACT:** Cole Monnahan, 206–526–4224; cole.monnahan@noaa.gov.

SUPPLEMENTARY INFORMATION: For further information, please visit https://docs.google.com/document/d/1wm5by946rWdgrcdz5JgywTvC_KueUQVFCxU9AGUdDqE.

Daily Meeting Agenda

The agenda is subject to change; all times are in Pacific Standard Time (PST), and are approximate and may be changed at the discretion of the coordinators. Presentations are grouped by themes, and can focus on different large marine ecosystems (LME) in Alaska, including the Gulf of Alaska (GOA), Bering Sea and Aleutian Islands (BSAI), the Northern Bering Sea (NBS), and the Eastern Bering Sea (EBS).

DAY 1—TUESDAY JANUARY 14TH

Start PST	Length (mins)	Theme	Presenter	Topic	LME
9 a.m.	15	.....	Monnahan	Introductions.	
9:15 a.m.	15	.....	Monnahan	Work shop goals and products: conceptual models of key processes.	
9:30 a.m.	15	Early life history	L Rogers	Changes in the timing of spawning and early life stage development.	BSAI/GOA.
9:45 a.m.	15	Early life history	Page	Fall Condition of Young-Of-The-Year Walleye Pollock in the Southeastern and Northern Bering Sea.	EBS/NBS.
10 a.m.	15	Early life history	Stabeno	EcoFOCI	GOA.
10:15 a.m. ...	15	Early life history	Slesinger	Population-specific and temperature effects on hatch timing and success.	GOA.
10:30 a.m. ...	15	.....	.....	Break.	
10:45 a.m. ...	15	Early life history	Laurel	A history of Gulf of Alaska age-0 pollock in the nearshore.	GOA.
11 a.m.	15	Early life history	Miller	GOA-wide juvenile gadid survey	GOA.
11:15 a.m. ...	15	Early life history	Champagnat	DSEM models to explain variation in recruitment in the GOA.	GOA.
11:30 a.m. ...	30	Early life history .....	.....	General Discussion	All.
12 p.m.	60	Early life history .....	.....	Breakout discussion: building conceptual models of recruitment.	Split GOA/BSAI.
1 p.m.	60	.....	.....	Lunch break.	
2 p.m.	15	Biology & feeding ecology.	Goldstein	Age, growth, life history, FT–NIRS for age, condition, and reproduction.	BSAI/GOA.
2:15 p.m.	15	Biology & feeding ecology.	Lamb	Results of multi-year juvenile pollock diet study (WGOA).	GOA.

DAY 1—TUESDAY JANUARY 14TH—Continued

Start PST	Length (mins)	Theme	Presenter	Topic	LME
2:30 p.m	15	Biology & feeding ecology.	Reum	Decadal patterns in walleye pollock diets in Alaskan marine ecosystems.	BSAI/GOA.
2:45 p.m	15	Biology & feeding ecology.	Indivero	Spatio-temporal model of weight-at-age; forecasting distribution shifts with climate change and spatial overlap with choke species.	EBS.
3 p.m	15	Biology & feeding ecology.	Miller	Patterns in movement and trophic behavior of adult walleye pollock in the Bering Sea—results from stable isotope analysis of eye lenses.	EBS.
3:15 p.m	15	Biology & feeding ecology.	Abookire	Effects of ocean warming on weight at age, recruitment, and age structure diversity for GOA walleye pollock.	GOA.
3:30 p.m	15	Biology & feeding ecology.	Bigman	Changes in size-at-age of pollock with temperature and oxygen.	EBS.
3:45 p.m	15	.....	.....	Break.	.....
4 p.m	30	Biology & feeding ecology.	.....	General Discussion	All.
4:30 p.m	60	Biology & feeding ecology.	.....	Breakout discussion: building conceptual models of growth.	Split GOA/BSAI.
5:30 p.m	30	.....	.....	Conclude for day.	.....

DAY 2—WEDNESDAY, JANUARY 15TH

Start time PST	Length (mins)	Theme	Presenter	Topic	LME
9 a.m	15	.....	McGowan	Recap and updates on conceptual models.	.....
9:15 a.m	15	Population monitoring	Vechter	Past, current, and potential future data collections from the commercial pollock fishery.	BSAI/GOA.
9:30 a.m	15	Population monitoring	Yochum	Fishery-dependent data collection	BSAI/GOA.
9:45 a.m	15	Population monitoring	Schaal	Genomic analysis of GOA and Bering Sea Pollock.	BSAI/GOA.
10 a.m	15	Population monitoring	Wassermann	Pollock population monitoring issues	BSAI/GOA.
10:15 a.m	15	Population monitoring	Neidecher	Maturity, hisology, fecundity data used to assess spawning strategy and changes in spawning patterns.	BSAI/GOA.
10:30 a.m ...	15	.....	.....	Break.	.....
10:45 a.m ...	15	Population monitoring	Ressler	Acoustic-trawl surveys of pollock in Alaska—what they provide, outstanding questions.	BSAI/GOA.
11 a.m	15	Population monitoring	Levine	Use of moored echosounders to better understand pollock behavior.	BSAI/GOA.
11:15 a.m ...	60	Population monitoring	.....	General Discussion	All.
12:15 p.m ...	60	.....	.....	Lunch break.	.....
1:15 p.m	15	Predation/food webs ...	Dorn	GOA-CLIM	GOA.
1:30 p.m	15	Predation/food webs ...	Holsman	Climate integrated stock assessment advice ...	BSAI/GOA.
1:45 p.m	15	Predation/food webs ...	Barnes	Predators as samplers: using food habits data to inform climate- and community-driven shifts in habitat quality for EFH species.	GOA.
2 p.m	15	Predation/food webs ...	Gerson	Using predators as samplers to quantify foraging landscapes throughout the Gulf of Alaska.	GOA.
2:15 p.m	15	Predation/food webs ...	Rovellini	Implications of arrowtooth flounder predation on pollock for GOA Optimum Yield.	GOA.
2:30 p.m	15	.....	.....	Break.	.....
2:45 p.m	15	Predation/food webs ...	McHuron	Marine mammal consumption of pollock	BSAI/GOA.
3 p.m	60	Predation/food webs ...	.....	General Discussion	All.
4 p.m	45	.....	.....	Breakout discussions for conceptual models.	.....
4:45 p.m .....	.....	.....	.....	Conclude for day.	.....

DAY 3—THURSDAY JANUARY 16TH

Start time PST	Length (mins)	Theme	Presenter	Topic	LME
9 a.m	15	.....	Ferriss	Recap from day 2	GOA.

DAY 3—THURSDAY JANUARY 16TH—Continued

Start time PST	Length (mins)	Theme	Presenter	Topic	LME
9:15 a.m.	15	Climate/ecosystem	Miller	Establishing new trophic indices of age-0 pollock for the Bering Sea: a stable isotopic retrospective analysis of trophic response to changing ocean conditions.	EBS.
9:30 a.m.	15	Climate/ecosystem	Wassermann	EBS pollock model-based indices	EBS.
9:45 a.m.	15	Climate/ecosystem	Siddon	EBS ESR and EBS Pollock risk table	EBS.
10 a.m.	15	Climate/ecosystem	Ferriss	GOA Risk table ecosystem information: data included and gaps.	GOA.
10:15 a.m. ...	15	Climate/ecosystem	Shotwell	GOA pollock ESP indicators and applications to ABC and TAC decisions.	GOA.
10:30 a.m. ...	15	Climate/ecosystem	Whitney	Can ecosystem and or socio-economic functions play a role in specifying management objectives?.	BSAI.
10:45 a.m. ...	15	.....	.....	Break.	
11 a.m.	15	Climate/ecosystem	M. Rogers	NBS Regional Work Plan—Pollock isoscapes in warm and cold conditions.	NBS.
11:15 a.m. ...	15	Climate/ecosystem	Thorson	State-space models to integrate climate and forage drivers into research and operations.	EBS.
11:30 a.m. ...	15	Climate/ecosystem	Adams	Single and multi-species management strategies under climate change.	GOA.
11:45 a.m. ...	60	Climate/ecosystem .....	.....	General Discussion	All.
12:45 p.m. ...	60	.....	.....	Lunch break.	
1:45 p.m.	30	Recruitment model	TBD	Present hypothesized set of conceptual models for recruitment.	GOA.
2:15 p.m.	30	Growth model	TBD	Present hypothesized set of conceptual models for growth.	GOA.
2:45 p.m.	15	.....	.....	Break.	
3 p.m.	30	Recruitment model	TBD	Present hypothesized set of conceptual models for recruitment.	BSAI.
3:30 p.m.	30	Growth model	TBD	Present hypothesized set of conceptual models for growth.	BSAI.
4 p.m.	60	Report writing.	.....		
5 p.m. ....	.....	.....	.....	Conclude for day.	

The meeting is open to the public; however, during the ‘Report Writing’ session on Thursday, January 16th, the public should not engage in discussion.

Special Accommodations

This meeting is physically accessible to people with disabilities. Special requests should be directed to Cole Monnahan, via email (see **FOR FURTHER INFORMATION CONTACT**).

Dated: December 19, 2024.

Kelly Denit,

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

[FR Doc. 2024–30733 Filed 12–23–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE547]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a half-day virtual meeting of its Law Enforcement Technical Committee (LETC).

DATES: The meeting will convene on Thursday, January 16, 2025, beginning at 9 a.m. and ending at 1 p.m., EST.

ADDRESSES: The meeting will be held virtually, via webinar only. Please visit the Gulf Council website (www.gulfcouncil.org) for agenda and meeting materials information.

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Max Birdsong, Social Scientist, Gulf of Mexico Fishery Management Council; max.birdsong@gulfcouncil.org, telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The following items of discussion are on the agenda, though agenda items may be addressed out of order and any changes will be noted on the Council’s website when possible.

Thursday, January 16, 2025; 9 a.m.–1 p.m., EST

The LETC will begin with introductions and adoption of agenda, approval of minutes from the October 2023 LETC meeting from and election of Committee Chair and Vice Chair.

The Gulf Council LETC will hold a review and discuss the Federal Charter Vessel ID Marking Requirements and 20-Fathom Recreational Seasonal Closure for *Shallow-water Grouper*. The Committee will also discuss the Nomination for Officer/Team of the Year, along with any Other Business items.

—Meeting Adjourns

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on www.gulfcouncil.org.

The Law Enforcement Technical Committee consists of principal law enforcement officers in each of the Gulf States, as well as the NOAA Office of Law Enforcement, U.S. Fish and Wildlife Service, the U.S. Coast Guard, and the NOAA Office of General Counsel for Law Enforcement.

Although other non-emergency issues not on the agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

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

Dated: December 18, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024-30627 Filed 12-23-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE533]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Advisory Panel via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, January 14, 2025 at 9 a.m.

ADDRESSES: Webinar registration URL information: <https://nefmc-org.zoom.us/j/9kduigrzspGd>
[BXNMk5OW3Do9LXrpcMR7nR](https://nefmc-org.zoom.us/j/9kduigrzspGd).

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Cate O'Keefe, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Scallop Advisory Panel will meet to Review 2025 Scallop Work Priorities, including a work plan for this calendar year. The discussion will focus on the development of a Long-Term Strategic Plan. Other business will be discussed, if necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cate O'Keefe, Executive Director, at (978) 465-0492, at least 5 days prior to the meeting date.

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

Dated: December 18, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024-30624 Filed 12-23-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE168]

Final 2023 Marine Mammal Stock Assessment Reports

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

ACTION: Notice; response to comments.

SUMMARY: As required by the Marine Mammal Protection Act (MMPA), NMFS has considered public comments for revisions of the 2023 marine mammal stock assessment reports (SARs). This notice announces the availability of 66 final 2023 SARs that were updated and finalized.

ADDRESSES: The 2023 final SARs are available in electronic form via the internet at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>

FOR FURTHER INFORMATION CONTACT:

Zachary Schakner, Office of Science and Technology, 301-427-8106, Zachary.Schakner@noaa.gov; Nancy Young, 206-526-4297, Nancy.Young@noaa.gov, regarding Alaska regional stock assessments; Jessica McCordic, 508-495-2396, Jessica.McCordic@noaa.gov, regarding Atlantic, Gulf of Mexico, and Caribbean regional stock assessments; or Jim Carretta, 858-546-7171, Jim.Carretta@noaa.gov, regarding Pacific regional stock assessments.

SUPPLEMENTARY INFORMATION:

Background

Section 117 of the MMPA (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (USFWS) to prepare stock assessments for each stock of marine mammals occurring in waters under the jurisdiction of the United States, including the U.S. Exclusive Economic Zone (EEZ). These SARs must contain information regarding the distribution and abundance of the stock, population growth rates and trends, estimates of annual human-caused mortality and serious injury (M/SI) from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock. Initial SARs were completed in 1995.

The MMPA requires NMFS and USFWS to review the SARs at least annually for strategic stocks and stocks for which significant new information is available and at least once every three years for non-strategic stocks. The term "strategic stock" means a marine mammal stock: (A) for which the level of direct human-caused mortality exceeds the potential biological removal level or PBR (defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population); (B) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act (ESA) within the foreseeable future; or (C) which is listed as a threatened species or endangered species under the ESA or is designated as depleted under the MMPA. NMFS and USFWS are required to revise a SAR if they determine the review indicates that the status of the

stock has changed or can be more accurately determined.

In order to ensure that marine mammal SARs constitute the best scientific information available, the updated SARs under NMFS' jurisdiction are peer-reviewed within NMFS Science Centers and by members of three regional independent scientific review groups established under the MMPA to independently advise NMFS and the USFWS on marine mammals. As a result of the time involved in the assessment of new scientific information, revision, and peer-review of the SARs, the period covered by the 2023 final SARs is generally 2017 through 2021.

NMFS reviewed the status of all marine mammal strategic stocks and considered whether significant new information was available for all other stocks under NMFS' jurisdiction. As a result of this review, NMFS revised or developed new reports for 66 stocks in the Alaska, Atlantic, and Pacific regions to incorporate new information. The 2023 revisions to the SARs consist primarily of updated or revised human-caused M/SI estimates and updated abundance estimates. This publication also finalizes (1) a new SAR for a newly described species, Sato's beaked whale (2) revisions to the stock structure of West Coast harbor porpoise that splits the Northern California–Southern Oregon stock into two stocks (the Northern California–Southern Oregon stock and the Central Oregon stock) and (3) name changes for all stocks with '4-Islands' in the name to 'Maui Nui' to align with the original Hawaiian names of various islands and places where the stocks reside.

The 2023 revisions to the abundance and trend sections of the main Hawaiian Islands insular false killer whale section of the false killer whale SAR are not being finalized at this time because of a delay in the publication of updated abundance estimates. The mortality and serious injury information has been updated together with the other false killer whale stocks represented in this SAR. The abundance and trend sections for main Hawaiian Islands insular false killer whales will be revised in a subsequent SAR cycle. The draft 2023 SAR for the Washington Inland Waters harbor seal stocks is not being finalized at this time given that the draft Pearson *et al.* estimates of abundance and trends remain unpublished. This SAR will be revised in a subsequent cycle when the abundance estimates for these stocks are published.

NMFS received comments on the draft 2023 SARs from the Marine Mammal Commission (Commission);

the Department of Fisheries and Oceans Canada (DFO); two fishing industry associations (Hawaii Longline Association (HLA) and Maine Lobstermen's Association (MLA)); an environmental non-governmental organization (Center for Biological Diversity); two Alaska Natives Organizations (Chugach Regional Resources Commission and the Aleut Community of St. Paul Island); and the Western Pacific Regional Fishery Management Council (Council). Our responses to substantive comments are below. We have not responded to comments that failed to raise a significant point for us to consider (*e.g.*, comments that are out of scope of the draft SARs). We appreciate the Commission's program-level comments and will take them into consideration, as appropriate, in the future.

In response to a comment from MLA that noted NMFS relied on an incorrect population size estimate for the NARW SAR, we have further revised the NARW SAR to include the latest and best available estimate on NARW abundance, which also now incorporates an improvement to the underlying model to allow for the potential of recruitment based on observed calves (Linden 2024a,b). However, we note that the issue of having multiple abundance estimates for the NARW population using the same general model is not new. It is an outcome of the timing of the SAR cycle and when the data are available to perform an updated model run.

Since 2017, NMFS has produced annual NARW population size estimates in collaboration with the New England Aquarium, which are released at the North Atlantic Right Whale Consortium's annual meeting, typically in October each year. In 2023, NMFS began publishing these estimates in stand-alone peer-reviewed Technical Memorandum to provide full and transparent documentation of the estimation process and results (*e.g.*, Linden 2023, Linden 2024b). However, the timing of the release of these estimates has not allowed for their straightforward incorporation into the contemporaneous final NARW SAR. This is, in part, because NMFS' marine mammal SARs are typically reviewed by the SRGs in early spring, subsequently made available for public comment, and then finalized with a notice in the **Federal Register**. Abundance estimates produced in October are, therefore, not typically available for inclusion in the latest SAR before SRG review and public comment. Nevertheless, NMFS agrees with MLA that the NARW abundance estimates produced each

October should generally be considered the best available scientific information on the population size of NARWs for that year, as long as all necessary review requirements, including peer review, have been satisfied. Furthermore, NMFS recognizes that having multiple abundance estimates for the NARW population publicly available in various stages of the SAR process, including multiple estimates for any given single year, creates confusion and ambiguity as to what is the best available and most recent estimate of the population size.

To address this timing issue for the final 2023 SAR and minimize similar timing issues going forward, NMFS is modifying certain procedural steps in developing the NARW SAR. Specifically, the final 2023 NARW SAR has been updated to include the latest abundance estimate published in Linden (2024b) in October 2024, along with the most recent human-caused mortality and serious injury data based on Henry *et al.* 2024. In future SAR cycles, NMFS anticipates it will proceed similarly to include the most recent data available in the most recent NARW SAR when finalized.

A key aspect of the NARW stock assessment process that allows for NMFS to incorporate the best available science into the final SAR is that unless the model used to estimate population abundance is significantly modified, additional runs of the model to produce newer estimates only necessitate a Level 1 review per NMFS' *Guidelines for Preparing Stock Assessment Reports Pursuant to the Marine Mammal Protection Act* (NMFS 2023, hereafter the GAMMS). Per the GAMMS section 3.6 Ensuring Appropriate Peer Review of New Information peer review, Level 1, "For routine data updates and analyses using methods unchanged from previously peer-reviewed and published analyses for the affected stock, there is no need for additional peer review before including such information in draft SARs for review by the SRG and co-management partners (when applicable)." Under Level 1, updated annual abundance estimates and data on human-caused M/SI are explicitly provided as examples of new information that meets the criteria for Level 1 peer review, provided they "employ[s] methods that are not substantively changed from previously peer-reviewed and published analyses." In cases where a model used for a marine mammal stock assessment is substantively changed, the GAMMS direct NMFS to follow Level 2 peer-review, which states that "NMFS should consult with the SRG and co-management partners (when applicable)

about further peer review, including that of the SRG, before such information is included in the draft SAR.”

For the 2023 NARW SAR, the population abundance model was indeed substantively modified to improve the estimates by allowing the model to accommodate for potential recruitment into the population based on observed calves (Linden 2024a). Following this, the improved model was then used to produce an updated annual abundance estimate of the population (Linden 2024b). In accordance with the GAMMS Level 2 peer review guidance, NMFS requested a review of the model improvements (Linden 2024a) by the Atlantic SRG in October 2024 and received positive feedback, noting that the improved model provides the best available estimate of NARW abundance. Following this, NMFS also sought a review of its application of the improved model to produce an updated NARW abundance estimate from the Atlantic SRG. While the Atlantic SRG chair indicated SRG review was unnecessary given that the new information met the GAMMS Level 1 peer review guidance, the chair nonetheless provided a positive review of the new abundance estimate (Linden 2024b). For the updated information on human-caused M/SI that became available after publication of the draft 2023 NARW SAR (Henry *et al.* 2024), NMFS did not seek additional peer review given that the new information meets the GAMMS Level 1 peer review guidance. Additionally, NMFS had already provided the updated information to the Atlantic SRG for review at their annual meeting in February 2024.

In summary, given MLA’s comment and the best scientific information that has become available and peer reviewed since publication of the draft 2023 NARW SAR, the final 2023 NARW SAR has been updated to include the most recent and best available scientific information on NARW population abundance and human-caused mortality and serious injury of the stock.

Comments on National Issues

Comment 1: The Commission recommends that NMFS establish a consistent approach for describing M/SI within the text of the SARs, adhering to the current Guidelines for Preparing Stock Assessment Reports Pursuant to the Marine Mammal Protection Act (NMFS 2023), and reporting total human-caused and fisheries-related M/SI in the summary tables by region.

Response: We strive for consistency in all information in the summary tables. We continue to implement the revised

GAMMS as we determine revisions are warranted on a stock-by-stock basis with the goal of improving consistency over time.

Comments on Alaska Issues

Comment 2: The Commission recommends that NMFS’ annual reports of human-caused M/SI of marine mammals in Alaska be made available at the time of the public comment period to enable informed review, rather than citing an in-preparation report (*e.g.*, Freed *et al.* (in prep.) is cited in the draft 2023 Alaska SARs). The Commission suggests that if the report has not yet been published by the time the draft SARs are released, the information should be made available in another way, such as a preliminary or abbreviated report.

Response: We recognize that it may be helpful to SAR reviewers to access the supporting M/SI report while reviewing the draft SARs. The timelines for injury and mortality data acquisition and finalization (sometimes involving genetic analysis for species identification), injury severity determination and review, and report writing, review, and publication mean that a final report may not be available before draft SARs are released for public comment. Our current practice is to make the newest year of preliminary data available to the Alaska Scientific Review Group (SRG) and Marine Mammal Commission ahead of the annual Alaska SRG meeting. If future reports are not published before publication of the draft SARs, we will aim to make the 5-year preliminary dataset corresponding with the draft SARs and/or a draft report available to the public upon request.

Comment 3: The Chugach Regional Resources Commission (CRRC) provided information on research by its Alutiiq Pride Marine Institute and capabilities of its marine mammal program. The CRRC provided two reports that are not currently cited in the draft 2023 SARs: a report compiling marine mammal harvest data from 1984–2014 in the Chugach region (Keating *et al.* 2023), and a report summarizing the status and data available for Steller sea lions, harbor seals, harbor porpoise and Dall’s porpoise in the CRRC region (Rehberg 2023).

Response: We appreciate the proactive engagement by CRRC and the information provided in the two reports. We reviewed the reports specifically for information about Steller sea lions, the only species covered in the reports for which the SAR was revised in 2023, and determined the reports do not provide additional information that was not

already presented in the SAR. We encourage CRRC to share information on any future surveys and harvest data that can be reviewed during future review and revisions of the SARs.

Comment 4: The Aleut Community of St. Paul Island commented that the Eastern Pacific northern fur seal SAR was not revised in 2023 and an update is needed because newly available scientific research showing that nutritional limitations are one likely cause of the continued population decline would allow NMFS to more accurately determine the status of the stock. Specifically, they cited (1) McHuron *et al.* (2019) for finding evidence that food limitation could be contributing to reduced reproductive success and that long-term prey limitations could be causing reduced pup production; (2) McHuron *et al.* (2020) for concluding that increasing the prey available in important locations was the most feasible way to “reduce maternal foraging effort and consequently increase pup growth rates;” and (3) Divine *et al.* (2022) for reinforcing the conclusions of the two McHuron *et al.* papers by Indigenous knowledge holders.

The Aleut Community of St. Paul Island also commented that the updated SAR must include an estimate of mortality due to prey competition from commercial fishing, claiming that such mortality is human caused and is incidental to human activities. They cited Short *et al.* (2021) as providing estimates of the mortality of first-year pups due to prey competition.

Response: NMFS reviewed the strategic Eastern Pacific northern fur seal SAR at the beginning of the 2023 SAR cycle and determined that the new scientific information available, including published literature and updated M/SI estimates, did not indicate that the stock’s strategic status under the MMPA had changed or that NMFS could more accurately determine the stock’s status (*see* 16 U.S.C. 1386(c)(2)). As part of the annual SAR review for strategic stocks, NMFS reviewed the Eastern Pacific northern fur seal SAR in 2024 and determined, based on the best available scientific information, that a revision is warranted. We will consider the scientific information provided by the commenter as we develop the 2024 SAR.

Comments on Atlantic Issues

Comment 5: The Department of Fisheries and Oceans Canada disagrees with the country of origin assignments for observed human-caused mortality and serious injury in the North Atlantic

right whale (NARW) SAR for NARWs #3893, #3920, #4094, and #3125.

Response: In regards to NARW #3893, #3920, #4094, and #3125, we refer DFO to our response to their comment on this issue in the **Federal Register** notice for the final 2022 SARs (88 FR 54592, 54593 (Aug. 11, 2023) (response to comment #5)). We also note that the serious injury of NARW #4094 in 2017 is no longer included in the 2023 NARW SAR given that it was updated to include the available M/SI data from the most recent 5-year time (2018–2022).

Comment 6: MLA states the NARW SAR must disclose the limits of the Pace model, explain how those limitations have been addressed, and clarify how new information is incorporated into the model. MLA identified the following limitations: the model remains sensitive to new data and has highly variable outputs, especially at the end of the time series when it is not known if an unseen whale has died or simply not been detected, does not account for natural mortality and predation and assumes all estimated mortality is human-caused, assumes an equal sex ratio and probability of mortality, and the model's initial estimated population decline from 2011 to 2015 occurred during a time when NARW geographic distribution shifted to areas lacking survey effort and recapture rates declined significantly.

Response: Regarding model sensitivity to new data, natural mortality and assumed human-caused mortality, and limitations of the model due to geographic distribution shifts, MLA provided substantively identical comments on the 2022 NARW SAR. MLA has not presented any new information that was not considered and addressed in our response to their comments on these issues for the 2022 NARW SAR. Therefore, we refer to our responses on the 2022 NARW SAR (88 FR 54592, 54594 (response to comment #6)).

Regarding the model assuming an equal sex ratio and probability of mortality, in response to MLA's comment on this issue for the 2022 SARs, we revised the NARW SAR to clarify that "[t]he model does not assume an equal sex ratio and allows survival and capture rates to differ between the sexes." However, MLA comments that this issue remains and cites Pace (2021), which states, "We estimated the relative effective detection effort as the mean adult female capture probability for the era." To clarify, the MLA incorrectly attributes a quote from Pace *et al.* (2021) to Pace (2021). Pace *et al.* (2021) was a specific analysis for

exploring hypotheses related to undetected (cryptic) mortality. The population estimate in the 2023 NARW SAR, using the methods of Pace *et al.* (2017) and further refined in Pace (2021), specified separate capture and survival probabilities for males and females. In addition, the population model has now been further refined and improved to accommodate the potential for recruitment into the population based on observed calves (Linden 2024a,b), which underwent additional peer review by the Atlantic SRG and was determined to be the best available science on NARW abundance.

Comment 7: MLA claims the draft NARW SAR does not include the best scientific information available on the population size because the draft SAR states that the NARW population size (as of 2021) is 340 whales, and NMFS published a technical memorandum in October 2023 reporting that the NARW population size was 364 whales in 2021 and 356 whales in 2022. MLA claims this has major consequences for other key metrics in the SAR.

Response: In response to MLA's comment on this issue, we have updated the final 2023 NARW SAR to include the most recent and best available scientific information on NARW population abundance and human-caused mortality and serious injury of the stock (see Background section) that was just recently released in October. In addition, we updated the M/SI data in the NARW SAR to include data from the most recent 5-year time period (2018–2022) for which they are available.

However, it is important to note that for NARWs, small changes in population size have minimal effect on their PBR level and, thus, management targets. The PBR level for NARWs has been 0.7 since the final 2021 NARW SAR was published and less than 1 since 1995 when the first NARW SAR was published following the 1994 amendments to the MMPA. PBR in the final 2023 SAR for NARWs is 0.73. While we have revised the SAR to include the most recent available estimate on the population's size, it does not significantly impact other metrics in the SAR. Until such time that the minimum population size is greater than 500 NARWs, the PBR level benchmark for the stock will remain below 1 individual whale. Moreover, regardless of the stock's PBR level, NARWs will remain a strategic and depleted stock under the MMPA as long as the species is listed under the ESA.

Comment 8: MLA states that NMFS' determination that 87 percent of undetected, assumed carcasses

represent whales killed by fishing entanglements is unsupported and arbitrary because the draft 2023 SAR states that entanglement is more likely to be detected than vessel strikes and which raises concern with NMFS' method of apportioning unknown sources of human-caused mortality. MLA also comments that significant discussion about vessel strike data and management was struck from the 2023 NARW SAR without any justification.

Response: Regarding the percentage of undetected mortality assumed to be from entanglement, MLA provided substantively identical comments on the 2022 NARW SAR. MLA has not presented any new information that was not considered and addressed in our response to their comments on this issue for the 2022 NARW SAR. Therefore, we refer to our responses on the 2022 NARW SAR (88 FR 54592, 54594 (response to comment #7)).

With respect to the removal of some discussion on vessel strike management measures, NMFS is striking this text because it believes it is overly detailed and already covered in general in the SAR and in more detail in the cited studies. The text simply elaborated on the specifics of the studies except in the case of Hayes *et al.* (2018), which we have now added. To keep the SAR concise while continuing to include the best available scientific information on vessel strike management measures, we are opting to generally summarize and cite relevant studies going forward. The sentence referring to the study by Kelly *et al.* (2020) was not stricken but instead moved up to the preceding paragraph to improve readability.

Comment 9: MLA states the NARW draft SAR must estimate M/SI by fishery and failure to do so ignores the best scientific information available. Specifically, MLA states table 2 should be revised to summarize data on the country of origin of NARW entanglements during the relevant period, considering scientific observations of entangling gear and differences in conservation programs between countries.

Response: MLA provided a substantively identical comment on the draft 2022 NARW SAR. MLA has not presented any new information that was not already considered and addressed in our response to their comment on the 2022 NARW SAR. We refer MLA to our response on the 2022 NARW SAR (88 FR 54592, 54595 (response to comment #8)).

Comment 10: MLA comments that the draft 2023 NARW SAR does not include information on commercial fisheries that interact with the stock as required

by Section 117(a)(4) of the MMPA and the SAR should include data on the severity of entanglements, citing New England Aquarium reports, and report observed data, such as the 90 percent decline in lobster gear entanglements since 2010. MLA claims that by omitting this relevant data, NMFS fails to comply with the MMPA. MLA also comments that the draft SAR inaccurately claims that scarring is a better indicator of fisheries' interaction than entanglement records, ignoring data that suggests most entanglements are minor, misrepresenting the effects of existing measures.

Response: MLA provided a substantively identical comment on the draft 2022 NARW SAR. MLA has not presented any new information that was not already considered and addressed in our response to their comments on this issue for the 2022 NARW SAR. We refer MLA to our response to their comment on the 2022 NARW SAR (88 FR 54592, 54595 (response to comment #9)).

Comment 11: MLA comments that the NARW SAR should include additional available scientific information about NARW behavior and associated risk of harm from fishing gear, specifically, the SAR should describe population density (e.g., the SAR should not strike language describing "peak detection" in Canadian waters and add these details where relevant), include recent scientific literature that confirms areas NARW have shifted their habitat usage (e.g., long-term passive acoustic data show that "NARWs appear to have shifted from previously prevalent northern grounds, such as the Bay of Fundy and greater Gulf of Maine (regions 3 and 4) to spending more time in mid-Atlantic regions year-round"), and include recently published modeling work, which predicts "decreased habitat suitability across the Gulf of Maine" and "current[s] that regions outside the current areas of conservation focus may become increasingly important habitats for *E. glacialis* under future climate scenarios."

Response: MLA provided substantively identical comments on the 2022 NARW SAR while citing new scientific information. We revised the SAR to include the studies cited by MLA (e.g., Ross *et al.* 2023; Meyer-Gutbrod *et al.* 2023)); however, these studies further support the information included in the SAR. We refer to our responses on the 2022 NARW SAR (88 FR 54592, 54594 (response to comment #10)). In addition, we note the 2023 SAR includes an updated summary of distribution shifts and their relationship to climate changes throughout. Changes

to the text, such as striking the previous reference to peak detections in Canada, were made to ensure the information summarized in the SAR is based on the best scientific information available, including more recent publications.

Comment 12: MLA notes that the draft SAR under-reports calving data because it omits data describing the rebound in calving after 2018 and recommends renaming the "Other Mortality" heading to "Vessel Strike-Related Mortality and Serious Injury" as is done for the section on M/SI from fishery-related M/SI.

Response: Regarding calving data and headings, MLA provided substantively identical comments on the draft 2022 NARW SAR. MLA has not presented any new information that was not already considered and addressed in our response to their comments on this issue for the 2022 NARW SAR. We refer MLA to our previous response on the 2022 NARW SAR (88 FR 54592, 54596 (response to comment #11)). We note that Figure 4 in the 2023 NARW SAR shows the calving rate data from 1990 to 2022, the most recent year for which full data are available, using an Apparent Productivity Index (API). We explain that the fluctuating abundance observed from 1990 to 2020 makes interpreting a count of calves by year less clear than measuring population productivity, which we index by dividing the number of detected calves by the estimated adult and subadult population each year. Finally, rather than give a year by year accounting of the calving rates in the body of the text (which is already presented in Figure 4), we have struck the sentence stating that "[n]o calves were born in the winter of 2017–2018."

Comment 13: MLA comments that Kenney (2018) should not be cited in the SAR because it fails to account for biological processes (e.g., natural death) and assumes a constant calving rate that is higher than the rate included in the draft SAR.

Response: MLA provided an identical comment on the 2022 NARW SAR. MLA has not presented any new information that was not already considered and addressed in our response to their comments on this issue for the 2022 NARW SAR. Therefore, we refer MLA to our previous response on the 2022 NARW SAR (88 FR 54592, 54596 (response to comment #12)).

Comment 14: MLA states the decline in NARW body size does not correlate to observed birth rates, ignores potential causation by vessel traffic, and is not meaningful. MLA claims the decline in NARW body size does not correlate with calving rates and there are significant

limits to the inferences that can be made from Stewart *et al.* (2021). MLA also claims NMFS' statement that "entanglement will continue to impact calving rates, and the declining trend in abundance will likely continue" incorrectly assumes that entanglements are a meaningful driver to the purported decline in body size.

Response: Regarding NARW body size, MLA provided a substantively identical comment on the 2022 NARW SAR. MLA has not presented any new information that was not already considered and addressed in our response to their comments on this issue for the 2022 NARW SAR. Therefore, we refer MLA to our previous response (88 FR 54592, 54596 (response to comment #13)). Regarding the statement on entanglements, we note that MLA mischaracterizes the interpretation of Stewart *et al.* 2021 and 2022 in the NARW SAR with respect to the effects of entanglement. The SAR only briefly describes the empirical results of Stewart *et al.* 2021 and 2022 (i.e., North Atlantic right whale are growing to shorter adult lengths than in previous decades, and smaller females have longer inter-birth intervals than larger females) and notes that their findings (i.e., some calving rate variability is related to variability in nutrition) may be related to a combination of changes in feeding habitats and increased energy expenditures related to non-lethal entanglements, which is supported by several other studies (Meyer-Gutbrod and Greene 2014; Meyer-Gutbrod *et al.* 2021; Meyer-Gutbrod *et al.* 2023; Record *et al.* 2019; Rolland *et al.* 2016; Pettis *et al.* 2017; van der Hoop *et al.* 2017). Nevertheless, we have deleted the specific sentence, in part, because with the most recent abundance estimate, the population appears to no longer be declining.

Comments on Pacific Issues

Comment 15: The Commission comments that the Pantropical spotted dolphin, Hawai'i Island SAR states that mean annual takes are undetermined for this stock, as well as for the O'ahu and Maui Nui Stocks. While the summary table lists M/SI as "unk" for the O'ahu and Maui Nui Stocks, it lists both fisheries and total human-caused M/SI as "≥0.2" for the Hawai'i Island Stock. The Commission recommends that NMFS either provide explanatory text within the SAR to justify the estimate of "≥0.2" for M/SI or change the estimate to be "unk".

Response: The erroneous values in the summary table have been changed to

unknown,' to match what appears in the SAR.

Comment 16: The Commission comments that descriptions of "other factors" that may be causing decline or impeding recovery were not included in the revised SARs for four strategic stocks: Sperm whale—California/Oregon/Washington stock, blue whale—Eastern North Pacific (ENP) stock, fin whale—California/Oregon/Washington Stock, and sei whale—ENP stock. The Commission recommends that NMFS revise these SARs to describe any other factors and, if there are no data to indicate that other factors may be affecting the stock, then this should be clearly stated.

Response: The draft ENP blue whale SAR included an "other factors" section, and we have added a summary of these factors to the SARs referenced above that lacked them.

Comment 17: HLA comments that the draft 2023 SAR removes the Pelagic Stock designation without explanation and replaces it with a "management area," reporting all required information for this area instead of a stock. HLA disagrees with this because the MMPA requires information to be reported for "stocks," not "management areas", NMFS did not follow its own guidance for revising stock designations. HLA also commented that the "management area" does not accurately represent the Pelagic Stock's range and the best available scientific information because animals have been tracked and recorded outside of the management area and using the management area for Nmin and PBR and comparing such to all fishery M/SI creates inaccuracies.

Response: NMFS is neither replacing the Pelagic Stock with a new assessment area nor defining new demographically independent populations or designating new stocks. Rather, the draft SAR proposed to use information on what is the known range for the Hawai'i Pelagic False killer whale stock to identify an appropriate area over which to assess the stock (termed "Management Area" in the draft SAR and now "Assessment Area" in the Final SAR). This area reflects the most comprehensive synthesis of existing biological data on the stock, ensures comparisons of PBR to human-caused M/SI are commensurate, and follows NMFS' GAMMS. Specifically, Section 3.4.4 on transboundary stocks in the GAMMS states "For non-migratory transboundary stocks (e.g., stocks with broad pelagic distributions that extend into international waters), an area-apportioned Nmin based on abundance estimates relevant to managing marine mammals under U.S. jurisdiction

should be provided and used to calculate an adjusted PBR." The SAR has always noted that the range of the Hawai'i Pelagic Stock of false killer whales likely extends beyond the U.S. EEZ, but until the 2023 SAR, NMFS only assessed the stock based on data from within the EEZ because data were not available to estimate abundance outside of the EEZ. Following the 2023 changes to GAMMS (NMFS 2023), NMFS re-evaluated the appropriateness of only using data from within the EEZ to assess PBR relative to human-caused M/SI. The GAMMS (section 3.1) discourages reliance on political boundaries like the EEZ that do not represent a stock's true biological and ecological range and is counter to the MMPA's objective of maintaining stocks as functioning elements of their ecosystems. Based on the availability of data to estimate abundance outside of the EEZ following the density surface models for the central Pacific provided in Bradford *et al.* (2020) and a review of the available biological data on stock range, we determined that it was more appropriate to assess the stock based on the newly identified assessment area. An assessment of this stock over this area better reflects the stock's true status as compared to an assessment that only covers the EEZ, and it is based on biologically relevant false killer whale ranging data. As noted with previous boundary changes (in Bradford *et al.* 2015, 2020), NMFS revises the area over which the stock is assessed as new information or analyses become available that indicate the known stock range should be revised. This change, from assessing the stock within the EEZ to assessing within a broader area (*i.e.*, assessment area) reflects application of the best available data on abundance and human-caused M/SI and is similar to other revisions NMFS makes when additional data, including data with broader spatial coverage, become available to assess a stock. In summary, the new assessment area better represents the known biological and ecological range of the Hawai'i Pelagic stock and more effectively allows for management of the stock over its full known distribution, consistent with MMPA objectives. NMFS has revised the SAR to clarify that the EEZ only population size, Nmin, and PBR are included for comparison to previous assessments only.

The methodology and resulting Hawai'i Pelagic stock assessment area was reviewed by the Pacific Scientific Review Group (PSRG) during their 2023 annual meeting and was modified based on their recommendations. At the time

the area was established, there were no data available on the presence of false killer whales from the Hawai'i pelagic stock outside this area. NMFS did not receive any comments on alternative biologically data-driven approaches to define the assessment area, and as such, we are retaining the area as presently defined following the recommendations of the PSRG. As noted in the comment from HLA, a Hawai'i pelagic false killer whale tagged near the main Hawaiian Islands made a brief excursion a short distance outside of the current assessment area following PSRG review and the publication of the draft SAR. We have added clarifying language to the SAR to explicitly note that the assessment area does not represent the full stock range and therefore, N_{min}, PBR, and human-caused M/SI are considered minimum estimates. NMFS will review the cited data along with the best scientific information available on the stocks range to determine whether a SAR revision is warranted. **Comment 18:** HLA comments that NMFS substantially underestimates the population size of the FKW Pelagic Stock and that the proposed "management area" draws an arbitrary line within a portion of the full range of the Pelagic Stock, which NMFS estimates to contain 5,528 whales.

Response: The MMPA defines a stock as "a group of marine mammals of the same species or smaller taxa in a common spatial arrangement, that interbreed when mature." 16 U.S.C. 1362(11). The best scientific information available suggests that, based on their proximity and fidelity to central Pacific waters around Hawai'i, the Hawai'i pelagic false killer whales are a demographically-independent population and as such, they are managed as a single stock under the MMPA. We know through telemetry tracks and resightings of individual whales that the whales regularly use and return to the waters around Hawai'i. Through reliance on data collected from these whales, we defined an assessment area (referred to as management area in the draft SAR) that represents the greatest known extent of the Hawai'i pelagic stock's range at the time it was established, and as such, the N_{min} estimate derived from this area is the greatest N_{min} estimate for the stock that is supported by the available data that still meets the requirement of the MMPA that N_{min} "(A) is based on the best available scientific information on abundance, incorporating the precision and variability associated with such information; and (B) provides reasonable assurance that the stock size

is equal to or greater than the estimate.” (16 U.S.C. 1362(27)). HLA’s comment references a larger abundance, which appears to be for false killer whales in the central Pacific. The relatively lower abundance estimated within the assessment area as compared to the abundance estimated for the full central Pacific is a reflection of the habitat suitability and the relatively lower densities of false killer whales in subtropical and temperate waters relative to the tropical equatorial region.

Comment 19: HLA and the Council comment that recovery factor that is greater than 0.5 should be used because the Hawai’i pelagic stock of false killer whale is not considered depleted, strategic, or threatened, the status of the stock is known, and such is supported by the best available scientific information.

Response: Section 3.2.4 of the GAMMS states the default recovery factor for depleted, threatened, and stocks of unknown status should be 0.5 based on a coefficient of variation (CV) equal or less than 0.3; however, if the CV is greater than 0.3, the recovery factor should be decreased to 0.48 to 0.40 depending on the CV. The status of the stock relative to its Optimum Sustainable Population is unknown. Based on public comment, NMFS has reevaluated its choice of recovery factor and has modified the recovery factor and PBR within the SAR to reflect a recovery factor of 0.44, an intermediate value that is derived from the relative abundance of false killer whales within and outside of the EEZ and the greater certainty within the Hawai’i EEZ (CV <0.3) and significant uncertainty around the magnitude of M/SI attributed to foreign fleets operating outside of the EEZ but within the assessment area.

Comment 20: HLA recommends the SAR should be revised to reflect zero M/SI from the deep-set fishery for both the insular and NWHI stocks based on the best available information.

Response: The Hawai’i-based deep-set longline fishery’s efforts overlap with a small portion of the Main Hawaiian Islands (MHI) Insular stock and the Northwestern Hawaiian Islands (NWHI) stock boundaries; although, there has not been an observed interaction within the overlap area with the MHI insular stock. There have been three observed interactions within the overlap area with the NWHI stock. The first two were in 2012, within the current Longline Exclusion Zone, prior to TRT changes that eliminated the seasonal contraction of that area. The third was in 2019, outside the current Longline Exclusion Zone but within the overlap area of the NWHI stock and the pelagic stock

boundary. This interaction was first presented in the 2021 SAR and remains within the current assessment. As long as there is fishing effort within these stock boundaries or unless the stock identity of a bycaught animal is established, accounting for possible impact to the NWHI and MHI insular stocks is in accordance with current bycatch evidence and with GAMMS section 3.1.

Comment 21: The Council recommends that NMFS not use the management area boundary and associated abundance estimate using the Species Distribution Models (SDMs) in the FKW SAR or for any management purposes. For the area inside the EEZ, the Council recommends that NMFS use the design-based abundance estimation approach as the basis for assessing the stock until such time that a more rigorous and independent evaluation of the SDM approach can be completed. The Council’s Scientific and Statistical Committee (SSC) found that the design-based approach is the most appropriate for estimating abundance inside the EEZ around Hawai’i, as it utilizes data from the EEZ-wide cetacean survey intended for deriving abundance estimates, and provides the most robust estimate of the abundance for the corresponding area at the time of the 2017 survey. The Council further recommends that NMFS prioritize conducting surveys outside the EEZ to gather additional tagging and genetics data suitable for assessing that portion of the population. Considering that the proposed management area encompasses all recent Hawai’i deep-set longline fishery interactions, the proposed boundary likely overestimates the relative impact of the U.S. fleet on the pelagic stock while underestimating the impact of foreign fleets.

Response: As discussed in Comment 17, NMFS has clarified in the Hawai’i pelagic stock section of the SAR that EEZ-only population size, Nmin, and PBR are included for comparison to previous assessments only. The SSC’s recommendation to rely upon the design-based estimates neglected to consider the potential biases associated with encounter rate variation for this and other stocks. The issue was explored in depth within Bradford *et al.* (2020) and by the PSRG and forms the basis of NMFS’ use of the model-based estimates for assessment purposes, as detailed within the SAR. The full abundance approach (*i.e.*, the design and model-based estimates) was reviewed by three independent experts and the PSRG, collectively including several experts in quantitative assessments, including SDMs. NMFS recently completed a 30-day survey

outside the assessment area (referred to as management area in the draft SAR) and in a region of predicted high false killer whale density, with the explicit goal of collecting additional biological data to inform analysis of population structure for pelagic false killer whales. NMFS will review the best scientific information available, including survey and tagging data, to determine whether a SAR revision is warranted during the next SAR review cycle. The magnitude of possible foreign fleet bycatch does not alter the conclusion that the U.S. fleet incidental M/SI exceeds PBR and must be managed according to the take reduction process mandated in the MMPA.

Comment 22: The Council requested NMFS provide an explanation for the reduced abundance estimate for the pelagic stock inside the EEZ in the draft SAR (2,038) compared to Bradford *et al.* 2020 (2,086).

Response: The discrepancy between the draft 2023 SAR and Bradford *et al.* 2020 is noted in the draft SAR. This discrepancy is because the abundance estimate of 2,038 Hawai’i pelagic false killer whales refers to the abundance of animals within the EEZ portion of the assessment area (referred to as management area in the draft SAR); there is a small portion of the EEZ that is outside of the assessment area, which accounts for the small reduction in abundance between the two estimates.

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Dated: December 18, 2024.

Evan Howell,

*Director, Office of Science and Technology,
National Marine Fisheries Service.*

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BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE538]

Determination of Overfishing or an Overfished Condition

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

ACTION: Notice.

SUMMARY: This action serves as a notice that NMFS, on behalf of the Secretary of

Commerce (Secretary), has found that Puerto Rico Caribbean spiny lobster and Mid-Atlantic Coast golden tilefish are now subject to overfishing, Klamath River fall Chinook salmon and Queets Spring/Summer Chinook salmon continue to be overfished, and the Western and Central North Pacific Ocean Striped Marlin continues to be subject to overfishing. NMFS, on behalf of the Secretary, is required to provide this notice whenever it determines that a stock or stock complex is subject to overfishing, overfished, or approaching an overfished condition.

FOR FURTHER INFORMATION CONTACT:
Diana Perry, (301) 427–7863.

SUPPLEMENTARY INFORMATION: Pursuant to section 304(e)(2) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1854(e)(2), NMFS, on behalf of the Secretary, must notify councils, and publish a notice in the **Federal Register**, whenever it determines that a stock or stock complex is subject to overfishing, overfished, or approaching an overfished condition.

NMFS has determined that Puerto Rico Caribbean spiny lobster is now subject to overfishing. This determination is based on the most recent assessment completed in 2022 and using data through 2021 that found that the fishing mortality rate (F) exceeds the maximum fishing mortality threshold (MFMT). NMFS has notified the Caribbean Fishery Management Council of its requirement to end overfishing on this stock.

NMFS has determined that Mid-Atlantic Coast golden tilefish is now subject to overfishing. This determination is based on the most recent assessment completed in 2024 using data through 2023, which found that the F exceeds the MFMT. NMFS has notified the Mid-Atlantic Fishery Management Council of its requirement to end overfishing.

NMFS has determined that Klamath River fall-run Chinook salmon and Queets Spring/Summer Chinook salmon continue to be overfished. These determinations are based on the 3-year geometric mean of the annual spawning escapement for each stock completed in 2024, and using data from 2021–2023 for the Klamath River fall-run Chinook salmon stock and data from 2020–2022 for the Queets spring/summer Chinook salmon stock which fall below their respective minimum stock size threshold. NMFS continues to work with the Pacific Fishery Management Council to rebuild the Klamath River fall-run Chinook and Queets spring/summer Chinook salmon stocks.

NMFS has determined that Western and Central North Pacific Ocean Striped Marlin continues to be subject to overfishing. This determination is based on the most recent international stock assessment, completed in 2023 and using data through 2020, which indicates that F exceeds the MFMT. NMFS continues to work with the Western and Central Pacific Fisheries Commission to end overfishing.

Dated: December 18, 2024.

Kelly Denit,

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

[FR Doc. 2024–30640 Filed 12–23–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE516]

Fisheries of the Exclusive Economic Zone off Alaska; North Pacific Observer Program Standard Ex-Vessel Prices

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

ACTION: Notification of standard ex-vessel prices.

SUMMARY: NMFS publishes standard ex-vessel prices for groundfish and halibut for the calculation of the observer fee under the North Pacific Observer Program (Observer Program). This notice is intended to provide information to vessel owners, processors, registered buyers, and other Observer Program participants about the standard ex-vessel prices that will be used to calculate the Observer Program fee associated with landings of groundfish and halibut made in 2025. NMFS will send invoices to processors and registered buyers subject to the fee by January 15, 2026. Fees are due to NMFS on or before February 15, 2026.

DATES: The standard prices take effect on January 1, 2025.

ADDRESSES: Additional information about the Observer Program is available on NMFS Alaska Region's website at <https://www.fisheries.noaa.gov/alaska/fisheries-observers/north-pacific-observer-program>.

FOR FURTHER INFORMATION CONTACT: For general questions about the observer fee and standard ex-vessel prices, contact Amy Hadfield at (907) 586–7376. For questions about the fee billing process,

contact Charmaine Weeks at (907) 586–7231.

SUPPLEMENTARY INFORMATION:

Background

Regulations at 50 CFR part 679, subpart E, governing the Observer Program, require the deployment of NMFS-certified observers (observers) and electronic monitoring (EM) systems to collect information necessary for the conservation and management of the Bering Sea and Aleutian Islands (BSAI) and Gulf of Alaska (GOA) groundfish and halibut fisheries. Fishery managers use information collected by observers and EM to monitor quotas, manage groundfish and prohibited species catch, and document and reduce fishery interactions with protected resources. Scientists use observer-collected information for stock assessments and marine ecosystem research.

The Observer Program includes two observer coverage categories: the partial coverage category and the full coverage category. All groundfish and halibut vessels and processors subject to observer coverage are included in one of these two categories. Defined at § 679.51, the partial coverage category includes vessels and processors that are not required to have an observer or EM at all times when fishing, and the full coverage category includes vessels and processors required to have all of their fishing and processing activity observed. Vessels and processors in the full coverage category arrange and pay for observer services from a permitted observer provider. Observer coverage and EM for the partial coverage category is funded through a system of fees based on the ex-vessel value of groundfish and halibut. Throughout this notice, the term “processor” refers to shoreside processors, stationary floating processors, and catcher/processors in the partial coverage category.

Landings Subject to Observer Coverage Fee

Pursuant to section 313 of the Magnuson-Stevens Fishery Conservation and Management Act, NMFS is authorized to assess a fee on all landings accruing against a Federal total allowable catch (TAC) for groundfish or commercial halibut quota landings made by vessels that are subject to Federal regulations and not included in the full coverage category. A fee is only assessed on landings of groundfish from vessels designated on a Federal Fisheries Permit or from vessels landing individual fishing quota (IFQ) or community development quota (CDQ) halibut or IFQ sablefish. Within the subset of vessels subject to the

observer fee, only landings accruing against an IFQ allocation or a Federal TAC for groundfish are included in the fee assessment. A table with additional information about which landings are subject to the observer fee is at § 679.55(c) and on page 2 of an informational bulletin titled “Observer Fee Collection” that can be downloaded from the NMFS Alaska Region website at <https://www.fisheries.noaa.gov/resource/document/observer-fee-collection-north-pacific-groundfish-and-halibut-fisheries-observer>.

Fee Determination

A fee equal to 1.65 percent of the ex-vessel value is assessed on the landings of groundfish and halibut subject to the fee. Ex-vessel value is determined by multiplying the standard price for groundfish by the round weight equivalent for each species, gear, and port combination, and the standard price for halibut by the headed and gutted weight equivalent. Standard prices are determined by aggregating prices by species, gear, and area grouping to arrive at an average price per pound for each grouping. NMFS reviews each vessel landing report and determines whether the reported landing is subject to the observer fee and, if so, which groundfish species in the landing are subject to the observer fee. All IFQ or CDQ halibut in a landing subject to the observer fee will be included in the observer fee calculation. For any landed groundfish or halibut subject to the observer fee, NMFS will apply the appropriate standard ex-vessel prices for the species, gear type, and port and calculate the observer fee associated with the landing.

Processors and registered buyers can access the landing-specific, observer fee information through the NMFS Web Application (<https://alaskafisheries.noaa.gov/webapps/efish/login>) or eLandings (<https://elandings.alaska.gov/>). Landing-specific observer fee information is either available immediately or within 24 hours after a landing report is submitted electronically. A time lag occurs for some landings because NMFS must process each landing report through the catch accounting system to determine which groundfish in a landing accrues against a Federal TAC and are subject to the observer fee.

Under the fee system, catcher vessel owners split the fee with the registered buyers or owners of shoreside or stationary floating processors. While the owners of catcher vessels and processors in the partial coverage category are each responsible for paying their portion of the fee, the owners of

shoreside or stationary floating processors and registered buyers are responsible for collecting the fees from catcher vessels and remitting the full fee to NMFS. Owners of catcher/processors in the partial coverage category are responsible for remitting the full fee to NMFS.

NMFS sends invoices to processors and registered buyers by January 15 of each calendar year. The total fee amount is determined by the sum of the fees reported for each landing at that processor or registered buyer in the prior calendar year. Processors and registered buyers must pay the fees to NMFS using eFISH. Payments are due by February 15 of each year. Processors and registered buyers have access to this system through a User ID and password issued by NMFS. Instructions for electronic payment are provided on the NMFS Alaska Region website at <https://www.fisheries.noaa.gov/alaska/commercial-fishing/observer-fee-collection-and-payment-north-pacific-groundfish-and-halibut> and on the observer fee invoice to be mailed to each processor and registered buyer.

Standard Prices

This notification provides the standard ex-vessel prices for groundfish and halibut species subject to the observer fee in 2025. Data sources for ex-vessel prices include the following:

- For groundfish other than sablefish IFQ and sablefish accruing against the fixed gear sablefish CDQ reserve, the State of Alaska's Commercial Fishery Entry Commission's (CFEC) gross revenue data, which are based on the Commercial Operator Annual Report (COAR) and Alaska Department of Fish and Game (ADF&G) fish tickets; and
- For halibut IFQ, halibut CDQ, sablefish IFQ, and sablefish accruing against the fixed gear sablefish CDQ reserve, the IFQ Buyer Report that is submitted to NMFS annually by each registered buyer that operates as a shoreside processor and receives and purchases IFQ landings of sablefish and halibut or CDQ landings of halibut under § 679.5(l)(7)(i).

The standard prices in this notification were calculated using the following procedures for protecting confidentiality of data submitted to or collected by NMFS. NMFS does not publish any price information that

would permit the identification of an individual or business. For NMFS to publish a standard price for a particular species-gear-port combination, the price data used to calculate the standard price must represent landings from at least four different vessels delivered to at least three different processors in a port or port group. NMFS has aggregated price data that are confidential because fewer than four vessels or three processors contributed data to a particular species-gear-port combination.

Groundfish Standard Ex-Vessel Prices

Table 1 shows the groundfish species standard ex-vessel prices that will be used to calculate the fee for 2025. These prices are based on the CFEC gross revenue data, which are based on landings data from ADF&G fish tickets and information from the COAR. The COAR contains statewide buying and production information and is considered the most complete routinely collected information to determine the ex-vessel value of groundfish harvested from waters off Alaska.

The standard ex-vessel prices for groundfish were calculated by adding ex-vessel value from the CFEC gross revenue files for 2021, 2022, and 2023 by species, port, and gear category, and adding the volume (round weight equivalent) from the CFEC gross revenue files for 2021, 2022, and 2023 by species, port, and gear category, and then dividing total ex-vessel value over the 3 year period in each category by total volume over the 3 year period in each category. This calculation results in an average ex-vessel price per pound by species, port, and gear category for the 3 year period. Three gear categories were used for the standard ex-vessel prices: (1) non-trawl gear, including hook-and-line, pot, jig, troll, and others (Non-Trawl); (2) non-pelagic trawl gear (NPT); and (3) pelagic trawl gear (PTR).

CFEC ex-vessel value and volume data are available in the fall of the year following the year the fishing occurred. Thus, it is not possible to base ex-vessel fee liabilities on standard prices that are less than two years old. For the 2025 groundfish standard ex-vessel prices, the most recent ex-vessel value and volume data available are from 2023.

If a particular groundfish species is not listed in table 1, the standard ex-

vessel price for a species group (if it exists in the management area) will be used. If price data for a particular species remained confidential once aggregated to the outside of Alaska (ALL) level, data are aggregated by species group (Flathead Sole; GOA Deep-water Flatfish; GOA Shallow-water Flatfish; GOA Skate, Other; and Other Rockfish). Standard prices for the groundfish species groups are shown in table 2.

If a port-level price does not meet the confidentiality requirements, the data are aggregated by port group. Port-group data for Southeast Alaska (SEAK) and the Eastern GOA excluding Southeast Alaska (EGOAxSE) also are presented separately when price data are available. Port-group data are aggregated by regulatory area in the GOA (Eastern GOA, Central GOA, and Western GOA) and by subarea in the BSAI (BS subarea and AI subarea). If confidentiality requirements are still not met by aggregating prices across ports at these levels, the prices are aggregated at the level of BSAI or GOA, then statewide (AK) and ports outside of Alaska (OTAK), and finally all ports, including those outside of Alaska (ALL).

Standard prices are presented separately for non-pelagic trawl and pelagic trawl when non-confidential data are available. NMFS also calculated prices for a "Pelagic Trawl/Non-pelagic Trawl Combined" (PTR/NPT) category that can be used when combining trawl price data for landings of a species in a particular port or port group will not violate confidentiality requirements. Creating this standard price category allows NMFS to assess a fee on 2025 landings of some of the species with pelagic trawl gear based on a combined trawl gear price for the port or port group. If confidentiality requirements are still not met with the PTR/NPT category, fixed and trawl gear prices are combined for an all gear price.

If no standard ex-vessel price is listed for a species or species group and gear category combination in table 1, table 2, or table 3, no fee will be assessed on that landing. Volume and value data for that species will be added to the standard ex-vessel prices in future years, if the data become available and display of a standard ex-vessel price meets confidentiality requirements.

TABLE 1—STANDARD EX-VESSEL PRICES FOR GROUNDFISH SPECIES FOR 2025 OBSERVER COVERAGE FEE

[Based on volume and value from 2021, 2022, and 2023]

Species (species code) ^{1 2}	Port/area ^{3 4}	Non-trawl	NPT	PTR	PTR/NPT
Arrowtooth Flounder (121)	ALL	\$0.06	----	----	\$0.06
Black Rockfish (142)	AK	0.86	----	----	----

TABLE 1—STANDARD EX-VESSEL PRICES FOR GROUND FISH SPECIES FOR 2025 OBSERVER COVERAGE FEE—Continued
 [Based on volume and value from 2021, 2022, and 2023]

Species (species code) ^{1 2}	Port/area ^{3 4}	Non-trawl	NPT	PTR	PTR/NPT
Blackgill Rockfish (177)	GOA	0.39	----	----	----
Blackgill Rockfish (177)	AK	0.39	----	----	----
Blackgill Rockfish (177)	ALL	0.39	----	----	----
Bocaccio Rockfish (137)	Sitka	0.41	----	----	----
Bocaccio Rockfish (137)	SEAK	0.41	----	----	----
Bocaccio Rockfish (137)	EGOA	0.37	----	----	----
Bocaccio Rockfish (137)	GOA	0.37	----	----	----
Bocaccio Rockfish (137)	AK	0.37	----	----	----
Bocaccio Rockfish (137)	ALL	0.36	----	----	----
Butter Sole (126)	Kodiak	----	\$0.09	----	\$0.09
Butter Sole (126)	CGOA	----	0.09	----	0.09
Butter Sole (126)	GOA	----	0.09	----	0.09
Butter Sole (126)	AK	----	0.09	----	0.09
Butter Sole (126)	ALL	----	0.09	----	0.09
Canary Rockfish (146)	Juneau	0.32	----	----	----
Canary Rockfish (146)	Petersburg	0.25	----	----	----
Canary Rockfish (146)	Sitka	0.43	----	----	----
Canary Rockfish (146)	SEAK	0.38	----	----	----
Canary Rockfish (146)	EGOA	0.38	----	----	----
Canary Rockfish (146)	Seward	0.37	----	----	----
Canary Rockfish (146)	CGOA	0.37	----	----	----
Canary Rockfish (146)	GOA	0.38	----	----	----
Canary Rockfish (146)	AK	0.38	----	----	----
Canary Rockfish (146)	ALL	0.38	----	----	----
China Rockfish (149)	SEAK	0.26	----	----	----
China Rockfish (149)	Cordova	0.43	----	----	----
China Rockfish (149)	EGOAxSE	0.39	----	----	----
China Rockfish (149)	Homer	0.36	----	----	----
China Rockfish (149)	Seward	0.22	----	----	----
China Rockfish (149)	CGOA	0.27	----	----	----
China Rockfish (149)	GOA	0.30	----	----	----
China Rockfish (149)	AK	0.30	----	----	----
China Rockfish (149)	ALL	0.30	----	----	----
Copper Rockfish (138)	Sitka	0.39	----	----	----
Copper Rockfish (138)	SEAK	0.30	----	----	----
Copper Rockfish (138)	Cordova	0.43	----	----	----
Copper Rockfish (138)	EGOAxSE	0.42	----	----	----
Copper Rockfish (138)	Homer	0.41	----	----	----
Copper Rockfish (138)	Seward	0.35	----	----	----
Copper Rockfish (138)	CGOA	0.36	----	----	----
Copper Rockfish (138)	GOA	0.37	----	----	----
Copper Rockfish (138)	AK	0.37	----	----	----
Copper Rockfish (138)	ALL	0.37	----	----	----
Dusky Rockfish (172)	Juneau	0.15	----	----	----
Dusky Rockfish (172)	Petersburg	0.56	----	----	----
Dusky Rockfish (172)	Sitka	0.45	----	----	----
Dusky Rockfish (172)	SEAK	0.37	----	----	----
Dusky Rockfish (172)	Cordova	0.46	----	----	----
Dusky Rockfish (172)	Homer	0.37	----	----	----
Dusky Rockfish (172)	Kodiak	0.86	0.13	0.12	----
Dusky Rockfish (172)	Seward	0.24	----	----	----
Dusky Rockfish (172)	CGOA	0.63	0.13	0.12	----
Dusky Rockfish (172)	GOA	0.60	0.13	0.12	----
Dusky Rockfish (172)	AK	0.59	0.13	0.12	----
Dusky Rockfish (172)	ALL	0.59	0.13	0.12	----
English Sole (128)	Kodiak	----	0.06	----	0.06
English Sole (128)	CGOA	----	0.06	----	0.06
English Sole (128)	GOA	----	0.06	----	0.06
English Sole (128)	AK	----	0.06	----	0.06
English Sole (128)	ALL	----	0.06	----	0.06
Flathead Sole (122)	Kodiak	----	0.06	----	0.06
Flathead Sole (122)	CGOA	----	0.06	----	0.06
Flathead Sole (122)	GOA	----	0.06	----	0.06
Flathead Sole (122)	AK	----	0.06	----	0.06
Flathead Sole (122)	ALL	----	0.06	----	0.06
Northern Rockfish (136)	Kodiak	----	----	----	0.13
Northern Rockfish (136)	CGOA	----	----	----	0.13
Northern Rockfish (136)	GOA	----	----	----	0.13
Northern Rockfish (136)	AK	----	----	----	0.13
Northern Rockfish (136)	ALL	----	----	----	0.13
Octopus (870)	Kodiak	0.46	----	0.48	0.50

TABLE 1—STANDARD EX-VESSEL PRICES FOR GROUND FISH SPECIES FOR 2025 OBSERVER COVERAGE FEE—Continued
 [Based on volume and value from 2021, 2022, and 2023]

Species (species code) ^{1 2}	Port/area ^{3 4}	Non-trawl	NPT	PTR	PTR/NPT
Octopus (870)	CGOA	0.46	----	0.48	0.50
Octopus (870)	GOA	0.67	0.50	0.48	----
Octopus (870)	BS	0.52	----	----	----
Octopus (870)	BSAI	0.52	----	----	----
Octopus (870)	AK	0.61	0.50	0.48	----
Octopus (870)	ALL	0.61	0.50	0.48	----
Pacific Cod (110)	Craig	0.44	----	----	----
Pacific Cod (110)	Juneau	0.69	----	----	----
Pacific Cod (110)	Petersburg	0.54	----	----	----
Pacific Cod (110)	Sitka	0.69	----	----	----
Pacific Cod (110)	Wrangell	0.35	----	----	----
Pacific Cod (110)	SEAK	0.66	----	----	----
Pacific Cod (110)	Cordova	0.38	----	----	----
Pacific Cod (110)	Whittier	0.36	----	----	----
Pacific Cod (110)	EGOAxSE	0.38	----	----	----
Pacific Cod (110)	Homer	0.35	----	----	----
Pacific Cod (110)	Kodiak	0.44	0.38	0.35	----
Pacific Cod (110)	Seward	0.36	----	----	----
Pacific Cod (110)	CGOA	0.41	0.38	0.35	----
Pacific Cod (110)	King Cove	0.40	----	----	----
Pacific Cod (110)	Sand Point	0.42	----	----	----
Pacific Cod (110)	WGOA	0.40	----	----	----
Pacific Cod (110)	GOA	----	0.39	0.36	----
Pacific Cod (110)	Dutch Harbor	0.44	0.54	----	0.54
Pacific Cod (110)	BS	0.46	0.52	----	0.52
Pacific Cod (110)	BSAI	0.46	0.51	----	0.51
Pacific Cod (110)	Stationary Floating Processor	0.38	----	----	----
Pacific Cod (110)	AK	0.41	0.43	0.36	----
Pacific Cod (110)	OTAK	0.36	----	----	----
Pacific Cod (110)	ALL	0.41	0.43	0.36	----
Pacific Ocean Perch (141)	Kodiak	----	0.14	0.14	----
Pacific Ocean Perch (141)	CGOA	----	0.14	0.14	----
Pacific Ocean Perch (141)	GOA	0.17	0.14	0.13	----
Pacific Ocean Perch (141)	AK	0.16	0.14	0.13	----
Pacific Ocean Perch (141)	ALL	0.16	0.14	0.13	----
Pollock (270)	Homer	0.48	----	----	----
Pollock (270)	Kodiak	0.11	0.10	0.14	----
Pollock (270)	CGOA	0.14	0.10	0.14	----
Pollock (270)	GOA	0.14	0.11	0.14	----
Pollock (270)	Dutch Harbor	----	----	0.18	0.18
Pollock (270)	BS	----	----	0.17	0.17
Pollock (270)	BSAI	----	----	0.17	0.17
Pollock (270)	AK	0.14	0.11	0.14	----
Pollock (270)	ALL	0.14	0.11	0.14	----
Quillback Rockfish (147)	Craig	0.42	----	----	----
Quillback Rockfish (147)	Juneau	0.38	----	----	----
Quillback Rockfish (147)	Petersburg	0.30	----	----	----
Quillback Rockfish (147)	Sitka	0.45	----	----	----
Quillback Rockfish (147)	Wrangell	0.38	----	----	----
Quillback Rockfish (147)	SEAK	0.43	----	----	----
Quillback Rockfish (147)	Cordova	0.43	----	----	----
Quillback Rockfish (147)	EGOAxSE	0.37	----	----	----
Quillback Rockfish (147)	Homer	0.31	----	----	----
Quillback Rockfish (147)	Kodiak	0.28	----	----	----
Quillback Rockfish (147)	Seward	0.29	----	----	----
Quillback Rockfish (147)	CGOA	0.29	----	----	----
Quillback Rockfish (147)	GOA	0.34	----	----	----
Quillback Rockfish (147)	AK	0.34	----	----	----
Quillback Rockfish (147)	ALL	0.34	----	----	----
Redbanded Rockfish (153)	Juneau	0.34	----	----	----
Redbanded Rockfish (153)	Ketchikan	0.20	----	----	----
Redbanded Rockfish (153)	Petersburg	0.23	----	----	----
Redbanded Rockfish (153)	Sitka	0.41	----	----	----
Redbanded Rockfish (153)	SEAK	0.34	----	----	----
Redbanded Rockfish (153)	EGOAxSE	0.26	----	----	----
Redbanded Rockfish (153)	Homer	0.18	----	----	----
Redbanded Rockfish (153)	Kodiak	0.16	----	----	----
Redbanded Rockfish (153)	Seward	0.29	----	----	----
Redbanded Rockfish (153)	CGOA	0.24	----	----	----
Redbanded Rockfish (153)	GOA	0.32	----	----	----
Redbanded Rockfish (153)	AK	0.32	----	----	----

TABLE 1—STANDARD EX-VESSEL PRICES FOR GROUND FISH SPECIES FOR 2025 OBSERVER COVERAGE FEE—Continued
 [Based on volume and value from 2021, 2022, and 2023]

Species (species code) ^{1 2}	Port/area ^{3 4}	Non-trawl	NPT	PTR	PTR/NPT
Redbanded Rockfish (153)	ALL	0.32	----	----	----
Redstripe Rockfish (158)	SEAK	0.29	----	----	----
Redstripe Rockfish (158)	EGOA	0.36	----	----	----
Redstripe Rockfish (158)	Seward	0.18	----	----	----
Redstripe Rockfish (158)	CGOA	0.18	----	----	----
Redstripe Rockfish (158)	GOA	0.23	----	----	----
Redstripe Rockfish (158)	AK	0.23	----	----	----
Redstripe Rockfish (158)	ALL	0.23	----	----	----
Rex Sole (125)	Kodiak	----	0.16	----	0.16
Rex Sole (125)	CGOA	----	0.16	----	0.16
Rex Sole (125)	GOA	----	0.16	----	0.16
Rex Sole (125)	AK	----	0.16	----	0.16
Rex Sole (125)	ALL	----	0.16	----	0.16
Rock Sole (123)	Kodiak	----	0.11	----	0.11
Rock Sole (123)	CGOA	----	0.11	----	0.11
Rock Sole (123)	GOA	----	0.11	----	0.11
Rock Sole (123)	AK	----	0.11	----	0.11
Rock Sole (123)	ALL	----	0.11	----	0.11
Rosethorn Rockfish (150)	Seward	0.17	----	----	----
Rosethorn Rockfish (150)	CGOA	0.17	----	----	----
Rosethorn Rockfish (150)	GOA	0.33	----	----	----
Rosethorn Rockfish (150)	AK	0.33	----	----	----
Rosethorn Rockfish (150)	ALL	0.33	----	----	----
Rougheye Rockfish (151)	Juneau	0.28	----	----	----
Rougheye Rockfish (151)	Ketchikan	0.24	----	----	----
Rougheye Rockfish (151)	Petersburg	0.29	----	----	----
Rougheye Rockfish (151)	Sitka	0.42	----	----	----
Rougheye Rockfish (151)	SEAK	0.37	----	----	----
Rougheye Rockfish (151)	Cordova	0.42	----	----	----
Rougheye Rockfish (151)	EGOAxSE	0.28	----	----	----
Rougheye Rockfish (151)	Homer	0.30	----	----	----
Rougheye Rockfish (151)	Kodiak	0.32	0.11	0.15	----
Rougheye Rockfish (151)	Seward	0.28	----	----	----
Rougheye Rockfish (151)	CGOA	0.29	0.11	0.15	----
Rougheye Rockfish (151)	GOA	0.34	0.11	0.15	----
Rougheye Rockfish (151)	BS	0.13	----	----	----
Rougheye Rockfish (151)	BSAI	0.13	----	----	----
Rougheye Rockfish (151)	AK	0.34	0.11	0.15	----
Rougheye Rockfish (151)	ALL	0.34	0.11	0.15	----
Sablefish (blackcod) (710)	Kodiak	n/a ⁵	1.32	1.52	----
Sablefish (blackcod) (710)	CGOA	n/a ⁵	1.32	1.52	----
Sablefish (blackcod) (710)	GOA	n/a ⁵	1.32	1.52	----
Sablefish (blackcod) (710)	AK	n/a ⁵	1.33	1.52	----
Sablefish (blackcod) (710)	ALL	n/a ⁵	1.33	1.52	----
Shortraker Rockfish (152)	Juneau	0.37	----	----	----
Shortraker Rockfish (152)	Petersburg	0.28	----	----	----
Shortraker Rockfish (152)	Sitka	0.42	----	----	----
Shortraker Rockfish (152)	SEAK	0.40	----	----	----
Shortraker Rockfish (152)	Cordova	0.42	----	----	----
Shortraker Rockfish (152)	Whittier	0.17	----	----	----
Shortraker Rockfish (152)	EGOAxSE	0.22	----	----	----
Shortraker Rockfish (152)	Homer	0.13	----	----	----
Shortraker Rockfish (152)	Kodiak	0.22	0.12	0.16	----
Shortraker Rockfish (152)	Seward	0.33	----	----	----
Shortraker Rockfish (152)	CGOA	0.30	0.12	0.16	----
Shortraker Rockfish (152)	GOA	0.35	0.12	0.16	----
Shortraker Rockfish (152)	AK	0.35	0.12	0.16	----
Shortraker Rockfish (152)	OTAK	0.14	----	----	----
Shortraker Rockfish (152)	ALL	0.35	0.12	0.16	----
Silvergray Rockfish (157)	Juneau	0.34	----	----	----
Silvergray Rockfish (157)	Sitka	0.41	----	----	----
Silvergray Rockfish (157)	Wrangell	0.52	----	----	----
Silvergray Rockfish (157)	SEAK	0.37	----	----	----
Silvergray Rockfish (157)	Cordova	0.41	----	----	----
Silvergray Rockfish (157)	EGOAxSE	0.26	----	----	----
Silvergray Rockfish (157)	Homer	0.15	----	----	----
Silvergray Rockfish (157)	Seward	0.34	----	----	----
Silvergray Rockfish (157)	CGOA	0.33	----	----	----
Silvergray Rockfish (157)	GOA	0.34	----	----	----
Silvergray Rockfish (157)	AK	0.34	----	----	----
Silvergray Rockfish (157)	ALL	0.34	----	----	----

TABLE 1—STANDARD EX-VESSEL PRICES FOR GROUND FISH SPECIES FOR 2025 OBSERVER COVERAGE FEE—Continued
 [Based on volume and value from 2021, 2022, and 2023]

Species (species code) ^{1 2}	Port/area ^{3 4}	Non-trawl	NPT	PTR	PTR/NPT
Skate, Big (702)	EGOA	0.39	----	----	----
Skate, Big (702)	Kodiak	0.45	0.40	0.45	----
Skate, Big (702)	Seward	0.29	----	----	----
Skate, Big (702)	CGOA	0.38	0.40	0.45	----
Skate, Big (702)	GOA	0.38	0.40	0.45	----
Skate, Big (702)	AK	0.38	0.40	0.45	----
Skate, Big (702)	ALL	0.38	0.40	0.45	----
Skate, Longnose (701)	EGOA	0.36	----	----	----
Skate, Longnose (701)	Homer	0.13	----	----	----
Skate, Longnose (701)	Kodiak	0.43	0.45	0.45	----
Skate, Longnose (701)	Seward	0.33	----	----	----
Skate, Longnose (701)	CGOA	0.36	0.45	0.45	----
Skate, Longnose (701)	GOA	0.36	0.45	0.45	----
Skate, Longnose (701)	AK	0.36	0.45	0.45	----
Skate, Longnose (701)	ALL	0.35	0.45	0.45	----
Skate, Other (700)	GOA	0.39	----	----	----
Skate, Other (700)	AK	0.39	----	----	----
Skate, Other (700)	ALL	0.39	----	----	----
Thornyhead Rockfish (Idiots) (143) ..	Juneau	0.93	----	----	----
Thornyhead Rockfish (Idiots) (143) ..	Ketchikan	0.72	----	----	----
Thornyhead Rockfish (Idiots) (143) ..	Petersburg	0.86	----	----	----
Thornyhead Rockfish (Idiots) (143) ..	Sitka	0.74	----	----	----
Thornyhead Rockfish (Idiots) (143) ..	SEAK	0.78	----	----	----
Thornyhead Rockfish (Idiots) (143) ..	Cordova	0.42	----	----	----
Thornyhead Rockfish (Idiots) (143) ..	Whittier	0.21	----	----	----
Thornyhead Rockfish (Idiots) (143) ..	EGOAxSE	0.48	----	----	----
Thornyhead Rockfish (Idiots) (143) ..	Homer	0.39	----	----	----
Thornyhead Rockfish (Idiots) (143) ..	Kodiak	0.49	----	----	----
Thornyhead Rockfish (Idiots) (143) ..	Seward	0.78	----	----	----
Thornyhead Rockfish (Idiots) (143) ..	CGOA	0.71	----	----	----
Thornyhead Rockfish (Idiots) (143) ..	GOA	0.74	----	----	----
Thornyhead Rockfish (Idiots) (143) ..	BS	0.31	----	----	----
Thornyhead Rockfish (Idiots) (143) ..	BSAI	0.31	----	----	----
Thornyhead Rockfish (Idiots) (143) ..	AK	0.72	----	----	----
Thornyhead Rockfish (Idiots) (143) ..	OTAK	0.15	----	----	----
Thornyhead Rockfish (Idiots) (143) ..	ALL	0.72	----	----	----
Tiger Rockfish (148)	Juneau	0.29	----	----	----
Tiger Rockfish (148)	Sitka	0.37	----	----	----
Tiger Rockfish (148)	SEAK	0.41	----	----	----
Tiger Rockfish (148)	Cordova	0.44	----	----	----
Tiger Rockfish (148)	EGOAxSE	0.39	----	----	----
Tiger Rockfish (148)	Homer	0.17	----	----	----
Tiger Rockfish (148)	Seward	0.27	----	----	----
Tiger Rockfish (148)	CGOA	0.24	----	----	----
Tiger Rockfish (148)	GOA	0.29	----	----	----
Tiger Rockfish (148)	AK	0.29	----	----	----
Tiger Rockfish (148)	ALL	0.29	----	----	----
Vermilion Rockfish (184)	SEAK	0.51	----	----	----
Vermilion Rockfish (184)	EGOA	0.51	----	----	----
Vermilion Rockfish (184)	GOA	0.51	----	----	----
Vermilion Rockfish (184)	AK	0.51	----	----	----
Vermilion Rockfish (184)	ALL	0.51	----	----	----
Yelloweye Rockfish (145)	Craig	1.20	----	----	----
Yelloweye Rockfish (145)	Juneau	0.94	----	----	----
Yelloweye Rockfish (145)	Ketchikan	0.58	----	----	----
Yelloweye Rockfish (145)	Petersburg	1.01	----	----	----
Yelloweye Rockfish (145)	Sitka	1.33	----	----	----
Yelloweye Rockfish (145)	Wrangell	0.89	----	----	----
Yelloweye Rockfish (145)	SEAK	1.13	----	----	----
Yelloweye Rockfish (145)	Cordova	0.68	----	----	----
Yelloweye Rockfish (145)	EGOAxSE	0.48	----	----	----
Yelloweye Rockfish (145)	Homer	0.68	----	----	----
Yelloweye Rockfish (145)	Kodiak	0.38	----	0.21	0.27
Yelloweye Rockfish (145)	Seward	0.68	----	----	----
Yelloweye Rockfish (145)	CGOA	0.62	----	0.21	0.27
Yelloweye Rockfish (145)	GOA	0.92	----	0.21	0.27
Yelloweye Rockfish (145)	BS	0.41	----	----	----
Yelloweye Rockfish (145)	BSAI	0.41	----	----	----
Yelloweye Rockfish (145)	AK	0.91	----	0.21	0.27
Yelloweye Rockfish (145)	ALL	0.90	----	0.21	0.27
Yellowtail Rockfish (155)	Sitka	0.53	----	----	----

TABLE 1—STANDARD EX-VESSEL PRICES FOR GROUND FISH SPECIES FOR 2025 OBSERVER COVERAGE FEE—Continued
[Based on volume and value from 2021, 2022, and 2023]

Species (species code) ^{1 2}	Port/area ^{3 4}	Non-trawl	NPT	PTR	PTR/NPT
Yellowtail Rockfish (155)	SEAK	0.48	----	----	----
Yellowtail Rockfish (155)	EGOA	0.48	----	----	----
Yellowtail Rockfish (155)	Seward	0.27	----	----	----
Yellowtail Rockfish (155)	CGOA	0.59	----	----	----
Yellowtail Rockfish (155)	GOA	0.54	----	----	----
Yellowtail Rockfish (155)	AK	0.54	----	----	----
Yellowtail Rockfish (155)	ALL	0.45	----	----	----

---- = no landings in last 3 years or the data is confidential.

¹ If species is not listed, use price for the species group in table 2 if it exists in the management area. If no price is available for the species or species group in table 1, table 2, or table 3, no fee will be assessed on that landing. That species will come into standard ex-vessel prices in future years.

² For species codes, see table 2a to 50 CFR part 679.

³ Regulatory areas are defined at § 679.2. (AI = Aleutian Islands subarea; AK = Alaska; ALL = all ports including those outside Alaska; BS = Bering Sea subarea; BSAI = Bering Sea/Aleutian Islands; CGOA = Central Gulf of Alaska; EGOA = Eastern Gulf of Alaska; EGOAxSE = Eastern Gulf of Alaska except Southeast Alaska; GOA = Gulf of Alaska; SEAK = Southeast Alaska; WGOA = Western Gulf of Alaska).

⁴ If a price is listed for the species, port, and gear type combination, that price will be applied to the round weight equivalent for groundfish landings. If no price is listed for the port and gear type combination, use port group and gear type combination, or see table 2 or table 3.

⁵ n/a = ex-vessel prices for sablefish landed with hook-and-line, pot, or jig gear are listed in table 3 with the prices for IFQ and CDQ landings.

TABLE 2—STANDARD EX-VESSEL PRICES FOR GROUND FISH SPECIES GROUPS FOR 2025 OBSERVER COVERAGE FEE
[based on volume and value from 2021, 2022, and 2023]

Species group ¹	Port/area ^{2 3}	Non-trawl	NPT	PRT	PTR/NPR
BSAI Skate and GOA Skate, Other (USKT) ⁴ .	GOA	\$0.39	----	----	----
BSAI Skate and GOA Skate, Other (USKT) ⁴ .	AK	0.39	----	----	----
Flathead Sole (FSOL) ⁵	Kodiak	----	\$0.06	----	\$0.06
Flathead Sole (FSOL) ⁵	CGOA	----	0.06	----	0.06
Flathead Sole (FSOL) ⁵	GOA	----	0.06	----	0.06
Flathead Sole (FSOL) ⁵	AK	----	0.06	----	0.06
GOA Deep Water Flatfish ⁶	AK	0.06	----	----	0.06
GOA Shallow Water Flatfish ⁷ (SFL1)	Kodiak	----	0.10	----	0.10
GOA Shallow Water Flatfish ⁷ (SFL1)	CGOA	----	0.10	----	0.10
GOA Shallow Water Flatfish ⁷ (SFL1)	GOA	----	0.10	----	0.10
Other Rockfish ^{8 9} (ROCK)	Craig	0.31	----	----	----
Other Rockfish ^{8 9} (ROCK)	Juneau	0.45	----	----	----
Other Rockfish ^{8 9} (ROCK)	Ketchikan	0.30	----	----	----
Other Rockfish ^{8 9} (ROCK)	Petersburg	0.26	----	----	----
Other Rockfish ^{8 9} (ROCK)	Sitka	0.47	----	----	----
Other Rockfish ^{8 9} (ROCK)	Wrangell	0.38	----	----	----
Other Rockfish ^{8 9} (ROCK)	SEAK	0.41	----	----	----
Other Rockfish ^{8 9} (ROCK)	Cordova	0.62	----	----	----
Other Rockfish ^{8 9} (ROCK)	EGOAxSE	0.46	----	----	----
Other Rockfish ^{8 9} (ROCK)	Homer	0.64	----	----	----
Other Rockfish ^{8 9} (ROCK)	Kodiak	0.37	----	\$0.21	0.17
Other Rockfish ^{8 9} (ROCK)	Seward	0.54	----	----	----
Other Rockfish ^{8 9} (ROCK)	CGOA	0.54	----	0.21	0.17
Other Rockfish ^{8 9} (ROCK)	GOA	0.49	----	0.21	0.17
Other Rockfish ^{8 9} (ROCK)	BS	0.35	----	----	----
Other Rockfish ^{8 9} (ROCK)	BSAI	0.35	----	----	----
Other Rockfish ^{8 9} (ROCK)	AK	----	----	0.21	0.17

---- = no landings in last 3 years or the data is confidential.

¹ If groundfish species is not listed in table 1, use price for the species group if it exists in the management area. If no price is available for the species or species group in table 1, table 2, or table 3, no fee will be assessed on that landing. That species will come into standard ex-vessel prices in future years.

² Regulatory areas are defined at § 679.2. (AI = Aleutian Islands subarea; AK = Alaska; BS = Bering Sea subarea; CGOA = Central Gulf of Alaska; EGOA = Eastern Gulf of Alaska; EGOAxSE = Eastern Gulf of Alaska except Southeast Alaska; GOA = Gulf of Alaska; SEAK = Southeast Alaska).

³ If a price is listed for the species, port, and gear type combination, that price will be applied to the round weight equivalent for groundfish landings. If no price is listed for the port and gear type combination, use port group and gear type combination.

⁴ "BSAI Skate and GOA Skate, Other" means all skates with the exception of *Raja binoculata* (Big), *R. rhina* (Longnose), *Bathyrhaja aleutica* (Aleutian) and *B. parmifera* (Alaska).

⁵ "Flathead sole" includes *Hippoglossoides elassodon* (flathead sole) and *H. robustus* (Bering flounder).

⁶ "Deep-water flatfish" in the GOA means Dover sole, Greenland turbot, Kamchatka flounder, and deepsea sole.

⁷ "Shallow-water flatfish" in the GOA means flatfish not including "deep-water flatfish", flathead sole, rex sole, or arrowtooth flounder.

⁸ In the GOA:

"Other rockfish (slope rockfish)" means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergray), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermillion), *S. reedi* (yellowmouth), *S. entomelas* (widow), and *S. flavidus* (yellowtail).

“Demersal shelf rockfish” means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

“Other rockfish” in the Western and Central Regulatory Areas means “other rockfish (slope rockfish)” and demersal shelf rockfish.

“Other rockfish” in the West Yakutat District of the EGOA means “other rockfish (slope rockfish),” northern rockfish, *S. polyspinosus*, and demersal shelf rockfish.

“Other rockfish” in the SEO District of the GOA (and SEAK for Table 2) means “other rockfish (slope rockfish) and northern rockfish, *S. polyspinosus*.”

⁹“Other rockfish” in the BSAI includes all *Sebastes* and *Sebastes* species except for Pacific ocean perch, northern, shortraker, and rougheye rockfish.

Halibut and Sablefish IFQ and CDQ Standard Ex-vessel Prices

Table 3 shows the observer fee standard ex-vessel prices for halibut and sablefish. These standard prices are

calculated as a single annual average price, by species and port or port group. Volume and ex-vessel value data collected on the 2024 IFQ Buyer Report for landings made from October 15, 2023 through September 30, 2024 were

used to calculate the standard ex-vessel prices for the 2025 observer fee for halibut IFQ, halibut CDQ, sablefish IFQ, and sablefish landings that accrue against the fixed gear sablefish CDQ reserve.

TABLE 3—STANDARD EX-VESSEL PRICES FOR HALIBUT IFQ, HALIBUT CDQ, SABLEFISH IFQ, AND SABLEFISH ACCRUING AGAINST THE FIXED GEAR SABLEFISH CDQ RESERVE FOR THE 2025 OBSERVER FEE
[based on 2024 IFQ Buyer Reports]

Species	Port/area ¹	Price ²
Halibut (200)	Craig	\$5.63
Halibut (200)	SEAK	5.51
Halibut (200)	Cordova	5.46
Halibut (200)	EGOAxSE	5.44
Halibut (200)	Homer	5.63
Halibut (200)	Kodiak	4.88
Halibut (200)	Seward	4.08
Halibut (200)	CGOA	4.97
Halibut (200)	GOA	5.19
Halibut (200)	BS	4.15
Halibut (200)	BSAI	4.15
Halibut (200)	AK	5.05
Halibut (200)	ALL	5.05
Sablefish (710)	Petersburg	1.67
Sablefish (710)	SEAK	1.58
Sablefish (710)	Cordova	1.65
Sablefish (710)	EGOAxSE	1.48
Sablefish (710)	Homer	1.54
Sablefish (710)	Kodiak	1.11
Sablefish (710)	Seward	1.07
Sablefish (710)	CGOA	1.11
Sablefish (710)	GOA	1.30
Sablefish (710)	BS	1.22
Sablefish (710)	BSAI	1.22
Sablefish (710)	AK	1.28
Sablefish (710)	ALL	1.28

¹ Regulatory areas are defined at § 679.2. (AK = Alaska; ALL = all ports including those outside Alaska; BS = Bering Sea subarea; CGOA = Central Gulf of Alaska; EGOAxSE = Eastern Gulf of Alaska except Southeast Alaska; SEAK = Southeast Alaska; WGOA = Western Gulf of Alaska).

² If a price is listed for the species and port combination, that price will be applied to the round weight equivalent for sablefish landings and the headed and gutted weight equivalent for halibut landings. If no price is listed for the port, use port group.

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

Dated: December 19, 2024.

Kelly Denit,

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

[FR Doc. 2024–30712 Filed 12–23–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE540

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Alabama Department of Conservation and Natural Resources Fisheries Independent Research Programs

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

ACTION: Notice; receipt of application for Letter of Authorization; request for comments and information.

SUMMARY: NMFS has received a request from the Alabama Department of Conservation and Natural Resources (ALDCNR) for authorization to take small numbers of marine mammals incidental to fisheries independent research programs in Mobile Bay and adjacent waters of Alabama over the course of five years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the ALDCNR's

request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on the ALDCNR's application and request.

DATES: Comments and information must be received no later than January 27, 2025.

ADDRESSES: Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to ITP.cockrell@noaa.gov.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities> without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Craig Cockrell, Office of Protected Resources, NMFS, (301) 427-8401. An electronic copy of the ALDCNR's application may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is

limited to harassment, a notice of a proposed authorization is provided to the public for review.

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term "take" means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On April 12, 2024, NMFS received an application from the ALDCNR requesting authorization for take of marine mammals incidental to their fisheries independent research programs related to sampling activities with gillnet and trawl gear in Mobile Bay and adjacent waters of Alabama. Following NMFS' review of the application, ALDCNR provided responses to NMFS initial questions on July 11, 2024 and responses to follow up questions on December 10, 2024. NMFS determined the application was adequate and complete on December 12, 2024. The requested regulations would be valid for five years from the date of issuance. The ALDCNR plans to conduct the research in Mobile Bay and adjacent waters including Mississippi Sound, Perdido Bay, Wolf Bay, and Little Lagoon. It is possible that marine mammals may interact with fishing gear (*e.g.* gillnets and trawl gear) proposed for use in ALDCNR's fishery independent resulting in injury, serious injury, or mortality. Therefore, the ALDCNR

requests authorization to incidentally take marine mammals.

Specified Activities

The ALDCNR conducts fishery independent surveys throughout the inshore and coastal waters of Alabama, in the northern Gulf of Mexico, to produce scientific information necessary for the management and conservation of living marine resources in that area. The fisheries independent research programs use sampling gear including gillnets, seines, and otter trawls to assess marine organisms in different habitats and trophic levels and provides data about post-larval, juvenile, and adult populations of marine organisms in Alabama inshore and coastal waters. The collective data is used by fisheries scientists to monitor growth, seasonal and geographical distribution, changes in population structures, and correlation of abundance with some abiotic factors for all Alabama marine fauna. These proposed activities by ALDCNR would be conducted over the 5-year period of the regulations and subsequent LOA.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the ALDCNR's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by the ALDCNR, if appropriate.

Dated: December 18, 2024.

Kimberly Damon-Randall,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2024-30726 Filed 12-23-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE536]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of meeting open to the public.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a second Recreational Initiative

Public Engagement Workshop via webinar.

DATES: The webinar will convene Thursday, January 16, 2025, from 6 p.m. to 9 p.m., EST.

ADDRESSES: The workshop will take place via webinar. You may participate by accessing the log-on information by visiting our website at www.gulfcouncil.org.

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348-1630.

FOR FURTHER INFORMATION CONTACT: Emily Muehlstein, Public Information Officer, Gulf of Mexico Fishery Management Council; telephone: (813) 348-1630; Emily.Muehlstein@gulfcouncil.org.

SUPPLEMENTARY INFORMATION:

Thursday, January 16, 2025; 6 p.m.–9 a.m., EST

The meeting will begin with a brief presentation on the purpose of the Recreational Initiative, provide a brief overview of results of the second Working Group Meeting, and outline the meeting format and expected outcomes. Staff will ask a series of open-ended questions and allow for open public comment on the Recreational Initiative.

Visit the Gulf Council's website for meeting registration information: <https://gulfcouncil.org/recreational-initiative/>. After registering, you will receive a confirmation email containing information about joining the webinar. Public feedback on the Recreational Initiative will also be gathered online through an online feedback tool located at: <https://docs.google.com/forms/d/e/1FAIpQLSfwnQ6AgzIBmgx0k18yzcPpDm0RDUV-zyybR05mxoJVRmBdQg/viewform>.

The meeting will be via webinar only. You may register for the webinar by visiting www.gulfcouncil.org and click on the meeting on the calendar.

The timing and order in which agenda items are addressed may change as required to effectively address the issue, and the latest version along with other meeting materials will be posted on the website as they become available.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid or accommodations should be directed to Kathy Pereira, (813) 348-1630, at least 15 days prior to the meeting date.

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

Dated: December 18, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024-30626 Filed 12-23-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE534]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Committee via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, January 14, 2025 at 1 p.m.

ADDRESSES: Webinar registration URL information: https://nefmc-org.zoom.us/j/9PZk_BAqawjkMxGEXiGZc44.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Cate O'Keefe, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Scallop Committee will meet to Review 2025 Scallop Work Priorities, including a work plan for this calendar year. The discussion will focus on the development of a Long-Term Strategic Plan. Other business will be discussed, if necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to

take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cate O'Keefe, Executive Director, at (978) 465-0492, at least 5 days prior to the meeting date.

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

Dated: December 18, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024-30625 Filed 12-23-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE518]

Fisheries of the Exclusive Economic Zone Off Alaska; North Pacific Halibut and Sablefish Individual Fishing Quota Cost Recovery Program

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

ACTION: Notice of standard prices and fee percentage.

SUMMARY: NMFS publishes the individual fishing quota (IFQ) standard prices and fee percentage for cost recovery for the IFQ Program for the halibut and sablefish fisheries of the North Pacific (IFQ Program). The fee percentage for 2024 is 3.0 percent. This action is intended to provide holders of halibut and sablefish IFQ permits with the 2024 standard prices and fee percentage to calculate the required payment for IFQ cost recovery fees due by January 31, 2025.

DATES: The standard prices and fee percentages are valid on December 26, 2024

FOR FURTHER INFORMATION CONTACT: Charmaine Weeks, Fee Coordinator, 907-586-7231.

SUPPLEMENTARY INFORMATION:

Background

NMFS Alaska Region administers the IFQ Program in the North Pacific. The IFQ Program is a limited access system authorized by the Magnuson-Stevens

Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Northern Pacific Halibut Act of 1982 (Halibut Act). Fishing under the IFQ Program began in March 1995.

Regulations implementing the IFQ Program are set forth at 50 CFR part 679.

In 1996, the Magnuson-Stevens Act was amended to, among other purposes, require the Secretary of Commerce to collect a fee to recover the actual costs directly related to the management and enforcement of any individual quota program. This requirement was further amended in 2006 to include collection of the actual costs of data collection and to replace the reference to “individual quota program” with a more general reference to “limited access privilege program” at section 304(d)(2)(A) of the Magnuson-Stevens Act. Section 304(d)(2) of the Magnuson-Stevens Act also specifies an upper limit on these fees, when the fees must be collected, and where the fees must be deposited.

On March 20, 2000, NMFS published regulations at § 679.45 to implement cost recovery for the IFQ Program (65 FR 14919, March 20, 2000). Under the regulations, an IFQ permit holder must pay a cost recovery fee for every pound of IFQ halibut and sablefish that is landed on their IFQ permit(s), including any halibut that is landed as guided angler fish. The IFQ permit holder is responsible for self-collecting the fee for all IFQ halibut and sablefish landings on their permit(s). The IFQ permit holder is also responsible for submitting IFQ fee payments(s) to NMFS on or before January 31 of the year following the year in which the IFQ landings were made. The total dollar amount of the fee is determined by multiplying the NMFS published fee percentage by the ex-vessel value of all IFQ landings made on the permit(s) during the IFQ fishing year. As required by § 679.45(d)(1) and (d)(3)(i), NMFS publishes this notice of the fee percentage for the IFQ halibut and sablefish fisheries in the **Federal Register** during or prior to the last quarter of each year.

Standard Prices

The fee is based on the sum of all payments from, for example, fish

processors, made to fishermen for the sale of the fish during the year. This includes any retro-payments (*e.g.*, bonuses, delayed partial payments, post-season payments) made to the IFQ permit holder for previously landed IFQ halibut or sablefish.

For purposes of calculating IFQ cost recovery fees, NMFS distinguishes between two types of ex-vessel value: actual and standard. Actual ex-vessel value is the amount of all compensation, monetary or non-monetary, that an IFQ permit holder received as payment for his or her IFQ fish sold. Standard ex-vessel value is the default value used to calculate the fee. IFQ permit holders have the option of using actual ex-vessel value if they can satisfactorily document it; otherwise, the standard ex-vessel value is used.

Section 679.45(b)(3)(iii) requires the Regional Administrator to publish IFQ standard prices during the last quarter of each calendar year. These standard prices are used, along with estimates of IFQ halibut and IFQ sablefish landings, to calculate standard ex-vessel values. The standard prices are described in U.S. dollars per IFQ equivalent pound for IFQ halibut and IFQ sablefish landings made during the 2024 year. According to § 679.2, IFQ equivalent pound(s) means the weight amount, recorded in pounds, and calculated as round weight for sablefish and headed and gutted weight for halibut, for an IFQ landing. The weight of halibut in pounds landed as guided angler fish is converted to IFQ equivalent pound(s) as specified in 50 CFR 300.65(c)(5)(ii)(E). NMFS calculates the standard prices to closely reflect the variations in the actual ex-vessel values of IFQ halibut and IFQ sablefish landings by month and port or port-group. The standard prices for IFQ halibut and IFQ sablefish are listed in the tables that follow the next section. Data from ports are combined as necessary to protect confidentiality.

Fee Percentage

NMFS calculates the fee percentage each year according to the factors and methods described at § 679.45(d)(2). NMFS determines the fee percentage

that applies to landings made in the previous year by dividing the total costs directly related to the management, data collection, and enforcement of the IFQ Program (management costs) during the previous year by the total standard ex-vessel value of halibut and sablefish IFQ landings made during the previous year (fishery value). NMFS identifies the actual management costs associated with certain management, data collection, and enforcement functions through an established accounting system that allows staff to track labor, travel, contracts, rent, and procurement. NMFS calculates the fishery value as described under the section Standard Prices.

Using the fee percentage formula described above, NMFS determined that the percentage of management costs to fishery value for the 2024 calendar year is 5.2 percent of the standard ex-vessel value; however, the fee percentage must not exceed 3.0 percent pursuant to section 304(d)(2)(B) of the Magnuson-Stevens Act. Therefore, the 2024 fee percentage is set at 3.0 percent. An IFQ permit holder is to use the fee percentage of 3.0 percent to calculate their fee for IFQ equivalent pound(s) landed during the 2024 halibut and sablefish IFQ fishing season. An IFQ permit holder is responsible for submitting the 2024 IFQ fee payment to NMFS on or before January 31, 2025. Payment must be made in accordance with the payment methods set forth in § 679.45(a)(4)(iv). Payment can be made using credit card, debit card, or electronic check via the *pay.gov* program. NMFS does not accept credit card information by phone or in-person for fee payments.

Due to the regulatory cap the 2024 fee percentage of 3.0 percent is the same as the 2023 fee percentage of 3.0 percent (88 FR 89667, December 28, 2023). Net fishery management costs decreased by 12% when compared to 2023's net fishery management costs. However, the total fishery value declined by 43%, resulting in a capped fee percentage.

TABLE 1—REGISTERED BUYER STANDARD EX-VESSEL PRICES BY LANDING LOCATION FOR THE 2024 IFQ SEASON¹

Landing location	Period ending	Halibut standard ex-vessel price	Sablefish standard ex-vessel price
CORDOVA	March 31 .....	.....	.....
	April 30 .....	.....	.....
	May 31 .....	.....	.....
	June 30 .....	.....	.....
	July 31	5.55	.....

TABLE 1—REGISTERED BUYER STANDARD EX-VESSEL PRICES BY LANDING LOCATION FOR THE 2024 IFQ SEASON¹—
Continued

Landing location	Period ending	Halibut standard ex-vessel price	Sablefish standard ex-vessel price
HOMER	August 31	5.34	.....
	September 30 .....	.....	.....
	October 31 .....	.....	.....
	November 30 .....	.....	.....
	December 31 .....	.....	.....
	March 31	5.16	.....
	April 30	5.20	1.02
	May 31	5.77	1.01
	June 30	6.04	1.55
	July 31	6.36	1.62
KODIAK	August 31	5.75	1.23
	September 30	5.23	1.65
	October 31	5.23	1.65
	November 30	5.23	1.65
	December 31	5.23	1.65
	March 31	5.02	.....
	April 30	4.71	0.98
	May 31	4.84	0.97
	June 30	5.60	1.13
	July 31	5.46	1.20
PETERSBURG	August 31	5.33	1.40
	September 30	5.06	1.34
	October 31	5.06	1.34
	November 30	5.06	1.34
	December 31	5.06	1.34
	March 31 .....	.....	.....
	April 30 .....	.....	.....
	May 31	5.73	.....
	June 30 .....	.....	.....
	July 31 .....	.....	.....
SEWARD	August 31	5.88	.....
	September 30 .....	.....	.....
	October 31 .....	.....	.....
	November 30 .....	.....	.....
	December 31 .....	.....	.....
	March 31 .....	.....	.....
	April 30 .....	.....	.....
	May 31	3.38	.....
	June 30 .....	.....	.....
	July 31 .....	.....	.....
SITKA	August 31 .....	.....	.....
	September 30	4.42	1.22
	October 31	4.42	1.22
	November 30	4.42	1.22
	December 31	4.42	1.22
	March 31 .....	.....	.....
	April 30 .....	.....	.....
	May 31 .....	.....	.....
	June 30 .....	.....	.....
	July 31	5.46	1.64
BERING SEA	August 31	5.44	.....
	September 30	5.46	.....
	October 31	5.46	.....
	November 30	5.46	.....
	December 31	5.46	.....
	March 31 .....	.....	.....
	April 30 .....	.....	.....
	May 31 .....	.....	.....
	June 30	3.83	.....
	July 31	3.97	.....
	August 31	3.98	.....
	September 30	4.24	.....
	October 31	4.24	.....

TABLE 1—REGISTERED BUYER STANDARD EX-VESSEL PRICES BY LANDING LOCATION FOR THE 2024 IFQ SEASON¹—Continued

Landing location	Period ending	Halibut standard ex-vessel price	Sablefish standard ex-vessel price
CENTRAL GULF OF ALASKA	November 30	4.24	.....
	December 31	4.24	.....
	March 31	5.18	1.09
	April 30	5.07	0.97
	May 31	5.15	1.00
	June 30	5.50	1.34
	July 31	4.82	1.36
	August 31	5.19	1.18
	September 30	4.85	1.30
	October 31	4.85	1.30
	November 30	4.85	1.30
	December 31	4.85	1.30
SOUTHEAST ALASKA	March 31	5.99	1.64
	April 30	5.48	1.62
	May 31	5.53	1.61
	June 30	5.85	1.95
	July 31	5.67	1.62
	August 31	5.56	1.76
	September 30	5.61	1.95
	October 31	5.61	1.95
	November 30	5.61	1.95
	December 31	5.61	1.95
ALL-ALASKA	March 31	5.71	1.50
	April 30	5.28	1.17
	May 31	5.33	1.24
	June 30	5.58	1.52
	July 31	4.87	1.48
	August 31	5.15	1.30
	September 30	5.03	1.45
	October 31	5.03	1.45
	November 30	5.03	1.45
	December 31	5.03	1.45
ALL	March 31	5.71	1.50
	April 30	5.28	1.17
	May 31	5.33	1.24
	June 30	5.58	1.52
	July 31	4.87	1.48
	August 31	5.15	1.30
	September 30	5.03	1.45
	October 31	5.03	1.45
	November 30	5.03	1.45
	December 31	5.03	1.45

¹ **Note:** In many instances, prices are not shown in order to comply with confidentiality guidelines when there are fewer than three registered buyers operating in a location during a month. Additionally, landings at different harbors in the same general location (e.g., "Juneau, Douglas, and Auke Bay") have been combined to report landings to the main port (e.g., "Juneau").

² *Landing Locations Within Port Group—Bering Sea:* Adak, Akutan, Akutan Bay, Atka, Bristol Bay, Chefornak, Dillingham, Captains Bay, Dutch Harbor, Egegik, Ikatan Bay, Hooper Bay, King Cove, King Salmon, Kipnuk, Mekoryuk, Naknek, Nome, Quinhagak, Savoonga, St. George, St. Lawrence, St. Paul, Togiak, Toksook Bay, Tununak, Beaver Inlet, Ugadaga Bay, Unalaska.

³ *Landing Locations Within Port Group—Central Gulf of Alaska:* Anchor Point, Anchorage, Alitak, Chignik, Cordova, Eagle River, False Pass, West Anchor Cove, Girdwood, Chinitna Bay, Halibut Cove, Homer, Kasilof, Kenai, Kenai River, Alitak, Kodiak, Port Bailey, Nikiski, Ninilchik, Old Harbor, Palmer, Sand Point, Seldovia, Resurrection Bay, Seward, Valdez, Whittier.

⁴ *Landing Locations Within Port Group—Southeast Alaska:* Angoon, Baranof Warm Springs, Craig, Edna Bay, Elfin Cove, Excursion Inlet, Gustavus, Haines, Hollis, Hoonah, Hyder, Auke Bay, Douglas, Tee Harbor, Juneau, Kake, Ketchikan, Klawock, Metlakatla, Pelican, Petersburg, Portage Bay, Port Alexander, Port Graham, Port Protection, Point Baker, Sitka, Skagway, Tenakee Springs, Thorne Bay, Wrangell, Yakutat.

⁵ *Landing Locations Within Port Group—All:* For Alaska: All landing locations included in 1, 2, and 3. For California: Eureka, Fort Bragg, Other California. For Oregon: Astoria, Aurora, Lincoln City, Newport, Warrenton, Other Oregon. For Washington: Anacortes, Bellevue, Bellingham, Nagai Island, Edmonds, Everett, Granite Falls, Ilwaco, La Conner, Port Angeles, Port Orchard, Port Townsend, Ranier, Fox Island, Mercer Island, Seattle, Standwood, Other Washington. For Canada: Port Hardy, Port Edward, Prince Rupert, Vancouver, Haines Junction, Other Canada.

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

Dated: December 20, 2024.

Kelly Denit,

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

[FR Doc. 2024–31018 Filed 12–20–24; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE550]

Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops

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

ACTION: Notice of public workshops.

SUMMARY: Atlantic Shark Identification Workshops and Safe Handling, Release, and Identification Workshops will be held in January, February, and March of 2025. Certain fishermen and shark dealers are required to attend a workshop to meet regulatory requirements and to maintain valid permits. Specifically, the Atlantic Shark Identification Workshop is mandatory for all federally permitted Atlantic shark dealers. The Safe Handling, Release, and Identification Workshop is mandatory for vessel owners and operators who use bottom longline, pelagic longline, or gillnet gear, and who have also been issued shark or swordfish limited access permits. Additional free workshops will be conducted in 2025 and will be announced in a future notice. In addition, NMFS has implemented online recertification workshops for persons who have already taken an in-person training.

DATES: The Atlantic Shark Identification Workshops will be held on January 16, 2025, February 13, 2025, and March 20, 2025. The Safe Handling, Release, and Identification Workshops will be held on January 7, 2025, February 4, 2025, and March 6, 2025.

ADDRESSES: The Atlantic Shark Identification Workshops will be held in Kenner, LA, Fort Pierce, FL, and Wilmington, NC. The Safe Handling, Release, and Identification Workshops will be held in Marathon, FL, Portsmouth, NH, and Houston, TX.

FOR FURTHER INFORMATION CONTACT: Elsa Gutierrez by email at elsa.gutierrez@noaa.gov or by phone at 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic highly migratory species (HMS) fisheries (tunas, swordfish, sharks, and billfish) are managed under the 2006 Consolidated HMS Fishery Management Plan (FMP) and its amendments, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and consistent with the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). HMS implementing regulations are at 50 CFR part 635. Section 635.8 describes the requirements for the Atlantic Shark Identification Workshops and Safe Handling, Release, and Identification Workshops. The workshop schedules, registration information, and a list of frequently asked questions regarding the Atlantic Shark Identification and Safe Handling, Release, and Identification workshops are available online at: <https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/atlantic-shark-identification-workshops> and <https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/safe-handling-release-and-identification-workshops>.

Atlantic Shark Identification Workshops

Since January 1, 2008, Atlantic shark dealers have been prohibited from receiving, purchasing, trading, or bartering for Atlantic sharks unless a valid Atlantic Shark Identification Workshop certificate is on the premises of each business listed under the shark dealer permit that first receives Atlantic sharks (71 FR 58058, October 2, 2006). Dealers who attend and successfully complete a workshop are issued a certificate for each place of business that is permitted to receive sharks. These certificate(s) are valid for 3 years. Thus, certificates that were initially issued in 2022 will expire in 2025.

Currently, permitted dealers may send a proxy to an Atlantic Shark Identification Workshop. However, if a dealer opts to send a proxy, the dealer must designate a proxy for each place of business covered by the dealer's permit that first receives Atlantic sharks. Only one certificate will be issued to each proxy. A proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and who fills out dealer reports. Atlantic shark dealers are prohibited from renewing a Federal shark dealer permit unless a valid Atlantic Shark Identification Workshop certificate for each business location that first receives Atlantic sharks has

been submitted with the permit renewal application. Additionally, a copy of a valid dealer or proxy Atlantic Shark Identification Workshop certificate must be in any trucks or other conveyances that are extensions of a dealer's place of business.

Workshop Dates, Times, and Locations

1. January 16, 2025, 12 p.m.–4 p.m., Home2 Suites Kenner Airport, 1112 Veterans Memorial Boulevard, Kenner, LA 70062. 2. February 13, 2025, 12 p.m.–4 p.m., Hampton Inn & Suites Fort Pierce, 1985 Reynolds Drive, Fort Pierce, FL 34945. 3. March 20, 2025, 12 p.m.–4 p.m., Wingate by Wyndham Wilmington, 5126 Market Street Bus 17, Wilmington, NC 28405.

Registration

To register for a scheduled Atlantic Shark Identification Workshop, please contact Eric Sander at ericssharkguide@yahoo.com or at 386–852–8588. Pre-registration is highly recommended, but not required.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items to the workshop:

- Atlantic shark dealer permit holders must bring proof that the attendee is an owner or agent of the business (such as articles of incorporation), a copy of the applicable permit, and proof of identification.
- Atlantic shark dealer proxies must bring documentation from the permitted dealer acknowledging that the proxy is attending the workshop on behalf of the permitted Atlantic shark dealer for a specific business location, a copy of the appropriate valid permit, and proof of identification.

Workshop Objectives

The Atlantic Shark Identification Workshops are designed to reduce the number of unknown and improperly identified sharks reported in the dealer reporting form and increase the accuracy of species-specific dealer-reported information. Reducing the number of unknown and improperly identified sharks will improve quota monitoring and the data used in stock assessments. These workshops will train shark dealer permit holders or their proxies to properly identify Atlantic shark carcasses.

Safe Handling, Release, and Identification Workshops

Since January 1, 2007, shark limited access and swordfish limited access

permit holders who fish with longline or gillnet gear have been required to submit a copy of their Safe Handling, Release, and Identification Workshop certificate in order to renew either permit (71 FR 58058, October 2, 2006). These certificate(s) are valid for 3 years. Certificates issued in 2022 will expire in 2025. As such, vessel owners who have not already attended a workshop and received a NMFS certificate, or vessel owners whose certificate(s) will expire prior to the next permit renewal, must attend a workshop to fish with, or renew, their swordfish and shark limited access permits. Additionally, new shark and swordfish limited access permit applicants who intend to fish with longline or gillnet gear must attend a Safe Handling, Release, and Identification Workshop and submit a copy of their workshop certificate before either of the permits will be issued.

In addition to vessel owners, at least one operator on board vessels issued a limited access swordfish or shark permit that uses longline or gillnet gear is required to attend a Safe Handling, Release, and Identification Workshop and receive a certificate. Vessels that have been issued a limited access swordfish or shark permit and that use longline or gillnet gear may not fish unless both the vessel owner and operator have valid workshop certificates on board at all times. Vessel operators who have not already attended a workshop and received a NMFS certificate, or vessel operators whose certificate(s) will expire prior to their next fishing trip, must attend a workshop to operate a vessel with swordfish and shark limited access permits on which longline or gillnet gear is used.

Workshop Dates, Times, and Locations

1. January 7, 2025, 9 a.m.–2 p.m., Faro Blanco Resort Curio by Hilton, 1996 Overseas Highway, Marathon, FL 33050.

2. February 4, 2025, 9 a.m.–2 p.m., Residence Inn by Marriott Downtown Portsmouth, 100 Deer Street, Portsmouth, NH 03801.

3. March 6, 2025, 9 a.m.–2 p.m., Holiday Inn Express–Houston Medical Center, 9300 S. Main Street, Houston, TX 77025.

Registration

To register for a scheduled Safe Handling, Release, and Identification Workshop, please contact Angler Conservation Education at 386–682–0158. Pre-registration is highly recommended, but not required.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items with them to the workshop:

- Individual vessel owners must bring a copy of the appropriate swordfish and/or shark permit(s), a copy of the vessel registration or documentation, and proof of identification;
- Representatives of a business-owned or co-owned vessel must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable swordfish and/or shark permit(s), and proof of identification; and
- Vessel operators must bring proof of identification.

Workshop Objectives

The Safe Handling, Release, and Identification Workshops are designed to teach the owner and operator of a vessel that fishes with longline or gillnet gear the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles, marine mammals, smalltooth sawfish, Atlantic sturgeon, and prohibited sharks. In an effort to improve reporting, the proper identification of protected species and prohibited sharks will also be taught at these workshops. Additionally, individuals attending these workshops will gain a better understanding of the requirements for participating in these fisheries. The overall goal of these workshops is to provide participants with the skills needed to reduce the mortality of protected species and prohibited sharks, which may prevent additional regulations on these fisheries in the future.

Online Recertification Workshops

NMFS implemented an online option for shark dealers and owners and operators of vessels that fish with longline and gillnet gear to renew their certificates in December 2021. To be eligible for online recertification workshops, dealers and vessel owners and operators need to have previously attended an in-person workshop. Information about the courses is available online at <https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/atlantic-shark-identification-workshops> and <https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/safe-handling-release-and-identification-workshops>. To access the course please visit: <https://hmsworkshop.fisheries.noaa.gov/start>.

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

Dated: December 18, 2024.

Kelly Denit,

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

[FR Doc. 2024–30668 Filed 12–23–24; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Information and Regulatory Affairs (OIRA), of the Office of Management and Budget (OMB), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before January 27, 2025.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at <https://www.reginfo.gov/public/do/PRAMain>. Please find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the website's search function. Comments can be entered electronically by clicking on the “comment” button next to the information collection on the “OIRA Information Collections Under Review” page, or the “View ICR—Agency Submission” page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting <https://www.reginfo.gov/public/do/PRAMain>.

In addition to the submission of comments to <https://Reginfo.gov> as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the “Commission” or “CFTC”) by clicking on the “Submit Comment” box next to the descriptive entry for OMB Control No. 3038–3043, at <https://comments.cftc.gov/FederalRegister/PublicInfo.aspx>.

Or by either of the following methods:

- **Mail:** Christopher Kirkpatrick, Secretary of the Commission,

Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- *Hand Delivery/Courier*: Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include 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, 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://www.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 ICR 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 Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT:

Melissa Chiang, Senior Assistant General Counsel, Office of the General Counsel, Commodity Futures Trading Commission, (202) 418-5578; email: mchiang@cftc.gov, and refer to OMB Control No. 3038-3043.

SUPPLEMENTARY INFORMATION:

Title: Rules Relating to Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration, and Member Responsibility Actions (OMB Control Number 3038-0043). This is a request for extension of a currently approved information collection.

Abstract: 17 CFR part 171 rules require a registered futures association to provide fair and orderly procedures for membership and disciplinary actions. The Commission's review of decisions of registered futures associations in disciplinary, membership denial, registration, and member responsibility actions is governed by Section 17(h)(2) of the Commodity Exchange Act, 7 U.S.C. 21(h)(2). The rules establish procedures and standards for Commission review of such actions, and the reporting requirements included in the procedural

rules are either directly required by Section 17 of the Commodity Exchange Act or are necessary to the type of appellate review role Congress intended the Commission to undertake when it adopted that provision. Because the number of respondents, responses per respondent, and time per response has not changed, this renewal does not change the reporting burden for this collection.

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.² On December 3, 2024, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 89 FR 80896 ("60-Day Notice") The Commission did not receive any relevant comments on the 60-Day Notice.

Burden Statement: The estimated total annual respondent burden for this collection is three hours. This estimate includes the time needed to transmit decisions of disciplinary, membership denial, registration, and member responsibility actions to the Commission for review.

Estimated Number of Respondents: 1.
Estimated Average Burden Hour(s) per Response: 1 hour.

Estimated Number of Annual Responses per Respondent: 3.
Estimated Total Annual Burden Hours: 3 hours.

Frequency of Collection: On occasion. There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: December 19, 2024

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2024-30766 Filed 12-23-24; 8:45 am]

BILLING CODE 6351-01-P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Extend Collection 3038-0074: Core Principles and Other Requirements for Swap Execution Facilities

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

² 44 U.S.C. 3512, 5 CFR 1320.5(b)(2)(i) and 1320.8(b)(3)(vi). The OMB control numbers for the CFTC regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981).

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is announcing an opportunity for public comment on the proposed renewal of a collection of certain information by the agency. Under the Paperwork Reduction Act ("PRA"), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the proposed renewal of the Information Collection Request ("ICR") titled: OMB Control Number 3038-0074, Core Principles and Other Requirements for Swap Execution Facilities.

DATES: Comments must be submitted on or before February 24, 2025.

ADDRESSES: You may submit comments, identified by "Renewal of Collection 3038-0074, Core Principles and Other Requirements for Swap Execution Facilities" by any of the following methods:

- The CFTC website, at <https://comments.cftc.gov/>. Follow the instructions for submitting comments through the website.

- *Mail*: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- *Delivery/Courier*: Same as Mail above.

Please submit your comments using only one method.

FOR FURTHER INFORMATION CONTACT:

Roger Smith, Associate Chief Counsel, Division of Market Oversight Commodity Futures Trading Commission, (202) 418-5344; email: rsmith@cftc.gov, and refer to OMB Control No. 3038-0074.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.*, Federal agencies must obtain approval from the Office of Management and Budget ("OMB") for each collection of information they conduct or sponsor. "Collection of Information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information,

¹ 17 CFR 145.9.

before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below. 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.

Title: Core Principles and Other Requirements for Swap Execution Facilities (OMB Control No. 3038–0074). This is a request for extension of a currently approved information collection.

Abstract: Section 5h to the Commodity Exchange Act (“CEA”) sets forth the requirements concerning the registration and operation of swap execution facilities (“SEFs”), which the Commission has implemented in part 37 of its regulations. These information collections are needed for the Commission to ensure that SEFs comply with these requirements. Among other requirements, part 37 of the Commission’s regulations imposes SEF registration requirements for a trading platform or system, obligates SEFs to provide transaction confirmations to swap counterparties, and requires SEFs to comply with 15 core principles. Collection 3038–0074 was created in response to the part 37 regulatory requirements for SEFs.

With respect to the collection of information, the CFTC invites comments on:

- 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;
- The accuracy of the Commission’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <https://www.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, 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://www.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 ICR 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 Freedom of Information Act.

Burden Statement: The Commission is revising its estimate of the burden for this collection for SEFs. The respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 20.

Estimated Average Burden Hours per Respondent: 764 (rounded).

Estimated Total Annual Burden Hours: 15,275.

Frequency of Collection: On occasion. There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: December 18, 2024.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2024–30630 Filed 12–23–24; 8:45 am]

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CONSUMER FINANCIAL PROTECTION BUREAU

Supervisory Highlights: Special Edition Student Lending

AGENCY: Consumer Financial Protection Bureau.

ACTION: Supervisory highlights.

SUMMARY: The Consumer Financial Protection Bureau (CFPB or Bureau) is issuing its thirty sixth edition of *Supervisory Highlights*.

DATES: The findings in this edition of *Supervisory Highlights* focus significant findings across the entire student loan market and cover select examinations that were generally completed in 2024.

FOR FURTHER INFORMATION CONTACT: Jaclyn Sellers, Senior Counsel, at (202) 435–7449. If you require this document

in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

1. Introduction

Student loans represent the second-largest form of U.S. consumer debt at around \$1.77 trillion in total outstanding balances. While Federal student loans comprise the vast majority of the student lending market, private student loans present notable risks. The refinance market, for example, may offer certain benefits, but refinancing or consolidating Federal loans through a private lender results in the loss of important Federal protections. And institutional lending products—private loans made by the borrower’s school directly to the student—warrant special attention because of the uniquely close relationship between student and school. Additionally, the terms of private student loans are not standardized, and examiners have found certain loan terms problematic for consumers. Because of these substantial risks, the Consumer Financial Protection Bureau (CFPB) is actively engaged in vigorous oversight of all areas of the student loan market to ensure that entities comply with Federal consumer financial laws, including the Consumer Financial Protection Act (CFPA),¹ the Electronic Fund Transfer Act and its implementing regulation, Regulation E,² and the Truth in Lending Act and its implementing regulation, Regulation Z.³

This edition of *Supervisory Highlights* focuses on significant findings across the entire student loan market. The first group of findings relates to the refinance market. Examiners identified abusive misleading statements regarding loss of Federal benefits as well as regulatory violations in connection with the refinancing and consolidation of loans. The second group involves the offering by private lenders of illusory benefits, including unemployment and disability protections as well as rate reductions for autopay. The third group involves noteholder liability for claims of school misconduct. Examiners identified violations related to private student loan servicers’ treatment of borrowers whose loan contracts have provisions allowing them to assert any claims and defenses they have against their school, such as for fraud, against the subsequent noteholder. The fourth group of findings involves illegal collection tactics, such as contract provisions allowing schools

¹ 12 U.S.C. 5481 *et seq.*

² 15 U.S.C. 1693, *et seq.*; 12 CFR part 1005, *et seq.*

³ 15 U.S.C. 1601, *et seq.*; 12 CFR part 1026, *et seq.*

¹ 17 CFR 145.9.

to withhold academic transcripts of delinquent borrowers.

The fifth and last group of findings relate to the servicing of Federal student loans. For over three years, payments on these loans were paused due to the COVID-19 pandemic. During that time, approximately 20 million borrower accounts were transferred to different Federal student loan servicers. In September 2023, interest began accruing on nearly \$1.5 trillion in federally owned loans owed by approximately 43 million consumers.

In October 2023, loan payment obligations resumed for around 28 million borrowers—including more than 6 million entering repayment for the first time. Many of these borrowers applied for income-driven repayment (IDR) plans to reduce their monthly payment amounts. Our recent supervisory work identified significant and pervasive violations related to servicers' handling of the return to repayment. These violations include failing to provide appropriate avenues for consumers to communicate with their servicers, sending deceptive billing statements, withdrawing excess amounts from borrowers' deposit accounts, and numerous problems related to processing of IDR applications.

To maintain the anonymity of the supervised institutions discussed in *Supervisory Highlights*, references to institutions generally are in the plural and the related findings may pertain to one or more institutions.⁴ We invite readers with questions or comments about *Supervisory Highlights* to contact us at CFPB_Supervision@cfpb.gov.

2. Supervisory Observations

2.1 Refining Student Loans

Refinancing student loans poses risks for borrowers, including loss of benefits tied to Federal student loans. In addition to other benefits, Federal student loans offer access to various forgiveness programs. For example, under the Public Service Loan Forgiveness program, eligible borrowers can have their remaining loan balance forgiven after making 120 qualifying loan payments on an IDR plan, while working for a qualifying public service employer. Under the Teacher Loan Forgiveness program, teachers may be eligible to have a portion of their loans forgiven after working for five years in low-income public schools. When

borrowers refinance or consolidate these loans through a private lender, they lose these benefits and protections.

2.1.1 Deceptive Representations About Eligibility for Forgiveness Upon Refinancing Federal Student Loans

Examiners found that private lenders offering to refinance Federal student loans engaged in deceptive acts or practices where their marketing and disclosure materials give a misleading net impression that refinancing Federal loans might not result in forfeiting access to Federal forgiveness programs, when, in fact, it was a certainty. A representation, omission, act, or practice is deceptive when: (1) the representation, omission, act, or practice misleads or is likely to mislead the consumer; (2) the consumer's interpretation of the representation, omission, act or practice is reasonable under the circumstances; and (3) the misleading representation, omission, act or practice is material.⁵

Examiners observed that the lenders repeatedly disclosed some of the benefits borrowers would lose access to if they refinanced their Federal loans into private loans, but omitted the fact that borrowers would lose access to forgiveness plans. In one instance, the lenders said borrowers “may” lose access to Federal benefits, despite it being a certainty. In phone calls about refinancing Federal loans, the lenders scripted responses to direct questions about loan forgiveness that omitted the loss of forgiveness benefits upon refinancing.

These statements were misleading because they created the net impression that borrowers could refinance their loans with the lenders without losing access to forgiveness programs, which is false. The borrowers' interpretation of the representations was reasonable, as borrowers are entitled to accept statements on the lenders' website and the lenders' responses to direct questions in assessing the pros and cons of refinancing Federal student loans. The representations are material as they may affect borrowers' decisions regarding whether to refinance their Federal loans.

2.1.2 Abusive Practices in Connection With the Loss of Forgiveness Benefits Upon Refinancing Federal Student Loans

Examiners also found instances of abusive acts or practices by private lenders in connection with misleading statements about Federal forgiveness in connection with refinancing Federal

loans by private lenders. An abusive act or practice: (1) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or (2) takes unreasonable advantage of: a lack of understanding on the part of the consumer of the material risks, costs or conditions of the product or service; the ability of the consumer to protect the interest of the consumer in selecting or using a financial product or service; or the reasonable reliance by the consumer on a covered person to act in the interest of the consumer.⁶

Examiners found that the lenders engaged in abusive acts or practices by taking unreasonable advantage of a lack of understanding on the part of borrowers regarding the material risks, costs, or conditions of refinancing Federal loans into private loans. The lenders took unreasonable advantage of borrowers where their representations misled borrowers about the Federal benefits at risk when borrowers refinance their student loans. Here, the lenders created the impression that refinancing Federal loans may not result in forfeiting access to Federal forgiveness programs.

The lenders profited from borrowers paying the full amount of their loans, when the borrowers otherwise potentially could have had some or all of those loans forgiven. They also gained customers who might not otherwise refinance their loans with the lenders, expanding their market share. And they increased loan amounts when borrowers consolidated Federal loans with private loans, which increased their revenue from interest on the loans. Borrower complaints evidenced a lack of understanding about the impact on eligibility for loan forgiveness and confusion based on the lenders' representations.

2.1.3 Failure To Re-Amortize Consolidated Loans After Borrowers' Requests To Exclude Certain Loans

Examiners found that student loan originators engaged in unfair acts or practices by failing to re-amortize or offer to re-amortize a consolidated refinanced student loan when the borrower requested a modification to the loan package to exclude certain loans during the three-day cancellation period. An act or practice is unfair when: (1) it causes or is likely to cause substantial injury to consumers; (2) the injury is not reasonably avoidable by

⁴ If a supervisory matter is referred to the Office of Enforcement, Enforcement may cite additional violations based on these facts or uncover additional information that could impact the conclusion as to what violations may exist.

⁵ 12 U.S.C. 5531.

⁶ 12 U.S.C. 5535(a)(1)(B). See also CFPB, *Policy Statement on Abusive Acts or Practices* (Apr. 3, 2023), <https://www.consumerfinance.gov/compliance/supervisory-guidance/policy-statement-on-abusiveness/#1>.

consumers; and (3) the injury is not outweighed by countervailing benefits to consumers or to competition.⁷ When seeking to refinance private student loans, borrowers noticed that lenders erroneously included Federal student loans in the refinance package and requested, within the applicable three-day cancellation period, to have the Federal loans excluded. Lenders failed to exclude the loans from the refinance package before the new loan funded and the lenders had paid off the Federal loans. Upon realizing that they should not have included the Federal loans in the package, the lenders subsequently removed the Federal loans and recouped the payoff amounts. But rather than re-amortizing or offering to re-amortize the refinanced loan, they merely reduced the principal. This tactic lowered the amount owed and shortened the loan term but did not change the monthly payment.

This practice was unfair because it caused or was likely to cause substantial injury to borrowers because they were charged monthly payments larger than what they would have been charged had the Federal loans not been included and not given a choice about how to allocate their funds. Borrowers could not reasonably avoid the injuries because they could not control lenders' decisions not to re-amortize or offer to re-amortize the loans. The injuries outweighed any countervailing benefits to consumers or competition.

2.1.4 Failure To Cancel Loans During Three-Day Cancellation Period

Examiners found that student loan originators violated Regulation Z⁸ by not allowing borrowers to cancel private education loans without penalty before midnight of the third business day following the date on which the borrower received the disclosures as required.⁹ Specifically, lenders violated the regulation by failing to cancel the refinancing of Federal loans as requested by borrowers within the three-day cancellation period.

2.2 Illusory Benefits Offered by Private Lenders

2.2.1 Unfair Denial of Disability Benefits

Examiners found that lenders engaged in unfair acts or practices by denying borrowers' applications for discharge based on Total and Permanent Disability for reasons other than those identified in the loan note where they otherwise

satisfied the criteria for discharge based on Total and Permanent Disability.

Examiners observed that borrowers' loan notes provided for Total and Permanent Disability discharge based on the criterion that borrowers were unable to engage in any substantial gainful activity due to a physical or mental impairment of a certain type. The lenders denied applications for Total and Permanent Disability discharges based on criteria not included in the loan note.

This practice caused substantial injury because borrowers were required to continue to make loan payments on loans that should have been discharged according to the contract terms. Borrowers may be required to pay down loan balances of thousands of dollars each. The injury is not reasonably avoidable because borrowers have no way to prevent the lenders from applying additional criteria to their discharge applications. The injury does not outweigh any countervailing benefits to consumers or competition.

2.2.2 Deceptive Misrepresentations Regarding Autopay Discount

Examiners found that private student lenders engaged in deceptive acts or practices by inaccurately representing that their autopay discount was not available to borrowers with certain types of loans when in fact they were eligible.

The lenders had policies providing qualifying borrowers with a discount of 0.25% on their student loan interest rate if they sign up for autopay. On their online borrower portals, the lenders represented that certain types of loans did not qualify for an autopay rate reduction, just before a link to enroll in autopay. However, these types of loans had become eligible for the autopay discount five years earlier.

This representation misled or was likely to mislead borrowers, as it misstated that certain borrowers were not eligible for the autopay discount when they were, in fact, eligible. Borrowers' interpretation of the representation was reasonable, as it is reasonable for borrowers to take at face value an express claim on their lender's portal regarding its policies for autopay eligibility. The representation is material, as borrowers often enroll in autopay to receive the discount on their student loan interest rate. Some borrowers who believe they are ineligible for the autopay rate reduction because they accepted the lenders' misleading misrepresentations may not sign up for autopay, and they may pay more in interest than they would have otherwise.

2.2.3 Illusory Unemployment Benefits

Private student loan originators advertised on their websites and on phone calls with borrowers that private student loan borrowers could suspend their loan payments if they lost their job. Examiners found that the lenders continued to advertise this as an attribute of their private student loans, even after the lenders unilaterally replaced the unemployment program with a less generous one that only allowed borrowers to reduce their payments during unemployment, but only if the borrower met new ability-to-pay eligibility criteria.

Examiners identified two law violations related to advertising this unemployment program, unilaterally eliminating the benefit, and then failing to honor it.

Examiners found that entities offering private student loans engaged in deceptive acts or practices by falsely advertising that private student loan borrowers could suspend their payments for short periods of unemployment when, in fact, the lenders no longer allowed borrowers to do so.

The statements were likely to mislead reasonable borrowers into believing that suspension of the payments would be available if they lost their job. In fact, after a point, the lenders no longer offered this benefit. Borrowers may reasonably take the websites and lenders' statements at face value regarding the ability to suspend their payments during unemployment. These representations were material because they were likely to affect borrowers' choice to originate or refinance their student loans based on the availability of the advertised benefit.

Examiners also found that private student loan originators engaged in abusive acts or practices by taking unreasonable advantage of borrowers' inability to protect their own interest in selecting or using a consumer financial product or service by prominently advertising unemployment protections and then eliminating or not providing those protections after the borrower had already elected the loans.

Lenders took unreasonable advantage of borrowers by promoting the ability to suspend payments for periods of unemployment to attract borrowers, and then reducing costs by significantly rolling back the unemployment protections. Some private student loan borrowers were unable to protect their interests because the lenders did not eliminate the unemployment benefit until after the borrower had taken out the loan. Once they were unemployed,

⁷ 12 U.S.C. 5531 and 5536.

⁸ 12 CFR 1026.48(d).

⁹ 12 CFR 1026.47(c).

borrowers also had few options to refinance their private loans with another lender. And the borrowers had no control over the lenders' decision to discontinue the protections.

2.3 Noteholder Liability Related to Claims of School Misconduct

Student loan borrowers sometimes allege their schools fraudulently induced them to enroll and to secure private student loans to finance their education. These borrowers may be able to discharge certain loans due to their school's misconduct under numerous State and Federal laws and protections. For example, the Borrower-Defense-to-Repayment regulation, 34 CFR 685.400 *et seq.*, allows borrowers to challenge the validity of Federal loans that they believe were originated due to school misconduct. If the borrower is successful, the borrowers' Federal student loans are completely expunged and any amounts they paid on those loans refunded. As of May 1, 2024, the U.S. Department of Education (DOE) had discharged \$28.7 billion dollars for 1.6 million borrowers who were cheated by their schools, saw their institutions precipitously close, or are covered by related court settlements.¹⁰

The Borrower-Defense-to-Repayment regulation does not apply to private student loans. However, other legal protections may allow borrowers to seek to have their private student loans discharged based on school misconduct. Many private student loans include a contractual guarantee in the promissory note—which may be required by the Federal Trade Commission's Holder-in-Due-Course Rule¹¹—that the borrower can assert against any subsequent loan holder any claim the borrower has against their school. In other words, provisions in borrowers' private student loan contracts often ensure that a borrower can assert school misconduct as a basis for loan discharge regardless of who holds the loan.

Examiners identified two violations related to private student loan servicers' treatment of borrowers whose loan contracts have provisions allowing them to challenge their loans against subsequent noteholders and who allege misconduct by their schools.

2.3.1 Misleading Borrowers About Their Contractual Rights To Challenge Fraudulent Loans

Examiners reviewed private student loan servicers' practices in connection with borrower contracts that contained language stating that any holder of the contract is subject to all claims and defenses that the borrower would have been able to assert against their school. They found that the servicers engaged in deceptive acts or practices when they implied to these borrowers that they could not challenge their loans using claims or defenses they could have had against their schools. In email responses to borrower complaints (both those made directly to servicers and to complaints referred by the CFPB), servicers stated that there was no discharge program available to these borrowers. In fact, provisions in their loan notes guaranteed their right to allege fraud by their schools as a claim or defense against repayment.

This statement was likely to mislead borrowers by implying that they could not challenge their loans using claims or defenses they could have had against their school. The borrowers' interpretation of the statement to mean that they had no avenues for challenging their private loans based on their school's conduct is reasonable under the circumstances, as they are entitled to accept that their servicers are providing accurate information about the borrower's rights. The servicers' representations were material because they likely affected the borrowers' decisions regarding whether to pursue their claims.

2.3.2 Failure To Consider Borrowers' Allegations of Fraud in Contravention of Contract

Examiners found that private student loan servicers engaged in an unfair act or practice by failing to consider most borrowers' challenges to their loans related to school misconduct, using claims or defenses they could have had against their schools. The servicers lacked policies and procedures to effectively consider most borrowers' challenges regarding their schools and failed to do so even though provisions in the borrowers' loan notes guaranteed the borrowers' right to assert such challenges. Servicers considered borrowers' claims against their schools only if the borrowers retained attorneys.

This practice resulted in substantial injury to consumers because it caused borrowers to forgo further attempts to challenge their loans or required them to incur the costs necessary to obtain an attorney. Borrowers could not

reasonably avoid the injury because they could not know that the servicer would disregard contractual provisions in their loan notes providing that any holder of the contract is subject to all claims and defenses that the borrower would have been able to assert against the seller. The injury is not outweighed by any countervailing benefits to consumers or competition.

2.3.3 Corrective Actions—Process for Considering Borrower Claims of School Misconduct

To address these UDAAPs related to noteholder liability, Supervision directed the private student loan lenders and servicers to maintain and publicize a robust process to consider borrower claims of misconduct by their school. More specifically, Supervision directed the entities to implement a claims-review process that is not unduly burdensome for the borrowers and gives due deference to findings of the DOE or courts regarding claims of misconduct, fraud, or misrepresentation by a borrower's school; that is public and easily accessible; and that ensures any denials are individualized and detailed. With respect to private student loans where the entity had actual notice that the DOE or a court had made a finding of fraud, misconduct, or misrepresentation by the school that resulted in discharge of loans to attend that school, Supervision further directed the entities to suspend collections until they provided the borrower with a detailed reason why their private loans were not the result of similar misconduct.

2.4 Illegal Loan Collection Tactics

2.4.1 False Threat of Legal Action

Examiners found that private student loan servicers engaged in deceptive acts or practices when they included language in collection letters that gave the misleading impression that the servicers would take legal action against borrowers who fell behind on loan payments. Servicers sent letters to borrowers that included language about enforcing collection of debts and adding legal costs to borrowers' debts if the borrowers did not pay. In fact, the servicers had no practice of bringing legal actions and incurred no legal costs associated with pursuing past due amounts during the exam period. Instead, the servicers returned severely delinquent accounts back to the noteholder.

This act or practice was likely to mislead borrowers because they could reasonably understand the letters to mean that the servicer may bring legal

¹⁰ Press Release, DOE, *Biden-Harris Administration Approves \$6.1 Billion Group Student Loan Discharge for 317,000 Borrowers Who Attended The Art Institutes* (May 1, 2024), (<https://www.ed.gov/about/news/press-release/biden-harris-administration-approves-61-billion-group-student-loan>).

¹¹ 16 CFR 433.2.

action against borrowers when, in fact, the servicer had no policy of bringing legal actions. This understanding is reasonable because borrowers have no way of knowing that the servicers do not bring legal actions to collect debts as a matter of policy. The representation is material because it is likely to affect borrowers' decisions regarding making payments on their debts.

In response to these findings, servicers removed the language referencing legal actions from their letters.

2.4.2 Withholding Transcripts as a Remedy for Default

Academic transcripts are certified records of a student over their course of study. They provide information about courses taken, courses completed, grades, credits earned, certain credentials like majors or minors, and graduation status. Transcripts provide essential documentation of consumers' post-secondary education histories. When requested, institutions provide, or authorize third parties to provide, official transcripts to prospective employers, State licensing or credentialing agencies, and other post-secondary institutions.

Employers or licensing agencies require official transcripts for a range of reasons. For example, some employers may require transcripts to confirm the accuracy of applicants' resumes, and licensing authorities use them to demonstrate that applicants obtained the requisite training.

Consumers also need transcripts when applying to other post-secondary institutions as transfer students or for higher level degrees or credentials. Students may need to demonstrate their completed coursework to obtain credit for that education and progress toward a terminal degree or credential. Moreover, even when consumers do not need or wish to receive credit for any prior education, some post-secondary institutions still require the consumer to provide official transcripts prior to enrollment.

During examinations of entities that created and distributed model retail installment contracts to schools, examiners identified contracts that contained language that allowed for the withholding of transcripts in situations where student borrowers were in default on their education loans. The model contracts contained language allowing educational institutions, as a remedy for default, to "withhold [the student]'s transcripts [or] course completion certificates." Schools used these model contracts to originate institutional loans

and reassigned the loans back to the entities for servicing.

Examiners found that the entities risked engaging in an abusive act or practice by taking unreasonable advantage of consumers' inability to protect their interests when they created and distributed to their clients' contracts for institutional student loans that contained language allowing, as a remedy for default, unconditional withholding of official transcripts as a blanket policy.¹² The entities risked gaining unreasonable advantage from the act or practice of creating contracts that permitted educational institutions to engage in blanket withholding of transcripts. Even though the entities did not directly benefit from the contract provision, the provision enabled their partner schools to engage in strong-arm collection tactics and could provide them with an advantage by boosting their market share or revenue. Borrowers were unable to protect their interests because at the time they needed an official transcript for a job, credential, or access to continued education, they were unable to protect themselves by seeking another education elsewhere or seeking credit elsewhere, since other lenders were unlikely to provide credit to borrowers of these schools who are in this position. Nor could the borrowers have protected themselves by choosing an alternative provider at the time of origination of the loan, as they cannot bargain over transcript withholding provisions, and borrowers are unlikely to select a school or loan based on these provisions, as opposed to factors relating to the education itself.

In response to these findings, the entities removed the contract language and advised their client schools to cease utilizing the contract provision.

2.4.3 Preventing Access to Education as a Remedy of Default

Examiners conducted reviews of entities that created and distributed model retail installment contracts to schools who then originated institutional loans and then assigned the loans to the entities for servicing. The model contracts required repayment during the in-school period and contained language allowing, as a remedy for default, educational institutions to "deny Buyer access to

classes, computers, final exams, and other education services at the School, terminate or suspend Buyer's enrollment, deny or cancel Buyer's registration for additional classes, . . . and take other similar actions affecting Buyer's status as a student at the School."

Examiners found that entities risked engaging in unfair acts or practices by distributing to their clients' contracts for institutional student loans which required repayment during the in-school period that contain language stating that a remedy for default is to deny students access to classes or other services related to ongoing education. This language created a risk of injury to consumers because if they defaulted, then schools could deny them access to education programs that consumers had already paid for, including potentially with other loans or savings. Additionally, since jobs that require advanced education generally pay more, this practice reduces the chances that consumers can earn their degree, and in turn reduces consumers' potential earnings, making repayment of the underlying debt more difficult. Borrowers are unlikely to select a school or loan based on these provisions, as opposed to factors relating to the education itself. Consumers generally do not expect to default, do not consider consequences of default when making product decisions, and cannot bargain over contractual terms. Once the consumer defaults, there is no way to avoid the injury of missing classes and other education benefits because the school controls access to classes. The injury caused by the practices were not outweighed by countervailing benefits to consumers or competition.

In response to these findings, the entities removed the contract language and advised their client schools to cease utilizing the contract provision.

2.4.4 Debiting Funds Early

Many student-loan borrowers make payments through auto debits, known as electronic fund transfers. Under Regulation E, the servicer, or designated payee, must obtain written authorization before transferring funds from consumers' accounts.¹³ The written authorization specifies the date the payment will be withdrawn. Examiners found that servicers violated this provision when they obtained written authorizations to withdraw funds on a specified date but instead withdrew the amounts one to three days prior to the date in the written authorization. Because the funds were

¹² Examiners previously found that institutions engaged in abusive acts or practices by withholding official transcripts as a blanket policy in conjunction with the extension so credit. See CFPB, *Supervisory Highlights, Issue 27 (Fall 2022)*, https://files.consumerfinance.gov/f/documents/cfpb_student-loan-servicing-supervisory-highlights-special-edition_report_2022-09.pdf.

¹³ 12 CFR 1005.10(b).

not withdrawn on the date in the written authorization, the payee did not have written authorization for the transfers and violated Regulation E. In response to these findings, servicers are revising their policies and developing a remediation plan.

2.4.5 Failing To Notify Consumers of Changed Preauthorized Electronic Funds Transfer Amounts

Examiners continue to identify issues with failures to notify consumers of preauthorized electronic fund transfers that vary in amount.¹⁴ Consumers entered into agreements to withdraw the monthly payment amount, and the servicer took the monthly payment amount, but did not inform consumers when that amount had changed from the previous month. Regulation E requires the designated payee of a preauthorized electronic fund transfer from a consumer's account to provide the consumer with written notice of the amount and date of the transfer at least 10 days before the scheduled transfer date if the amount will vary from the previous transfer under the same authorization or from the preauthorized amount.¹⁵ Examiners found that servicers violated this provision when they did not provide written notices to consumers before withdrawing an amount that exceeded the previous transfer under the same authorization. In response to these findings, servicers are revising their policies and developing a remediation plan.

2.5 Federal Student Loan Servicing During the Return to Repayment

2.5.1 Extended Failure To Provide Adequate Avenues for Borrowers To Manage Key Loan Issues by Phone

Federal student loan servicers operate call centers through which they offer borrowers various services to address key loan issues by phone. These issues include resolving disputes, inquiring about account status, enrolling in Federal repayment programs, and making loan payments. Despite purporting to offer the ability to address key loan issues by phone, servicers failed to provide, for extended time periods, adequate avenues for borrowers to manage key aspects of their loans over the phone.

During the return to repayment in the fall of 2023, examiners reviewed metrics the servicers provided on a biweekly basis regarding how they handled

incoming calls from student loan borrowers. These metrics covered average call-hold time, abandonment rate, callback speed, and call-center staffing levels. In this period, borrowers calling their servicers faced key average call hold times of 40–58 minutes. Average hold times exceeded 30 minutes during 57–91 percent of operating hours. And more than 41 percent of borrowers abandoned their calls before connecting with an agent. The periods of unavailability lasted multiple weeks.

Examiners concluded that a lack of oversight contributed to these failures. Servicers' boards did not provide for the appropriate staffing levels to handle the influx of calls generated from the Federal return to repayment process.

Supervision found that the servicers' failures to provide, for an extended period, an adequate avenue for borrowers to timely resolve disputes, inquire about account status, or in enroll in Federal repayment programs, when they offered the option of addressing these issues by phone amounted to unfair acts or practices in violation of 12 U.S.C. 5531 and 5536. The failures caused or were likely to cause borrowers substantial injury by wasting time, delaying information, and delaying their ability to apply for benefits, which can result in increased payment amounts or delayed loan forgiveness. Borrowers cannot avoid this injury because they do not choose their loan servicer and have no control over its level of service, and other methods of seeking assistance like online account access or callbacks were unavailable or ineffective. And they cannot resolve individualized issues through other channels such as online accounts. This injury is not outweighed by any countervailing benefits to borrowers or competition.

Supervision also found that these failures violated the CFPA's prohibition against abusive acts or practices.¹⁶ The servicers took unreasonable advantage of the borrowers' inability to protect their own interests. Borrowers could not protect their own interests because they do not choose their loan servicer, nor can they control their servicer's level of service. The servicers' conduct prevented borrowers attempting to protect their own interests in timely resolving disputes or in accessing benefit programs by reaching out to their servicer—as instructed—from actually speaking to a representative who could help them. Many borrowers also could not protect their interests in

avoiding extensive hold times because they could not resolve some of their individualized issues through alternative channels, such as online accounts. The servicers gained an unreasonable advantage as they saved on operational expenses, including from understaffing their call centers, which resulted in extensive wait times that many borrowers could not avoid.

In response to these findings, Supervision directed servicers to maintain adequate avenues for borrowers to timely resolve disputes, inquire about account status, and enroll in Federal repayment programs by phone (including by ensuring against unreasonably long average call-hold times and unreasonably high call-drop rates for any extended period); develop and maintain plans to address reasonably foreseeable spikes in borrower communications demand to ensure that, regardless of demand, borrowers consistently have adequate avenues to manage their loans; identify the borrowers who attempted to call their servicers, waited more than an hour before abandoning their call, and within three months took significant action on their loan; and provide information on borrower remediation.

2.5.2 Deceptive Billing Statements

Examiners found that Federal student loan servicers engaged in a deceptive act or practice by providing borrowers with inaccurate payment amounts and due dates on billing statements and disclosures.

Federal student loan servicers provided borrowers inaccurate monthly payment amounts due to both system weaknesses and miscalculations. Some of the miscalculations were due to the servicers misapplying Federal poverty guidelines, using the wrong family size or income, or failing to include spousal debt. Examiners also reviewed billing statements or disclosures with incorrect payment due dates. These included providing borrowers incorrect due dates prior to October 1, 2023, the end of the Federal student loan payment pause, and giving repayment dates to borrowers with pending and approved borrower defense applications. Borrowers with pending or approved borrower defense applications should have been in a forbearance until the discharge or decision process was completed.

These misrepresentations were likely to mislead borrowers about the amount they owed and when their payment was due. Borrowers reasonably interpreted billing statements and disclosures from their Federal student loan servicers as an accurate and reliable source of

¹⁴ CFPB, *Supervisory Highlights, Issue 34 Summer 2024*, <https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-issue-34-summer-2024/>.

¹⁵ 12 CFR 1005.10(d)(1).

¹⁶ 12 U.S.C. 5531 and 5536

information on the amount due and due date for their payments. Express misrepresentations or misrepresentations regarding central characteristics such as cost or payment due dates are material.

2.5.3 Debiting Unauthorized Amounts

Regulation E requires the designated payee to obtain written authorization before transferring funds from consumers' accounts.¹⁷ Examiners observed that student loan servicers obtained authorizations that allowed them to withdraw the monthly payment amount, but the servicers then withdrew amounts that exceeded the written payment amount, in some cases instead withdrawing the entire outstanding loan balance. Because the authorizations allowed the servicers to withdraw only the monthly payment amounts, the preauthorized electronic funds transfers were not authorized in writing and therefore violated Regulation E.

In other instances, consumers signed authorizations that allowed servicers to withdraw monthly payment amounts for certain loans from one deposit account and monthly payment amounts for other loans from a different deposit account. The servicers then withdrew payments for all the loans from one of the two deposit accounts. Because the authorization only allowed the servicers to withdraw the monthly payment amounts for specific loans and they instead withdrew monthly payment amounts for other loans, the preauthorized electronic funds transfers were not authorized in writing and therefore violated Regulation E.

2.5.4 Excessive Delays in Processing of Applications for Income-Driven Repayment Plans

Federal student loan borrowers are eligible for a number of repayment plans that base monthly payments on their income and family size; these plans are called IDR plans. To enroll in IDR plans, consumers must submit applications to their servicers who process the applications.

Examiners found that servicers engaged in unfair acts or practices when they caused consumers to experience excessive delays in processing times for IDR applications. In many reviewed files, it took more than 90 calendar days for servicers to process the IDR applications. These delays caused or were likely to cause substantial injury as interest continued to accrue while servicers processed IDR applications, so excessive delays likely resulted in unnecessary accrued interest. In

addition, the delays may have prevented borrowers from making payments which count towards loan forgiveness. These delays also caused borrowers considerable frustration and wasted time as they repeatedly tried to obtain information from servicers about the status of their applications. Consumers could not reasonably avoid the injury because they do not choose their servicer and have no control of how long it takes servicers to review and evaluate borrowers' applications. The injury to consumers was not outweighed by countervailing benefits to consumers or to competition.

2.5.5 Improper Denials of Applications for Income-Driven Repayment

Examiners found that servicers engaged in unfair acts or practices when they improperly denied consumers' IDR applications. Examiners found that servicers denied consumers' applications for failing to provide sufficient income documentation despite consumers providing sufficient documentation of income. Examiners also found that servicers denied consumers' applications because they had ineligible loan types, when in fact the consumers had eligible loans. These improper denials caused or were likely to cause substantial injury because consumers who are improperly denied paid or were at risk of paying higher monthly payments. Additionally, some consumers may have spent time and resources addressing the denials. Consumers could not reasonably avoid the injury because servicers are responsible for processing IDR applications in accordance with processing requirements and consumers do not choose their servicers. And the injury to consumers is not outweighed by countervailing benefits to consumers or competition.

2.5.6 Providing Inaccurate Denial Reasons in Response to Income-Driven Repayment Applications

Examiners found that servicers engaged in deceptive acts or practices by providing inaccurate denial reasons to consumers who applied for IDR plans. The denial letters misled or were likely to mislead borrowers as the denial reasons were not accurate, and in multiple cases, erroneously denied eligible consumers. It is reasonable for borrowers to expect servicers to properly evaluate their eligibility for IDR plans and for denial letters to accurately explain the reasons why servicers denied their IDR applications. The misleading representations were material as the inaccurate denial reasons were likely to influence borrower

choices with respect to applying for IDR plans by, for example, leading to borrowers' confusion about eligibility criteria and discouraging borrowers from re-applying for an IDR plan by telling them to find and provide unnecessary additional information in order to qualify.

2.5.7 Failure To Advise Consumers of the Option to Verbally Provide Income in Connection With Income-Driven Repayment Applications

During the COVID-19 pandemic and through February 29, 2024, the Department of Education allowed consumers to apply for IDR plans by providing an attestation of income over the phone or in writing, this process was referred to as self-certification.

Examiners found that servicers engaged in unfair acts or practices by failing to advise consumers that they could self-certify their income when applying for an IDR plan. Consumers contacted their servicers to discuss their pending IDR applications that were delayed due to missing income documentation, but the servicer representatives did not advise consumers that they could provide the missing information by making an oral attestation during the call. These acts or practices caused or were likely to cause substantial injury because it caused servicers to deny consumers' applications, preventing lower payment amounts, potential interest subsidies, and credit towards loan forgiveness. Consumers could not avoid this injury because they do not choose their servicers and relied on the servicers to provide relevant information regarding IDR applications. The injury to consumers is not outweighed by countervailing benefits to consumers or competition.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2024-30758 Filed 12-23-24; 8:45 am]

BILLING CODE 4810-AM-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21-19]

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.

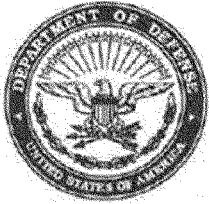
¹⁷ 12 CFR 1005.10(b).

FOR FURTHER INFORMATION CONTACT:
 Pamela Young at (703) 953-6092,
pamela.a.young14.civ@mail.mil, or
dscs.ncr.rsrcmgmt.list.cns-mbx@
mail.mil.

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 with attached
 Transmittal 21-19 and Policy
 Justification.

Dated: December 17, 2024.
Stephanie J. Bost,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.
BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY
 2800 Defense Pentagon
 Washington, DC 20301-2800

DEC 22 2023

The Honorable Mike Johnson
 Speaker of the House
 U.S. House of Representatives
 H-209, The Capitol
 Washington, DC 20515

Dear Mr. 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. 21-19 concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Kingdom of Saudi Arabia for defense articles and services estimated to cost \$1 billion. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

James A. Hursch
 Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Regional Balance (Classified document provided under separate cover)

BILLING CODE 6001-FR-C

Transmittal No. 21-19

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 *	\$0 billion,
Other	\$1 billion,

Total	\$1 billion.

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

None

Non-MDE:

Continuation of a blanket order training program inside and outside of the Kingdom of Saudi Arabia that includes, but is not limited to, flight training; technical training; professional military education; specialized training; Mobile Training Teams (MTTs); Technical Assistance Field Team (TAFT); Extended Training Service Specialists (ETSS); and English language training. These blanket order training cases will cover all relevant types of training offered by or contracted through the United States (U.S.) Air Force or Department of Defense (DoD) Agencies. This training for the Royal Saudi Air Force (RSAF) and other Saudi forces will include such subjects as civilian casualty avoidance; the laws of armed conflicts; human rights; command and control; and targeting via MTTs and/or broader Programs of Instruction (POIs). Program management; trainers, simulators; travel; billeting; and medical support may also be included.

(iv) *Military Department:* Air Force (SR-D-THP)

(v) *Prior Related Cases, if any:* SR-D-THI, SR-D-THJ, SR-D-THK, SR-D-THL, SR-D-THM, SR-D-THN, SR-D-THO

(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:* December 22, 2023

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Saudi Arabia—Blanket Order Training

The Kingdom of Saudi Arabia has requested a continuation of a blanket order training program inside and outside of the Kingdom of Saudi Arabia that includes, but is not limited to, flight training; technical training; professional military education; specialized training; Mobile Training Teams (MTTs); Technical Assistance Field Team (TAFT); Extended Training Service Specialists (ETSS); and English language training. These blanket order training cases will cover all relevant types of training offered by or contracted through the U.S. Air Force or DoD. This training for the Royal Saudi Air Force (RSAF) and other Saudi forces will include such subjects as civilian casualty avoidance; the laws of armed conflicts; human rights; command and control; and targeting via MTTs and/or broader Programs of Instruction (POIs). Program management; trainers, simulators; travel; billeting; and medical support may also be included. The estimated total cost is \$1 billion.

This proposed sale will support the foreign policy goals and national security objectives of the U.S. by improving the security of a friendly country that is a force for political stability and economic progress in the Middle East.

The proposed sale will improve Saudi Arabia's capability to meet current and future threats and increase its interoperability with the U.S. through comprehensive U.S. Air Force training. The training will assist Saudi Arabia by fostering a climate of security in the region through the improved proficiency of the RSAF. Saudi Arabia will have no difficulty absorbing this training into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

There is no principal contractor for the proposed sale. Training will be provided by U.S. Government or contract vendors based upon

requirements as they are determined. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the temporary or continuation of assignment of approximately three hundred thirty-nine (339) U.S. Government or contractor training personnel to Saudi Arabia for at least one year with a possibility of extension.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2024–30631 Filed 12–23–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 24–16]

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:

Pamela Young at (703) 953–6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

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 with attached Transmittal 24–16, Policy Justification, and Sensitivity of Technology.

Dated: December 17, 2024.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P

**DEFENSE SECURITY COOPERATION AGENCY**

2800 Defense Pentagon
Washington, DC 20301-2800

December 29, 2023

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

On December 29, 2023, the Secretary of State, pursuant to section 36(b) of the Arms Export Control Act (AECA), as amended, determined that an emergency exists which requires the immediate sale of the defense articles and defense services identified in the attached transmittal to the Government of Israel through the Foreign Military Sales process, including any further amendment specific to costs, quantity, or requirements occurring within the duration of circumstances giving rise to this emergency sale.

Please find attached (Tab 1) the Secretary of State Determination and Justification waiving the congressional review requirements under Section 36(b)(1) of the Arms Export Control Act, as amended. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

A handwritten signature in cursive script, reading "James A. Hursch", is positioned above the printed name and title.

James A. Hursch
Director

Enclosures:

1. Secretary of State Determination Letter and Justification
2. Transmittal
3. Policy Justification
4. Sensitivity of Technology

DETERMINATION UNDER SECTION 36(b)(1) OF THE ARMS EXPORT CONTROL ACT

Pursuant to section 36(b)(1) of the Arms Export Control Act, 22 U.S.C. 2776, I hereby determine that an emergency exists that requires the immediate sale through the following foreign military sales cases, including any further amendments specific to the cost, quantity, or requirements of these cases, in the national security interest of the United States:

For Israel:

- 155mm Artillery Rounds and Ancillary Items

This determination shall be published in the *Federal Register* and, along with the accompanying Memorandum of Justification, shall be transmitted to Congress with the applicable notifications.

12/29/2023
Date



Antony J. Blinken
Secretary of State

UNCLASSIFIED

(U) MEMORANDUM OF JUSTIFICATION
FOR EMERGENCY ARMS TRANSFERS TO ISRAEL UNDER SECTION 36(b)(1) OF
THE ARMS EXPORT CONTROL ACT

(U) On October 7, Hamas launched the worst attack on Israel since the 1973 Yom Kippur War. Thousands of rockets were fired and continue to be fired indiscriminately, hitting locations and civilians as far as Tel Aviv and Jerusalem. Hamas gunmen crossed into Israel, entering towns and communities as far as 15 miles from Gaza, slaughtering men, women, and children. More than 230 hostages were captured and dragged back into Gaza, including U.S. citizens. As of today, Hamas' act of terrorism has claimed the lives of more than 1,200 in Israel, including at least 31 U.S. citizens, and wounded thousands more. The attack is the single deadliest day for the Jewish people since the Holocaust, and is reminiscent of the worst rampages of ISIS. The following day, the Government of Israel formally declared war on Hamas in accordance with its Basic Law.

(U) Israel has the right to defend itself, and the United States supports Israel taking necessary action to defend its country and protect its people from Hamas terrorists, consistent with international law and, specifically, the law of war. Following the attack, the President directed surging additional military assistance to the Israeli Defense Force, to include ammunition and interceptors to replenish the Iron Dome. The Department of State and the Department of Defense are coordinating with Israeli partners to meet their military requirements and ensure Israel has what it needs to defend itself, its people, and U.S. citizens living, working, and traveling in Israel.

(U) Israel faces further credible security threats on its northern border with Lebanon and Syria. Since October 7, sporadic violence has occurred across the Blue Line, which marks the *de facto* boundary between Israel and Lebanon, and Israel remains at immediate risk of other parties in Lebanon or Syria exploiting Hamas' appalling attack.

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- 2 -

(U) The United States' commitment to Israel's security is ironclad, which is reflected in decades of close political-military dialogues and high-level defense policy exchanges. The historic ten-year U.S.-Israel Memorandum of Understanding to provide Israel with \$38 billion in security assistance is a bulwark against regional threats; however, Israel requires urgent support to respond to the immediate threat raised by Hamas' horrific attack, to replenish stocks of key defense articles that maintain its Qualitative Military Edge in the region, and to deter and guard against the threat of broad scale regional conflict.

(U) Given the scale and scope of Hamas' offensive, it is in the United States' national security interest to swiftly provide Israel with the defense systems it requires to defend itself and reinforce deterrence against other regional threats, which we have undertaken since October 7. Israel has communicated an urgent requirement for 155mm artillery rounds, including necessary ancillary items (i.e. fuzes, charges, primers). The urgency of this requirement has been validated by the Department of Defense in consultation with the Department of State. We anticipate Israel will continue its military operations in Gaza in the near-term. In order to effectively do so and ensure it is prepared for any other attacks, it has an immediate need for these defense articles. These 155mm items are readily available in DoD stock and can be quickly transferred to Israel. The immediacy of the challenge at hand requires overcoming the statutory 15-day Congressional Notification timeline to immediately expedite transfers to Israel.

(U) For the reasons cited above, an emergency exists requiring immediate provision of these defense articles to Israel in the national security interest of the United States. This transfer, through a Foreign Military Sale, will provide Israel as soon as possible with defense articles that are necessary to allow it to defend itself in its war with Hamas. The Secretary of State, therefore, has certified an emergency exists under sections 36(b)(1) of the Arms Export Control Act, 22 U.S.C. 2776, thereby waiving the congressional review requirement of that provision.

UNCLASSIFIED

BILLING CODE 6001-FR-C

Transmittal No. 24-16

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 Israel

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$ 7.5 million.
Other	\$140.0 million.
Total	\$147.5 million.

Funding Source: Foreign Military Funds and National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* Foreign Military Sales (FMS) cases IS-B-ZOZ and IS-B-ZZS were below congressional notification threshold at \$96.51 million and included four thousand seven hundred ninety-two (4,792) M107 155mm High Explosive projectiles (MDE); fifty-two thousand two hundred twenty-nine (52,229) M795 155mm High Explosive projectiles (non-MDE); and thirty thousand (30,000) M4 propelling charges (non-MDE), along with publications; associated technical documentation; and logistics support services, which have subsequently been delivered. Israel has requested additional 155mm ancillaries, which will exceed the notification value threshold, and thus notification of the entire program is required.

The above notification requirements are combined as follows:

Major Defense Equipment (MDE):

Four thousand seven hundred ninety-two (4,792) M107 155mm High Explosive Projectiles

Non-MDE:

Also included are various 155mm projectiles; propelling charges; 155mm ancillaries; publications; technical documentation; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistics and program support.

(iv) *Military Department:* Army (IS-B-ZZS, IS-B-ZOZ, IS-B-VCF)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* December 29, 2023

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Israel—155mm Artillery Ammunition

The Government of Israel has requested four thousand seven hundred ninety-two (4,792) M107 155mm High Explosive projectiles. Also included are various 155mm projectiles; 155mm ancillaries; publications; technical documentation; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistics and program support. The original FMS cases were below congressional notification threshold at \$96.51 million and included four thousand seven hundred ninety-two (4,792) M107 155mm High Explosive projectiles (MDE), fifty-two thousand two hundred twenty-nine (52,229) M795 155mm High Explosive projectiles (non-MDE), and thirty thousand (30,000) M4 propelling charges (non-MDE), along with publications, associated technical documentation, and logistics support services, which have subsequently been delivered. Israel has requested additional 155mm ancillaries, which will exceed the notification value threshold, and thus notification of the entire program is required. The estimated total cost is \$147.5 million.

The Secretary of State has determined and provided detailed justification to Congress that an emergency exists that requires the immediate sale to the Government of Israel of the above defense articles and services in the national security interests of the United States, thereby waiving the congressional review requirements under Section 36(b) of the Arms Export Control Act, as amended.

The United States is committed to the security of Israel, and it is vital to U.S. national interests to assist Israel to develop and maintain a strong and ready self-defense capability. This proposed sale is consistent with those objectives.

Israel will use the enhanced capability as a deterrent to regional threats and to strengthen its homeland defense. Israel 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 155mm artillery ammunition will be provided from U.S. Army stock. There are no 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 Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 24-16

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 M107 and M795 are standard Army 155mm high explosive projectiles capable of being fired from many of the 155mm howitzers in use around the world today. These projectiles have steel bodies which are filled with explosives, typically TNT.

2. The M739 and M782 are standard Army 155mm fuzes. Fuzes cause the projectile to detonate at the target and are attached to the projectile by the crew of the howitzer just before loading and firing. The M739 is a point detonating fuze which functions on impact; the M782 is a multi-function fuze which can be set to point detonate or to burst in the air above the target.

3. The M119 and M4 are standard Army 155mm propelling charges. They are loaded into the howitzer, separately from the M107 or M795 projectiles, and propel the projectile from the barrel when the weapon is fired.

4. The M82 is the standard Army 155mm primer. The primer serves to ignite the propelling charge when the howitzer is fired.

5. The highest level of classification of defense articles, components, and services included in this potential sale is UNCLASSIFIED.

6. 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.

7. A determination has been made that the Government of Israel will provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

8. All defense articles and services listed in this transmittal have been authorized for release and export to Israel.

[FR Doc. 2024-30635 Filed 12-23-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE**Office of the Secretary**

[Transmittal No. 23–77]

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:**Pamela Young at (703) 953–6092, *pamela.a.young14.civ@mail.mil*, or *dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil*.**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 with attached Transmittal 23–77, Policy Justification, and Sensitivity of Technology.

Dated: December 17, 2024.

Stephanie J. Bost,*Alternate OSD Federal Register Liaison Officer, Department of Defense.***BILLING CODE 6001–FR–P**



DEFENSE SECURITY COOPERATION AGENCY
 2800 DEFENSE PENTAGON
 WASHINGTON, DC 20301-2800

December 22, 2023

The Honorable Mike Johnson
 Speaker of the House
 U.S. House of Representatives
 H-209, The Capitol
 Washington, DC 20515

Dear Mr. 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. 23-77, concerning the Army's proposed Letter(s) of Offer and Acceptance to the North Atlantic Treaty Organization Support and Procurement Agency for defense articles and services estimated to cost \$780 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

James A. Hursch
 Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001-FR-C

Transmittal No. 23-77

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:* NATO Support and Procurement Agency (NSPA)

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$568 million
Other	\$212 million

TOTAL	\$780 million

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment:

Nine hundred forty (940) FIM-92K Stinger Block I Missiles

Non-MDE:

Also included are Battery Coolant Units (BCU); metal containers; U.S. Government and contractor production, technical, and engineering assistance; and other related elements of logistics and program support.

- (iv) *Military Department: Army (N4–B–VRL)*
- (v) *Prior Related Cases, if any: None*
- (vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None*
- (vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Attached Annex*
- (viii) *Date Report Delivered to Congress: December 22, 2023*

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

NATO Support and Procurement Agency—Stinger Missiles

The NATO Support and Procurement Agency (NSPA), as Lead Nation on behalf of Germany, Italy, and the Netherlands, has requested to buy nine hundred forty (940) FIM–92K Stinger Missiles. Also included are Battery Coolant Units (BCU); metal containers; United States (U.S.) Government and contractor production, technical, and engineering assistance; and other related elements of logistics and program support. The estimated total cost is \$780 million.

This proposed sale will support the foreign policy and national security objectives of the U.S. by improving the security of Germany, Italy, and the Netherlands, three NATO Allies.

The proposed sale will improve the air defense capabilities of these three NATO Allies. They will use the system to defend their territorial integrity and to promote regional stability. The proposed sale supports NATO's goal of improving national and territorial defense as well as improving interoperability with U.S. and NATO forces. Germany, Italy, and the Netherlands will have no difficulty absorbing this equipment into their armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be Raytheon, Tucson, AZ, and Lockheed Martin, Syracuse, NY. 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 U.S. Government personnel or contractor representatives to NATO.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 23–77

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

Annex

Item No. vii

(vii) Sensitivity of Technology:

1. The Stinger Re-programmable Micro-Processor (RMP) Block I Missile is a lightweight, self-contained air defense system that can be rapidly deployed by ground troops. Its seeker and guidance systems enable the weapon to acquire, track, and engage a target with one shot.

2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that the NSPA and Germany, Italy, and the Netherlands 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 NSPA, Germany, Italy, and the Netherlands.

[FR Doc. 2024–30632 Filed 12–23–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23–80]

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: Pamela Young at (703) 953–6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

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 with attached Transmittal 23–80 and Policy Justification.

Dated: December 17, 2024.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P



DEFENSE SECURITY COOPERATION AGENCY

2800 Defense Pentagon
Washington, DC 20301-2800

December 22, 2023

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. 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. 23-80, concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the North Atlantic Treaty Organization Support and Procurement Agency for defense articles and services estimated to cost \$150 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

James A. Hursch
Director

Enclosures:

1. Transmittal
2. Policy Justification

BILLING CODE 6001-FR-C

Transmittal No. 23-80

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:* NATO Support and Procurement Agency (NSPA)

(ii) *Total Estimated Value:*

Major Defense Equipment * \$ 0 million
Other \$150 million.

TOTAL \$150 million

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):
None

Non-MDE:

Contractor logistics support for the C-17 Strategic Airlift Capability program; U.S. Government and contractor engineering, technical, and logistics support services; and

other related elements of logistics and program support.

(iv) *Military Department:* Air Force (K8-D-GAD)

(v) *Prior Related Cases, if any:* K8-D-QAG, K8-D-QAC

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress*: December 22, 2023

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

NATO Support and Procurement Agency (NSPA)—C-17 Maintenance

The North Atlantic Treaty Organization (NATO) Support and Procurement Agency as Lead Nation has requested to buy contractor logistics support for the C-17 Strategic Airlift Capability program; United States (U.S.) Government and contractor engineering, technical, and logistics support services; and other related elements of logistics and program support. The estimated total cost is \$150 million.

This proposed sale will support the foreign policy goals and national security objectives of the U.S. by improving the security of NATO partners that are a force for political stability and economic progress in the North Atlantic region.

The proposed sale will improve NATO's capability to meet current and future threats by improving and maintaining a flexible strategic airlift capability. The multinational Heavy

Airlift Wing already has C-17s in its inventory and will have no difficulty absorbing these additional services into its armed services.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be The Boeing Company, Arlington, VA. 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 NATO.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2024-30634 Filed 12-23-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23-0Y]

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:

Pamela Young at (703) 953-6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

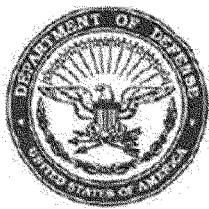
SUPPLEMENTARY INFORMATION: This 36(b)(5)(C) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23-0Y.

Dated: December 17, 2024.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY

2800 Defense Pentagon
Washington, DC 20301-2800

December 18, 2023

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. 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. 23-0Y. 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 23-53 of August 1, 2023.

Sincerely,

A handwritten signature in dark ink, reading "James A. Hursch".

James A. Hursch
Director

Enclosure:

1. Transmittal

BILLING CODE 6001-FR-C

Transmittal No. 23-0Y

Report of Enhancement or Upgrade of
Sensitivity of Technology or Capability
(Sec. 36(B)(5)(C), AECA)

(i) *Purchaser*: Government of Finland
(ii) *Sec. 36(b)(1), AECA Transmittal*
No.: 23-53

Date: August 1, 2023

Implementing Agency: Army

(iii) *Description*: On August 1, 2023, Congress was notified by Congressional certification transmittal number 23-53, of the possible sale, under Section 36(b)(1) of the Arms Export Control Act, of the M270A2 upgrade of M270A1 Multiple Launch Rocket Systems (MLRS). The upgrade includes intercom systems; radio communication mounts; machine gun mounts; battle

management system vehicle integration kit; publications for MLRS; spares; services; support equipment; and other related elements of program and logistics support. Major Defense Equipment (MDE) constituted \$0 of this total.

This transmittal notifies an increase in non-MDE value by \$180 million, resulting in a new estimated non-MDE and overall total case value of \$575 million. There is no MDE included in this potential sale.

(iv) *Significance*: Recent cost increases have brought about the need to add value to the original notification. The upgraded M270A2 MLRS will give Finland additional advanced capability to address current and future regional threats; reinforcing its ability to maintain regional stability, increasing

Finland's security. The sale supports United States (U.S.) national security interests by bolstering the land defense in Europe's northern flank.

(v) *Justification*: This proposed sale will support the foreign policy and national security of the U.S. by improving the security of a North Atlantic Treaty Organization Ally that is an important force for political stability and economic progress in Europe.

(vi) *Sensitivity of Technology*: The Sensitivity of Technology statement contained in the original notification applies to items reported here.

(vii) *Date Report Delivered to Congress*: December 18, 2023

[FR Doc. 2024-30633 Filed 12-23-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE**Department of the Navy****[Docket ID: USN–2024–HQ–0020]****Privacy Act of 1974; System of Records****AGENCY:** United States Marine Corps, Department of Defense (DoD).**ACTION:** Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of the Navy is modifying and reissuing a current system of records titled, “Marine Corps Marathon Automated Support System,” MMC00010. This system of records was originally established to collect and maintain records to register and promote participation in Marine Corps Marathon Organization’s race events. The system name and identifier are changing from “Marine Corps Marathon Automated Support System,” MMC0010 to “Marine Corps Marathon Organization Event Records,” M01710–2. Additionally, this system of records notice (SORN) is being updated to expand the events and individuals covered, include information regarding medical treatment provided at events, and incorporate the DoD standard routine uses and support additional information sharing of these records outside the DoD. The DoD is also modifying various other sections within the SORN to improve clarity or update information that has changed.

DATES: This system of records is effective upon publication; however, comments on the Routine Uses will be accepted on or before January 27, 2025. The Routine Uses are effective at the close of the comment period.

ADDRESSES: You may submit comments, identified by docket number and title, by either of the following methods:

* *Federal Rulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 05F16, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <https://www.regulations.gov> as they are

received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT:

Sally A. Hughes, FOIA/PA Programs Manager (ARSF), Headquarters, U.S. Marine Corps, 3000 Marine Corps Pentagon, Washington, DC 20350–3000, or by phone (703) 614–3685.

SUPPLEMENTARY INFORMATION:**I. Background**

The Marine Corps Marathon Automated Support System of records is used to register, acknowledge, and promote participation in Marine Corps Marathon Organization’s race events. Information from this system of records is used to plan, organize, coordinate, and execute the events and communicate with the runners, first responders, medical and general volunteers. Subject to public comment, the DoD is updating this SORN to add the standard DoD routine uses (routine uses A through J) and to allow for additional disclosures outside DoD related to the purpose of this system of records. Additionally, the following sections of this SORN are being modified: (1) to the Categories of Individuals Covered by the System section to expand the individuals covered; (2) to the Categories of Records to include medical data, treatment, and transportation information; (3) to the Purpose(s) to clarify how the records related to the Category of Individuals (4) to the Retrieval section to permit retrieval using revised Categories of Records; (5) to the Administrative, Technical, and Physical Safeguards to update the individual safeguards protecting the personal information; (6) to the Contesting Records Procedures section to update the appropriate citation for contesting records; (7) to the System Manager and System Location sections to update the addresses and office name; and (8) Retention and Disposal section to reflect current National Archives and Records Administration approved retentions. Furthermore, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice.

DoD SORNs have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties, and Transparency Division (OATSD(PCLT)) website at <https://dpcl.d.defense.gov/privacy>.

II. Privacy Act

Under the Privacy Act, a “system of records” is a group of 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 as a U.S. citizen or lawful permanent resident.

In accordance with 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) Circular No. A–108, OATSD(PCLT) has provided a report of this system of records to the OMB and to Congress.

Dated: December 18, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

Marine Corps Marathon Organization Event Records, M01710–2.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Marine Corps Marathon Office, Building 3399 Russell Road, Quantico, VA 22134–5000.

SYSTEM MANAGER(S):

The system manager is Director, Marine Corps Marathon Organization, 3399 Russell Road, Quantico, VA 22134–5000, or by phone 703–784–2225/6.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps: Function, Composition; DoD 7000.14–R Volume 13, Financial Management Regulations (FMR); SECNAVINST 1700.12B, Operation of Morale, Welfare, and Recreation Activities; and Marine Corps Marathon Charter, 27 March 2017.

PURPOSE(S) OF THE SYSTEM:

To register, acknowledge and promote participation in Marine Corps Marathon Organization’s race events. Information is used to plan, organize, coordinate, and execute the events and communicate with the runners, first responders, medical and general volunteers before, during and after the event to include publication of finisher results, finisher certificates and race photographs, videos, and motion pictures. Data and photographs, videotape, motion pictures and other recordings may be used by the Marine Corps Marathon Organization and its select partners and sponsors for surveys,

data mining, publications on websites, social media posting, race programs and promotions, newspaper articles, newsletters, digital media, and other race marketing purposes and runner experience and enhancements.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants, parents/guardians and volunteers for the Marine Corps Marathon, Marine Corps Marathon Transfer/Deferment, Marine Corps Marathon 10K, Marine Corps Marathon Kids Run, Marine Corps Historic Half, Historic 10K, Semper Fred 5K, Marine Corps 1775K, Run Amuck, Mini Run Amuck, Quantico Triathlon, Turkey Trot 10K, and Turkey Trot Kids Mile.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Personal information such as: name, address, date of birth, country, phone number(s), gender, emergency contact information, medical information (current and chronic health conditions, medications, injuries, allergies, and assistive devices as well as medical treatment requested and received). If participant is a minor, parent's name, contact information, and consent.

B. Employment information such as: position/title, rank/grade, work address, email address, military service, medical specialty/sub-specialty, certification/license number, status and expiration date, type, and associated state.

C. First responder and volunteer information such as: organization, race name and volunteer job selection/assignment, and eligibility information (such as experience, education, professional qualifications/skills), and start and completion dates of service.

D. Other information such as: apparel selection and size, race payment information, club member ID and bib number, solo or team runners, team captain selection, and team category (e.g., corporate/workplace, military, nonprofit running club, charity, university/college, high school), physical or special accommodations information, live map tracking data and race results, completion time, photograph(s), video, motion pictures, and other recordings. Publicly available social media information, including electronic social media information published or broadcast for public consumption, available on request to the public, accessible online to the public, available to the public by subscription or purchase, or is otherwise lawfully accessible to the public. Publicly available social media information does not include information only accessible by logging into a private account of the

individual about whom the record pertains or by requiring the individual to provide a password to social media information that is not publicly available.

RECORD SOURCE CATEGORIES:

Records and information stored in this system of records are obtained from: individuals (*i.e.*, participant, parent/guardian, or volunteer) through registration online, using Marine Corps Marathon Organization's contracted registration services or in person at the event to include photos or video taken.

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) of the Privacy Act of 1974, as amended, all or a portion of the records or information contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government when necessary to accomplish an agency function related to this system of records.

B. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

C. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

D. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines that 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.

E. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

F. 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.

G. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms a breach of the system of records; (2) the DoD determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

H. To another Federal agency or Federal entity, when the DoD 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.

I. To another Federal, State or local agency for the purpose of comparing to the agency's system of records or to non-Federal records, in coordination with an Office of Inspector General in conducting an audit, investigation, inspection evaluation, or other review as authorized by the Inspector General Act of 1978, as amended.

J. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

K. To the news media, social media channels, or the general public, when there exists a legitimate public interest in the disclosure of information, and the disclosure would not constitute an unwarranted invasion of personal privacy.

L. To select sponsors approved by the Marine Corps Marathon Organization to communicate with the runners.

M. To medical facilities/professionals receiving patients transported for additional care or for follow up care.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records may be stored electronically on secure servers or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, or digital media; in agency-owned cloud environments; or in vendor Cloud Service Offerings

certified under the Federal Risk and Authorization Management Program (FedRAMP).

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by name, home address, email address, telephone number, bib number, runners club ID.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

A. Race Winner Records:

PERMANENT: Cut off every 4 years. Transfer electronic records to the National Archives for pre-accessioning immediately after 10 YEARS. Transfer to the National Archives immediately after 20 Years.

B. General event management and participant records other than Race Winner Records: TEMPORARY: Cut off at CY. Destroy when 10 years old.

C. First Responder and Volunteer records: TEMPORARY: Cut off at CY or when individual leaves the program. Destroy 3 years after cutoff.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The DoD safeguards records in this system of records according to applicable rules, policies, and procedures, including all applicable DoD automated systems security and access policies. DoD policies require the use of controls to minimize the risk of compromise of personally identifiable information (PII) in paper and electronic form and to enforce access by those with a need to know and with appropriate clearances. Additionally, the DoD established security audit and accountability policies and procedures which support the safeguarding of PII and detection of potential PII incidents. The DoD routinely employs safeguards such as the following to information systems and paper recordkeeping systems: Multifactor log-in authentication including Common Access Card (CAC) authentication and password; physical token as required; physical and technological access controls governing access to data; network encryption to protect data transmitted over the network; disk encryption securing disks storing data; key management services to safeguard encryption keys; masking of sensitive data as practicable; mandatory information assurance and privacy training for individuals who will have access; identification, marking, and safeguarding of PII; physical access safeguards including multifactor identification physical access controls, detection and electronic alert systems for access to servers and other network

infrastructure; and electronic intrusion detection systems in DoD facilities.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to Director, Marine Corps Marathon Organization, P.O. Box 188, Quantico, VA 22134–5000. Written requests must contain full name, current address, telephone number, and must be signed by the individual. An email address is optional. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the appropriate format:

If executed outside the United States: “I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).”

If executed within the United States, its territories, possessions, or commonwealths: “I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).”

For personal visits, the individual should be able to provide an identification bearing picture and signature or sufficient verbal data to ensure that the individual is the subject of the inquiry. A visitor may review their records in person by appointment only, Monday through Friday, 8 a.m. to 4:30 p.m., Marine Corps Marathon Organization, Building 3399 Russell Road, Quantico, VA 22134. Contact by phone (703) 784–2225 for an appointment.

CONTESTING RECORD PROCEDURES:

The DoD rules for accessing records, contesting contents, and appealing initial Component determinations are contained in 32 CFR part 310, or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should follow the instructions for Record Access Procedures above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

August 3, 1993, 58 FR 41254; February 13, 2015, 80 FR 8078.

[FR Doc. 2024–30665 Filed 12–23–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF ENERGY

Advanced Scientific Computing Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Department of Energy (DOE) Advanced Scientific Computing Advisory Committee (ASCAC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES:

Thursday, January 16, 2025; 10 a.m. to 5 p.m. (EDT)

Friday, January 17, 2025; 10 a.m. to Noon (EDT)

ADDRESSES: Hilton Rockville, 1750 Rockville Pike, Rockville MD 20852. Teleconference: Remote attendance of the ASCAC meeting will be possible via Zoom. Instructions will be posted on the ASCAC website at <https://science.energy.gov/ascr/ascac/> prior to the meeting and can also be obtained by contacting Tanner Crowder by email at tanner.crowder@science.doe.gov or by telephone at (301) 903–5384. Advanced registration is required.

FOR FURTHER INFORMATION CONTACT:

Tanner Crowder, Office of Advanced Scientific Computing Research; SC–ASCR/Germantown Building; U.S. Department of Energy; 1000 Independence Avenue SW, Washington, DC 20585–1290; Telephone (301) 903–5384; email at tanner.crowder@science.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the committee is to provide advice and guidance on a continuing basis to the Office of Science and the Department of Energy on scientific priorities within the field of advanced scientific computing research.

Purpose of the Meeting: This meeting is the semi-annual meeting of the Committee.

Tentative Agenda:

- View from Washington
- View from Germantown
- Update on Charge to Review the Computational Science Graduate Fellowship
- Technical Presentations
- Public Comment (10-minute rule)

The meeting agenda includes an update on the accomplishments and planned activities of the Advanced Scientific Computing Research program; technical presentations; updates from subcommittee, and there will be an

opportunity for comments from the public. The meeting will conclude at Noon (EDT) on January 17, 2025. Agenda updates and presentations will be posted on the ASCAC website prior to the meeting: <https://science.osti.gov/ascr/ascac>.

Public Participation: The meeting is open to the public in-person and virtually. Individuals and representatives of organizations who would like to offer comments and suggestions may do so during the meeting. Approximately 30 minutes will be reserved for public comments. The time allotted per speaker will depend on the number who wish to speak but will not exceed 10 minutes. If you have any questions or need a reasonable accommodation under the Americans with Disabilities Act for this event, please send your request to Tanner Crowder at tanner.crowder@science.doe.gov, two weeks but no later than 48 hours, prior to the event. Closed captions will be enabled. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should submit their request at least five days before the meeting. Those not able to attend the meeting or who have insufficient time to address the committee are invited to send a written statement to Tanner Crowder, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, email to tanner.crowder@science.doe.gov.

Minutes: The minutes of this meeting will be available within 90 days on the Advanced Scientific Computing website at <https://science.osti.gov/ascr/ascac>.

Signing Authority: This document of the Department of Energy was signed on December 19, 2024 by David Borak, Committee Management Officer, 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 December 19, 2024.

Jennifer Hartzell,

*Alternate Federal Register Liaison Officer,
U.S. Department of Energy.*

[FR Doc. 2024–30777 Filed 12–23–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IN24–2–000]

American Efficient, LLC, Modern Energy Group LLC, MIH LLC, Midcontinent Energy LLC, Wylan Energy, LLC, Affirmed Energy LLC; Notice of Designation of Commission Staff as Non-Decisional

With respect to an order issued by the Commission on December 16, 2024, in the above-captioned docket, with the exceptions noted below, the staff of the Office of Enforcement are designated as non-decisional in deliberations by the Commission in this docket.¹ Accordingly, pursuant to 18 CFR 385.2202 (2024), they will not serve as advisors to the Commission or take part in the Commission's review of any offer of settlement. Likewise, as non-decisional staff, pursuant to 18 CFR 385.2201 (2024), they are prohibited from communicating with advisory staff concerning any deliberations in this docket.

Exceptions to this designation as non-decisional are:

Nicholas Stavlas
Michael Raibman
Thomas Olson
Mark Maneche
Yvonne Yegge
Charles Kitcher
Jennifer Gordon
Gareth Jones
Ian McDonald
Sam Malech
Erin Miller
Sara Brehm
Serrita Hill
Steven Bundick

Dated: December 18, 2024.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2024–30700 Filed 12–23–24; 8:45 am]

BILLING CODE 6717–01–P

¹ American Efficient, LLC, Modern Energy Group LLC, MIH LLC, Midcontinent Energy LLC, Wylan Energy, L.L.C., Affirmed Energy LLC, 189 FERC ¶ 61,196 (2024).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: CP25–34–000.

Applicants: Horizon Pipeline Company, L.L.C., Natural Gas Pipeline Company of America LLC.

Description: Horizon Pipeline Company, L.L.C. et al. submit Abbreviated Joint Application for Certificate of Public Convenience and Necessity re amendments to the lease agreement et al.

Filed Date: 12/17/24.

Accession Number: 20241217–5094.

Comment Date: 5 p.m. ET 1/7/25.

Docket Numbers: RP25–288–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: 4(d) Rate Filing: List of Non-Conforming Service Agreements (SRE Interim 2) to be effective 1/17/2025.

Filed Date: 12/17/24.

Accession Number: 20241217–5211.

Comment Date: 5 p.m. ET 12/30/24.

Docket Numbers: RP25–289–000.

Applicants: KPC Pipeline, LLC.

Description: 4(d) Rate Filing: Non-Conforming Service Agreement to be effective 1/1/2025.

Filed Date: 12/18/24.

Accession Number: 20241218–5041.

Comment Date: 5 p.m. ET 12/30/24.

Docket Numbers: RP25–290–000

Applicants: Iroquois Gas Transmission System, L.P.

Description: 4(d) Rate Filing: 12.18.24 Negotiated Rates—Mercuria Energy America, LLC R–7540–02 to be effective 1/1/2025.

Filed Date: 12/18/24.

Accession Number: 20241218–5044.

Comment Date: 5 p.m. ET 12/30/24.

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.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercensearch.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.

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: December 18, 2024.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2024-30699 Filed 12-23-24; 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: EC25-17-000.

Applicants: Hardin Solar Energy III LLC, WEC Infrastructure LLC.

Description: Supplement to 10/31/2024, Joint Application for Authorization Under Section 203 of the Federal Power Act of Hardin Solar Energy III LLC, et al.

Filed Date: 12/16/24.

Accession Number: 20241216-5338.

Comment Date: 5 p.m. ET 12/26/24.

Docket Numbers: EC25-30-000.
Applicants: Northwest Ohio Wind, LLC, Northwest Ohio IA, LLC, F8 Renewables NWO Wind, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Northwest Ohio Wind, LLC, et al.

Filed Date: 12/16/24.

Accession Number: 20241216-5339.

Comment Date: 5 p.m. ET 1/6/25.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG25-65-000.

Applicants: Excel Advantage Services, LLC d/b/a Misae Solar Park II.

Description: Excel Advantage Services, LLC d/b/a Misae Solar Park II submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 12/18/24.

Accession Number: 20241218-5159.

Comment Date: 5 p.m. ET 1/8/25.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER25-318-001.

Applicants: Southwest Power Pool, Inc., Central Power Electric Cooperative, Inc.

Description: Tariff Amendment: Southwest Power Pool, Inc. submits tariff filing per 35.17(b): Deficiency Response—Central Power's Revisions to Formula Rate to be effective 1/1/2025.

Filed Date: 12/18/24.

Accession Number: 20241218-5193.

Comment Date: 5 p.m. ET 1/8/25.

Docket Numbers: ER25-453-001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment to Notice of Cancellation of ISA, SA No. 6475; Queue No. AE1-079 to be effective 2/16/2025.

Filed Date: 12/18/24.

Accession Number: 20241218-5144.

Comment Date: 5 p.m. ET 1/8/25.

Docket Numbers: ER25-454-001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment to Notice of Cancellation of ISA, SA No. 6454; Queue No. AE1-237 to be effective 2/16/2025.

Filed Date: 12/18/24.

Accession Number: 20241218-5147.

Comment Date: 5 p.m. ET 1/8/25.

Docket Numbers: ER25-455-001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment to Notice of Cancellation of ISA, SA No. 6239; Queue No. AE2-343 to be effective 2/16/2025.

Filed Date: 12/18/24.

Accession Number: 20241218-5146.

Comment Date: 5 p.m. ET 1/8/25.

Docket Numbers: ER25-731-000.

Applicants: American Transmission Systems, Incorporated.

Description: 205(d) Rate Filing: ATSI submits Construction Agreement, SA No. 7206 to be effective 2/16/2025.

Filed Date: 12/17/24.

Accession Number: 20241217-5284.

Comment Date: 5 p.m. ET 1/7/25.

Docket Numbers: ER25-739-000.

Applicants: Richland Township Solar, LLC.

Description: 205(d) Rate Filing: Richland Township Solar, LLC Shared Facilities Agreement to be effective 1/14/2025.

Filed Date: 12/18/24.

Accession Number: 20241218-5000.

Comment Date: 5 p.m. ET 1/8/25.

Docket Numbers: ER25-740-000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of ISA, SA No. 5813; Queue No. AD2-072 to be effective 2/17/2025.

Filed Date: 12/18/24.

Accession Number: 20241218-5061.

Comment Date: 5 p.m. ET 1/8/25.

Docket Numbers: ER25-741-000.

Applicants: Ratts 1 Solar LLC.

Description: 205(d) Rate Filing: Ratts 1 Solar LLC MBR Tariff to be effective 2/17/2025.

Filed Date: 12/18/24.

Accession Number: 20241218-5062.

Comment Date: 5 p.m. ET 1/8/25.

Docket Numbers: ER25-742-000.

Applicants: Ratts 1 Phase 2 Solar, LLC.

Description: 205(d) Rate Filing: Ratts 1 Phase 2 Solar, LLC MBR Tariff to be effective 2/17/2025.

Filed Date: 12/18/24.

Accession Number: 20241218-5063.

Comment Date: 5 p.m. ET 1/8/25.

Docket Numbers: ER25-743-000.

Applicants: Union Electric Company.

Description: 205(d) Rate Filing: 2024-12-18 SA 4248 Ameren Missouri-Ameren Missouri 1st Rev E&P (Castle Bluff) to be effective 12/19/2024.

Filed Date: 12/18/24.

Accession Number: 20241218-5076.

Comment Date: 5 p.m. ET 1/8/25.

Docket Numbers: ER25-744-000.

Applicants: American Electric Power Service Corporation.

Description: 205(d) Rate Filing: AEP submits one FA re: SA No. 5677 to be effective 3/1/2025.

Filed Date: 12/18/24.

Accession Number: 20241218-5090.

Comment Date: 5 p.m. ET 1/8/25.

Docket Numbers: ER25-745-000.

Applicants: Michigan Electric Transmission Company, LLC.

Description: 205(d) Rate Filing: 2024-12-18 SA 4416 METC-DTE Electric E&P (J2876) to be effective 12/13/2024.

Filed Date: 12/18/24.

Accession Number: 20241218-5100.

Comment Date: 5 p.m. ET 1/8/25.

Docket Numbers: ER25-746-000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: Revisions to WEIS Tariff to Extend the Notification Period for Price Corrections to be effective 2/17/2025.

Filed Date: 12/18/24.

Accession Number: 20241218-5102.

Comment Date: 5 p.m. ET 1/8/25.

Pennsylvania, LLC, Transource West Virginia, LLC, Transource Maryland, LLC, Transource Missouri, LLC, Transource Oklahoma, LLC, Transource Pennsylvania, LLC, Transource West Virginia, LLC.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Transource Maryland, LLC, et al.

Filed Date: 12/13/24.

Accession Number: 20241213-5295.

Comment Date: 5 p.m. ET 1/3/25.

Docket Numbers: ES25-23-000.

Applicants: NorthWestern Corporation.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of NorthWestern Corporation.

Filed Date: 12/13/24.

Accession Number: 20241213-5298.

Comment Date: 5 p.m. ET 1/3/25.

Docket Numbers: ES25-24-000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Midcontinent Independent System Operator, Inc.

Filed Date: 12/17/24.

Accession Number: 20241217-5296.

Comment Date: 5 p.m. ET 1/7/25.

Docket Numbers: ES25-25-000.

Applicants: RE Papago PV LLC.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of RE Papago PV LLC.

Filed Date: 12/17/24.

Accession Number: 20241217-5298.

Comment Date: 5 p.m. ET 1/7/25.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH25-1-000.

Applicants: The Williams Companies, Inc.

Description: The Williams Companies, Inc. submits FERC 65-B Notice of Change in Fact to Waiver Notification.

Filed Date: 12/13/24.

Accession Number: 20241213-5297.

Comment Date: 5 p.m. ET 1/3/25.

Take notice that the Commission received the following electric reliability filings

Docket Numbers: RD25-4-000.

Applicants: North American Electric Reliability Corporation.

Description: Petition of The North American Electric Reliability Corporation for Approval of Proposed Reliability Standard TPL-008-1.

Filed Date: 12/17/24.

Accession Number: 20241217–5303.
Comment Date: 5 p.m. ET 1/17/25.

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: December 18, 2024.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2024–30701 Filed 12–23–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2024–0590; FRL–12509–01–OCSPP]

DQB Males (*Wolbachia Pipientis*, DQB Strain, Contained in Live Adult *Culex quinquefasciatus* Males); Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a second renewal request for a specific exemption from the Hawaii Department of Agriculture for use of the pesticide DQB Males (*Wolbachia pipientis*, DQB strain,

contained in live adult *Culex quinquefasciatus* males), to treat up to 20,000 acres of State, Federal, and private wildlife conservation areas throughout the State of Hawaii and to control *Culex quinquefasciatus* mosquitoes, a vector of avian malaria. The applicant proposes a new use of a microbial pesticide which has not been registered by EPA. Therefore, in accordance with Code of Federal Regulations, EPA is soliciting public comment before making the decision whether to grant the exemption.

DATES: Comments must be received on or before January 10, 2025.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2024–0590, and the specific case number for the chemical substance related to your comment, 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. To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <https://www.epa.gov/dockets/contacts.html>. 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:

Charles Smith, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: RDfRNotices@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are a pesticide manufacturer, North American Industrial Classification System (NAICS) (Code 32532) or involved with Hawaiian wildlife conservation areas that have known populations of *Culex quinquefasciatus*. This listing is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Other types of entities not listed could also be affected.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or email. Clearly mark the part or all the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI, and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/commenting-epa-dockets>.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, because of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. What action is the Agency taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the EPA Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the EPA Administrator determines that emergency conditions exist which require the exemption. The Hawaii Department of Agriculture has requested the EPA Administrator to issue a specific exemption for the use of DQB males for conservation purposes to control mosquitoes (*Culex quinquefasciatus*), which are a known vector of avian malaria and threaten Hawaii's endemic forest bird population. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the applicant asserts that avian malaria was introduced into the Hawaiian Islands in the 19th century and spread by a non-native mosquito. Hawaii is experiencing increased mosquito populations that have significantly reduced Hawaiian bird populations. According to the applicant, without mosquito control, the survival and recovery of Hawaii's few remaining forest birds, including threatened and endangered species, are at imminent risk.

The applicant proposes to make a maximum of 156 applications of DQB male mosquitoes per release site per year based on an anticipated maximum of 3 releases per week. The total number of application days is a maximum of 156 during the year. The total amount of DQB Males to be applied per year to treat conservation lands throughout Hawaii is up to 3,000,000 male mosquitoes per week or 156,000,000 males per year. The maximum amount of *Wolbachia pipientis*, DQB strain, to be applied per year is up to ~1.83 g/week or 95 g/year.

This notice does not constitute a decision by EPA on the application itself. The regulations governing FIFRA section 18 require publication of a notice of receipt of an application for a specific exemption proposing a new use of a microbial pesticide (*i.e.*, an active ingredient) which has not been registered by EPA. The notice provides an opportunity for public comment on the application.

The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the Hawaii Department of Agriculture.

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 17, 2024.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2024-30730 Filed 12-23-24; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2003-0004; FRL-12447-01-OCSPP]

Access to Confidential Business Information by General Dynamics Information Technology (GDIT) and its Subcontractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor General Dynamics Information Technology (GDIT) of Falls Church, VA, and its subcontractors to access information which has been submitted to EPA under the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than January 2, 2025.

FOR FURTHER INFORMATION CONTACT:

For technical information: Colby Lintner or Adam Schwoerer, Program Management and Operations Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 564-8182; email address: lintner.colby@epa.gov; or (202) 564-4767; schwoerer.adam@epa.gov.

For general information: 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. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of particular interest to those who submit certain information or data to EPA under the Toxic Substances Control Act (TSCA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

II. What action is the Agency taking?

Under contract number 47QTCK18D0003, task order number 47QFCA22F0018, contractor General Dynamics Information Technology (GDIT) of 3150 Fairview Park Drive, Falls Church, VA 22042, and its subcontractors will assist the Office of Pollution Prevention and Toxics (OPPT) by hosting the servers and managing the infrastructure where TSCA CBI resides.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 47QTCK18D0003, task order number 47QFCA22F0018, GDIT and its subcontractors will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. GDIT's and its subcontractor's personnel will be given access to information claimed or determined to be CBI information submitted to EPA under all sections of

TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA will provide the herein identified contractor and its subcontractors with access to the CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract, in accordance with EPA's *TSCA CBI Protection Manual* and the Rules of Behavior for Virtual Desktop Access to OPPT Materials, including TSCA CBI, will take place at EPA Headquarters, and/or at the following facilities of the contractor and/or subcontractors:

- Berrett & Associates, Inc., P.O. Box 2891, Sterling, VA 20167.
- CompTech Computer Technologies, Inc., 7777 Washington Village Drive, Suite 270 Dayton, OH 45459.
- Gridiron IT Solutions, LLC, 7777 Washington Village Drive, Suite 270 Dayton, OH 45459.
- IdentityNest, 115100 Weston Pkwy. #103, Cary, NC 27513.
- SCI Consulting Services, Inc., 4005 Taylor Drive, Fairfax, VA 21032; Shinetech, Inc., 5000 Ritter Road, Suite 202.
- Mechanicsburg, WV 17055.
- SkyePoint Decisions, Inc., 45240 Business Court, Suite 160, Dulles, VA 20166.
- SONA NETWORKS, LLC, 516 North Charles Street, Suite 311, Baltimore, MD 21201.
- TITANONEZERO, LLC, 7666 Fullertone Road, Unit G, Springfield, VA 22153.
- Woolpert, Inc., 4454 Idea Center Blvd., Dayton, OH 45402.

The personnel of the contractor and subcontractors will be required to sign nondisclosure agreements and will be briefed on specific security procedures for TSCA CBI.

Access to TSCA data, including CBI, will continue until April 24, 2029. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: December 18, 2024.

Pamela Myrick,

Director, Project Management and Operations Divisions, Office of Pollution Prevention and Toxics.

[FR Doc. 2024-30731 Filed 12-23-24; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**[EPA-HQ-OW-2024-0454; FRL 12023-01-OW]****Draft National Recommended Ambient Water Quality Criteria for the Protection of Human Health for Perfluorooctanoic Acid, Perfluorooctane Sulfonic Acid, and Perfluorobutane Sulfonic Acid****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of draft Clean Water Act (CWA) national recommended ambient water quality criteria (AWQC) for the protection of human health for three per- and polyfluoroalkyl substances (PFAS)—perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS), and perfluorobutane sulfonic acid (PFBS)—for a 60-day public comment period. The EPA has developed these draft PFAS national recommended human health criteria (HHC) to reflect the latest scientific information, consistent with current EPA guidance, methods, and longstanding practice. When PFAS national recommended HHC are finalized, they will provide information that States and Tribes may consider when adopting water quality standards.

DATES: Comments must be received on or before February 24, 2025.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OW-2024-0454, by any of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.
- **Email:** ow-docket@epa.gov. Include Docket ID No. EPA-HQ-OW-2024-0454 in the subject line of the message.
- **Mail:** U.S. Environmental Protection Agency, EPA Docket Center, Water Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- **Hand Delivery or Courier:** EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. to 4:30 p.m., Monday through Friday (except Federal holidays).

Instructions: All submissions received must include the Docket ID No. for this document. Comments received may be posted without change to <https://www.regulations.gov/>, including any

personal information provided. For detailed instructions on sending comments and additional information, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Brandi Echols, Office of Water, Health and Ecological Criteria Division (4304T), Environmental Protection Agency, 1301 Constitution Ave. NW, Washington, DC 20460; telephone number: (202) 566-2717; email address: Echols.Brandi@epa.gov.

SUPPLEMENTARY INFORMATION:**I. Public Participation****A. How can I get copies of these documents and other related information?**

The EPA has established Docket ID No. EPA-HQ-OW-2024-0454 for three draft PFAS human health criteria: “Draft Human Health Ambient Water Quality Criteria: Perfluorooctanoic Acid (PFOA) and Related Salts;” “Draft Human Health Ambient Water Quality Criteria: Perfluorooctane Sulfonic Acid (PFOS) and Related Salts;” and “Draft Human Health Ambient Water Quality Criteria: Perfluorobutane Sulfonic Acid (PFBS) and Related Salts.” Publicly available docket materials are available either electronically through <https://www.regulations.gov> or in hard copy at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. to 4:30 p.m., Monday through Friday (except Federal holidays). For further information on the EPA Docket Center services and the current status, see: <https://www.epa.gov/dockets>.

The three draft human health criteria documents can be accessed on the EPA's website through the following link: <https://www.epa.gov/wqc/human-health-water-quality-criteria-pfas>

B. Written Comments

Submit your comments, identified by Docket ID No. EPA-HQ-OW-2024-0454, at <https://www.regulations.gov> (our preferred method) or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to the EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be

accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). Please visit <https://www.epa.gov/dockets/commenting-epa-dockets> for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

C. What should I consider as I prepare my comments for the EPA?

In preparation for submitting comments to the EPA on this action, please review the draft chemical-specific criteria documents the EPA is publishing in the public docket for this action under Docket ID No. EPA-HQ-OW-2024-0454. Provide the EPA with comments regarding scientific views related to the draft national recommended water quality criteria for protecting human health. Include any recommended references for data and other scientific information to be considered by the EPA. To ensure that the EPA can properly respond to comments, commenters should cite the section(s) or chemical(s) in the draft criteria documents to which each comment refers. Commenters should use a separate paragraph for each issue discussed and submit any references cited in their comments. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment. Electronic files should avoid any form of encryption and should be free of any defects or viruses.

II. Background**A. What are PFAS and what are PFOA, PFOS, and PFBS?**

Per- and polyfluoroalkyl substances (PFAS) are a large class of thousands of synthetic chemicals that have been in use in the United States and around the world since the 1940s. The ability for PFAS to withstand heat and repel water and stains makes them useful in a wide variety of consumer, commercial, and industrial products, and in the manufacturing of other products and chemicals. Current scientific research and available evidence have shown the potential for harmful human health effects after being exposed to some PFAS, even at very low levels. PFAS' persistence and resistance to hydrolysis,

photolysis, metabolism, and microbial degradation raise additional concerns about human exposure and health effects.

The EPA has developed draft recommended criteria for three PFAS: perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS), and perfluorobutane sulfonic acid (PFBS). In the United States, most production of PFOA and PFOS, along with other long-chain PFAS, has been phased out and generally replaced by production of other PFAS. PFOA and its precursors have been used in flame repellents, cosmetics, paints, polishes, and processing aids used in the manufacture of nonstick coatings on cookware. PFOS has been used in a variety of products including surface treatments for soil and stain resistance, coating of paper, and in specialized applications such as firefighting foams. PFBS has been used as a replacement chemical for PFOS. Prior to its use as a PFOS replacement, PFBS had been produced as a byproduct and was present in consumer products as an impurity. Environmental releases of PFBS may result directly from the production and use of PFBS itself, production and use of PFBS-related substances for various applications, and/or from the degradation of PFBS precursors (*i.e.*, substances that may form PFBS during use, as a waste, or in the environment). Adverse human health effects associated with exposure to PFOA or PFOS include but are not limited to effects on the liver, growth and development (*e.g.*, low birth weight), the immune system (*e.g.*, reduced response to vaccines), lipid levels (*e.g.*, high cholesterol), as well as increased risk of certain types of cancer. Adverse human health effects associated with exposure to PFBS include but are not limited to thyroid, developmental, and kidney effects.

B. What are the EPA's national recommended ambient water quality criteria for the protection of human health?

Section 304(a)(1) of the CWA requires the EPA to develop, publish, and, from time to time, revise criteria for protection of water quality and human health that accurately reflect the latest scientific knowledge. HHC developed under CWA section 304(a) are based solely on data and scientific judgments on the relationship between pollutant concentrations and human health effects. CWA section 304(a) criteria do not reflect consideration of economic impacts or the technological feasibility of meeting pollutant concentrations in ambient water. HHC are scientifically

derived numeric concentrations of a pollutant that are expected to protect human health from the adverse effects of that pollutant in ambient water. HHC are designed to minimize the risk of adverse effects occurring to humans from chronic (lifetime) exposure to substances through drinking water and eating fish and shellfish from inland and nearshore waters.

Under the CWA and its implementing regulations, States and authorized Tribes are required to adopt water quality criteria to protect designated uses (*e.g.*, public water supply, recreational use, or industrial use). The recommended HHC provide scientific information to States and authorized Tribes when they establish water quality standards that ultimately provide a basis for assessing water body health and controlling discharges of pollutants. For each contaminant, the EPA derives two recommended HHC: one criterion is based on the consumption of both water and freshwater/estuarine fish and shellfish (collectively referred to as "organisms"), and the other is based on the consumption of organisms alone. The applicability of one criterion over the other depends on the designated use of a particular water body or water bodies (*e.g.*, public water supply vs. fishable waters). The EPA recommends applying the organism-only HHC to a water body where the designated use includes supporting fishable uses under section 101(a) of the CWA but not a drinking water supply source (*e.g.*, non-potable estuarine waters that support fish or shellfish for human consumption).

The EPA's national recommended water quality criteria are not regulations, and they do not substitute for the CWA or regulations. The EPA's recommended criteria do not impose legally binding requirements. States and authorized Tribes have the discretion to adopt, where appropriate, other scientifically defensible water quality criteria that differ from the EPA's CWA section 304(a) national recommendations.

III. Overview of EPA's Draft Human Health Criteria for PFOA, PFOS, and PFBS

The EPA is publishing draft national recommended HHC for PFOA, PFOS, and PFBS, based on the latest scientific knowledge and following the EPA's longstanding, peer reviewed methodology for deriving human health criteria. See *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health* (2000), EPA-822-B-00-004, October 2000. HHC are developed using a

mathematical equation that includes information on human health toxicity (non-cancer and cancer effects), exposure factors (specifically, fish consumption rates, body weight and drinking water intake), bioaccumulation potential, and consideration of potentially significant exposure sources beyond drinking water and freshwater/estuarine fish and shellfish consumption (*e.g.*, other foods, dust, consumer products; termed "relative source contribution").

The EPA derived the draft HHC using the latest scientific information regarding human health toxicity and potential exposures via drinking water and eating fish and shellfish from inland and nearshore waters. Specifically, the EPA derived the draft HHC using final EPA toxicity values (reference doses, cancer slope factors) for each of the three PFAS, which have undergone external peer review and public comment. To account for human exposure to these three individual PFAS from the fish and shellfish consumption pathway, the EPA developed draft bioaccumulation factors for freshwater and estuarine fish and shellfish, according to longstanding Agency methods. Consistent with past practice, the EPA derived the draft HHC using 90th percentile per capita rates for fish and shellfish consumption and drinking water ingestion, and a mean body weight for adults, all based on national survey data. The EPA derived a relative source contribution for each PFAS to ensure that a person's total exposure to each chemical does not exceed its noncancer toxicity value (reference dose).

The draft national recommended HHC for the three PFAS are summarized in table 1. Each of the draft criteria documents transparently describes the human health toxicity and exposure information that the EPA used to derive the HHC. Each draft criteria document also provides an illustrative example to assist States and Tribes in the consideration of water quality standards for PFAS mixtures.

TABLE 1—DRAFT HUMAN HEALTH CRITERIA (HHC) FOR PFOA, PFOS, AND PFBS

PFAS	Water + Organism HHC (ng/L)	Organism Only HHC (ng/L)
PFOA	0.0009	0.00036
PFOS	0.06	0.07
PFBS	400	500

IV. The EPA's Request for Comments and Next Steps

The EPA will consider the comments received, revise the criteria documents, and prepare final national recommended HHC for PFOA, PFOS, and PFBS that reflect EPA's consideration of those comments. The EPA will announce the availability of the final national recommended HHC for these three PFAS in the **Federal Register**. When final, these HHC will provide information that States and Tribes may consider when adopting water quality standards for PFOA, PFOS, and PFBS. The EPA expects to develop additional HHC for PFAS as scientific information becomes available.

Bruno Pigott,

Principal Deputy Assistant Administrator.

[FR Doc. 2024-30637 Filed 12-23-24; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2023-0129; FRL-12524-OMS-01]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Consolidated Air Rule for the Synthetic Organic Chemical Manufacturing Industry (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Consolidated Air Rule for the Synthetic Organic Chemical Manufacturing Industry (EPA ICR Number 1854.14, OMB Control Number 2060-0443) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through December 31, 2024. Public comments were previously requested via the **Federal Register** on May 18, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments may be submitted on or before January 27, 2025.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA-HQ-OAR-2023-0129, to EPA online using <https://www.regulations.gov/> (our preferred method), by email to *a-and-r-*

docket@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

The EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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:

Muntasir Ali, Sector Policies and Program Division (D243-05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-0833; email address: *ali.muntasir@epa.gov*.

SUPPLEMENTARY INFORMATION: This is a request for approval of a new collection. 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.

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 <https://www.regulations.gov> or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Abstract: The Consolidated Federal Air Rule (CAR) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI) (40 CFR part 65) was promulgated on December 14, 2000; and amended on August 27, 2007, November 12, 2010, August 11, 2011, June 25, 2013, and January 19, 2021. The CAR regulations are an optional compliance approach for new and existing SOCMI facilities that must comply with existing subparts in the Code of Federal Regulations (CFR). The CAR is a consolidation of major portions of 15 different New Source Performance

Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) pertaining to storage vessels, process vents, transfer racks, equipment leaks, and the general provisions for the three applicable parts (40 CFR parts 60, 61, and 63). These subparts are referred to as "referencing Subparts" because they have been amended to refer to the CAR as a compliance alternative. New facilities include those that commenced construction, modification or reconstruction after the date of proposal of the applicable referencing subpart(s). The referencing subparts include 40 CFR part 60, subparts Ka, Kb, VV, VVa, DDD, III, NNN, and RRR; 40 CFR part 61, subparts BB, Y, and V; 40 CFR part 63, subparts F, G, H, and I. This ICR does not incorporate burden from recently proposed amendments to referencing subparts VV, VVa, III, NNN, RRR, F, G, H, or I (88 FR 25080) or subpart Kb (88 FR 68535). This information is being collected to assure compliance with 40 CFR part 65.

Compliance with the CAR is a voluntary alternative. Sources may either continue to comply with existing applicable rules or may choose to comply with the consolidated rule. All existing sources must be in compliance with the requirements of the CAR and/or its referencing Subparts within three years of the effective date (*i.e.*, promulgation date) of the appropriate standard for the affected source. All new sources must be in compliance with the requirements of the CAR and/or its referencing Subparts upon startup or the promulgation date of standards for an affected source, whichever is later.

In general, all the NSPS, NESHAP, CAR, and maximum achievable control technology (MACT) standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to these standards.

Form Numbers: None.

Respondents/affected entities: Synthetic organic chemical manufacturing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subparts Ka, Kb, VV, VVa, DDD, III, NNN, and RRR; 40 CFR part 61, subparts V, Y, and BB; and 40 CFR part 63, subparts F, G, H, and I; 40 CFR part 65).

Estimated number of respondents: 1,346 (total).

Frequency of response: Initially, quarterly, semiannually, annually.

Total estimated burden: 1,220,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$219,000,000 (per year), includes \$65,200,000 annualized capital or operation & maintenance costs.

Changes in the Estimates: The increase in burden from the most recently approved ICR is due to adjustments. This increase is due in part to an adjustment to the number of sources assumed to comply with the CAR instead of the referencing Subparts. Recent Title V permit reviews for a HON rulemaking identified very few facilities were complying with the CAR. Based on the information reviewed for this rulemaking, we have assumed only 10% of sources will choose to comply with the CAR. This change, in addition to increased respondent counts, resulted in an increase in burden hours for referencing Subparts associated with HON. Additionally, respondent counts increased for several referencing Subparts based on industry growth rates.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2024–30641 Filed 12–23–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2024–0521; FRL–12356–01–OCSPP]

Pesticides; Spanish Translation Guide for Pesticide Labeling; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is announcing the availability of an updated guide for pesticide registrants to translate parts of their pesticide product labels into Spanish. The Spanish Translation Guide for Pesticide Labeling (STGPL) is written based on a universal form of Spanish to reach as many Spanish speakers as possible and provide example translations for language typically used in the health and safety sections of pesticide product labels.

DATES: This guide is effective December 26, 2024.

ADDRESSES: The docket for this action, identified by docket identification (ID)

number EPA–HQ–OPP–2024–0521, is available online at <https://www.regulations.gov>. Additional information about dockets generally, along with instructions for visiting the docket in-person, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

Susan Bartow Pesticide Re-evaluation Division (7508M), Office of Pesticide Programs, Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–2280 email address: OPPBilingualLabels@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

This action is directed to the general public and may be of specific interest to persons or entities that register or use pesticide products. Since a potentially broad range of entities may be interested in this action, the Agency has not attempted to describe all the specific entities that may be interested. If you have any questions regarding the applicability of this guidance to a particular entity or registration action, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the Agency's authority for taking this action?

Pesticide registration activities are governed by the Federal Insecticide Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, which was amended by the Pesticide Registration Improvement Act of 2022 (PRIA 5) on December 29, 2022. PRIA 5 amended FIFRA section 4(k) to require the safety and health portions of pesticide product labels to be translated into Spanish. PRIA 5 provides deadlines for bilingual labeling to appear on pesticide products on a rolling schedule from December 29, 2025, to December 29, 2030, with translations for the most hazardous and toxic pesticide products required first. PRIA 5 also requires the Agency to notify registrants within 10 days of updating the Spanish Translation Guide.

C. What action is the Agency taking?

EPA is announcing that an updated Spanish Translation Guide for Pesticide Labeling (STGPL) is available on the Agency web page to help guide pesticide registrants translate parts of their pesticide product labels into Spanish. EPA generally allows pesticide registrants to translate their product labels into any language so long as there

is an EPA-approved English version of the label, and the translation is true and accurate.

For additional information about bilingual labeling for pesticide products, go to <https://www.epa.gov/pesticide-labels/bilingual-labeling>.

II. Background

EPA's Office of Pesticide Programs (OPP) originally released the STGPL to the public in 2019 in response to concerns voiced by farmworker advocates, who argued that having bilingual pesticide labeling is critical to the well-being and protection of pesticide applicators and farmworkers who may be exposed to pesticides, many of whom in the U.S. may not be English literate. This more recent version of the STGPL includes changes or updates following stakeholder feedback, a sampling of current labeling, and statements from the 2021 Label Review Manual (LRM) that had not previously been included. These updates are comprised of additional language examples for different sections, updates made based on the LRM, and entirely new sections inserted with examples.

The STGPL is a resource for pesticide registrants to use for the translation of the required human health and safety sections on pesticide labeling from English to Spanish. Only these sections are necessary for translation to ensure that workers have access to important information to protect themselves from pesticide exposure, and to get appropriate help if exposed to a pesticide product. While use of the specific language from the STGPL is not required, EPA encourages use of the language in the STGPL to ensure translations are “true and accurate” per the responsibility of the registrant.

III. Do guidance documents contain binding requirements?

The STGPL is intended to provide guidance to pesticide registrants and EPA personnel and decision makers. While the requirements in the statutes and Agency regulations are binding on EPA and the pesticide registrants, the STGPL does not impose binding requirements on the Agency or any outside parties. As guidance, EPA may depart from the guidance where circumstances warrant and without prior notice. Likewise, pesticide registrants may assert that the guidance is not appropriate generally or not applicable to a specific pesticide or situation.

EPA encourages the use of the language in the STGPL to ensure that translations of the English text are “true

and accurate.”. Although use of the specific language from the STGPL is not required, the registrant is still responsible for ensuring that “true and accurate” Spanish translations are included for each section of the label that is included in the Agency’s STGPL.

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 18, 2024.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2024–30742 Filed 12–23–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2024–0601; FRL–12515–01–OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with the Clean Air Act, as amended (CAA or the Act), notice is given of a proposed consent decree in *Center for Community Action and Environmental Justice v. U.S. EPA, et al.*, No. 3:24–cv–05042–EMC. On August 12, 2024, Plaintiff Center for Community Action and Environmental Justice filed a complaint in the United States District Court for the Northern District of California San Francisco Division, alleging that the Environmental Protection Agency (EPA) failed to perform certain non-discretionary duties in accordance with the Act to take final action on a state implementation plan (SIP) revision submitted by the State of California. EPA is providing notice of this proposed consent decree, which would resolve all claims in the case by establishing a deadline for EPA to take final action as specified in the decree.

DATES: Written comments on the proposed consent decree must be received by *January 27, 2025*

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2024–0601, online at <https://www.regulations.gov> (EPA’s preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action. Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending

comments and additional information on the rulemaking process, see the “Additional Information about Commenting on the Proposed Consent Decree” heading under the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Abi Vijayan, Air and Radiation Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone (202) 564–3178; email address Vijayan.Abi@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining a Copy of the Proposed Consent Decree

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2024–0601) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the OEI Docket is (202) 566–1752.

The electronic version of the public docket for this action contains a copy of the proposed consent decree and is available through <https://www.regulations.gov>. You may use <https://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search.”

II. Additional Information About the Proposed Consent Decree

The proposed consent decree would establish a deadline for EPA to take action pursuant to CAA section 110(k) on a SIP revision, the “Heavy-Duty Inspection and Maintenance Regulation,” submitted by the State of California on December 14, 2022. The Heavy-Duty Inspection and Maintenance Regulation reduces emissions from on-road heavy-duty vehicles through periodic testing requirements, emissions monitoring techniques, and expanded enforcement strategies.

The proposed consent decree would require EPA to sign a notice of final rulemaking by July 31, 2025, and,

within 15 business days of signature, to send the required signed notice of final rulemaking to the Office of **Federal Register** for review and publication.

In accordance with section 113(g) of the CAA, for a period of thirty (30) days following the date of publication of this document, the Agency will accept written comments relating to the proposed consent decree. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

III. Additional Information About Commenting on the Proposed Consent Decree

Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2024–0601, via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this docket. 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. 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 additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Note that written comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be received by scheduled appointment only.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical

difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the <https://www.regulations.gov> website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

Gautam Srinivasan,
Associate General Counsel.

[FR Doc. 2024-30773 Filed 12-23-24; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OCFO-2023-0531; FRL-12523-01-OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Environmental Justice Thriving Communities Grantmaking (TCGM) Program: Applications for Subawards, Public Outreach Information Collections, and Post-Award Reporting (New)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Environmental Justice Thriving Communities Grantmaking (TCGM) Program: Applications for Subawards, Public Outreach Information Collections, and Post-Award Reporting (EPA ICR Number 2795.01, OMB Control Number 2035-NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a request for

approval of a new collection. Public comments were previously requested via the **Federal Register** on January 8, 2024 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments may be submitted on or before January 27, 2025.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA-HQ-OCJEER-2023-0531, to EPA online using www.regulations.gov (our preferred method), by email to Docket_OMS@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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:

Aarti Iyer, Office of the Chief Financial Officer, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; email address: iyer.aarti@epa.gov; phone: 202-564-0214.

SUPPLEMENTARY INFORMATION: This is a request for approval of a new collection. 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.

Public comments were previously requested via the **Federal Register** on January 8, 2024 during a 60-day comment period (89 FR 916). This notice allows for an additional 30 days for public comments. 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 or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional

information about EPA's public docket, visit <https://www.epa.gov/dockets>.

Abstract: To meet the goals and objectives that demonstrate the U.S. Environmental Protection Agency (EPA's) and the Administration's commitment to achieving environmental justice and embedding environmental justice into Agency programs, the Environmental Justice Thriving Communities Grantmaking Program provides about \$600 million in 11 cooperative agreements funding to "Grantmakers" who will function as pass-through entities for the Environmental Justice Thriving Communities Subgrants (2 CFR parts 200 and 1500). Each Grantmaker will collaborate with EPA to design and build their own processes to receive and evaluate applications to fund the development of community-led environmental justice projects. With this Information Collection Request (ICR), EPA seeks approval for the Grantmakers to (a) solicit application for subawards and (b) to collect reports from recipients of subawards to track their progress. Collection of this information is essential for Grantmakers to select and distribute the subawards, and to assess and manage the funded projects, which ensures responsible stewardship of public funds; rigorous evidence-based learning and improvement; and transparent accountability to the American public. This ICR also requests approval for the Grantmakers to collect input and insights from communities who seek to obtain technical assistance services, as well as stakeholders who have valuable experience and expertise in community engagement and empowerment. These information collections via (c) surveys and (d) focus groups will enable the Centers to document local priorities, needs, and norms to ensure that they develop useful and relevant technical assistance and training services. Furthermore, feedback about these services will enable the Centers to conduct self-assessments to identify best practices and areas for improvement.

Form Numbers: None.

Respondents/affected entities: Recipients of financial assistance subawards from Grantmakers, community members, stakeholders.

Respondent's obligation to respond: Mandatory for recipients of subawards to obtain or retain a benefit (2 CFR parts 200 and 1500). Voluntary for public outreach information collection via surveys and focus groups.

Estimated number of respondents: 295,638 (per year).

Frequency of response: Varies.

Total estimated burden: 237,049 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: \$10,845,779 (per year), including \$338,342 annualized capital or operation & maintenance costs.

Changes in the Estimates: This is a new collection, and so does not involve any program changes or burden adjustments.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2024–30642 Filed 12–23–24; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice 2024–6127]

Agency Information Collection

Activities: Submission to the Office of Management and Budget for Review and Approval; Comment Request; EIB 94–07, Exporters Certificate for Use With a Short-Term Financial Institution Buyer Credit or Export Letter of Credit Export Credit Insurance Policy

AGENCY: Export-Import Bank of the United States.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Export-Import Bank of the United States (EXIM), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

DATES: Comments must be received on or before February 24, 2025 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on www.regulations.gov, by mail to Edward Coppola, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC, or by email to Edward Coppola, edward.coppola@exim.gov.

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Edward Coppola (202) 565–3717. The form can be viewed at: https://img.exim.gov/s3fs-public/pub/pending/eib-94-07-2025Rev_508.pdf.

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 94–07 Exporters Certificate for Use with a Short-Term Financial Institution Buyer Credit or Export Letter of Credit Export Credit Insurance Policy.

OMB Number: 3048–0041.

Type of Review: Regular.

Need and Use: EXIM's financial institution policy holders provide this

form to U.S. exporters, who certify to the eligibility of their exports for EXIM support. The completed forms are held by the financial institution policy holders, only to be submitted to EXIM in the event of a claim filing. A requirement of EXIM's policies is that the insured financial institution policy holder obtains a completed Exporter's Certificate at the time it provides financing for an export. This form will enable EXIM to identify the specific details of the export transaction necessary for determining the eligibility of claims for approval. EXIM staff and contractors review this information to assist in determining that an export transaction, on which a claim for non-payment has been submitted, meets all the terms and conditions of the insurance coverage. EXIM uses the referenced form to obtain exporter certification regarding the export transaction, U.S. content, non-military use, non-nuclear use, compliance with EXIM's country cover policy, and their eligibility to participate in USG programs. These details are necessary to determine the legitimacy of claims submitted. It also provides the financial institution policy holder a check on the export transaction's eligibility, at the time it is fulfilling a financing request.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 240.

Estimated Time per Respondent: 15 minutes.

Annual Burden Hours: 60 hours.

Frequency of Reporting of Use: As required.

Dated: December 18, 2024.

Andrew Smith,

Records Officer.

[FR Doc. 2024–30659 Filed 12–23–24; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice: 2024–6130]

Agency Information Collection

Activities: Submission to the Office of Management and Budget for Review and Approval; Comment Request; EIB 10–02, Application for Short-Term Express Export Credit Insurance Policy

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM), as part of its continuing effort to reduce paperwork

and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

DATES: Comments must be received on or before February 24, 2025 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on WWW.REGULATIONS.GOV (EIB 10–02), by email edward.coppola@exim.gov, or by mail to Edward Coppola, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC. The application tool can be reviewed at: https://img.exim.gov/s3fs-public/pub/pending/Express_Application_eib10-02_2024_FINAL_508_1.pdf.

FOR FURTHER INFORMATION CONTACT:

To request additional information, please contact Edward Coppola (202) 565–3717.

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 10–02 Application for Short-Term Express Export Credit Insurance Policy.

OMB Number: 3048–0031.

Type of Review: Regular.

Need and Use: This form is used by an exporter (or broker acting on its behalf) in order to obtain approval for coverage of the repayment risk of export sales. The information received allows EXIM staff to determine of the eligibility of the applicant and the creditworthiness of one of the applicant's foreign buyers for EXIM assistance under its programs.

This is the application form for use by small U.S. businesses with limited export experience. Companies that are eligible to use the Express policy will need to answer approximately 32 questions and sign an acknowledgement of the certifications that appear on the reverse of the application form. This program does not provide discretionary credit authority to the U.S. exporter, and therefore the financial and credit information needs are minimized.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 500.

Estimated Time per Respondent: 0.25 hours.

Annual Burden Hours: 125 hours.

Frequency of Reporting of Use: Once per year.

Dated: December 18, 2024.

Andrew Smith,

Records Officer.

[FR Doc. 2024–30661 Filed 12–23–24; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL ELECTION COMMISSION**Sunshine Act Meetings**

TIME AND DATE: Thursday, January 9, 2025, at 10:00 a.m.

PLACE: 1050 First Street NE, Washington, DC and virtual (this meeting will be a hybrid meeting.)

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Matters relating to internal personnel decisions, or internal rules and practices.

Investigatory records compiled for law enforcement purposes and production would disclose investigative techniques.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

Matters concerning participation in civil actions or proceedings or arbitration.

Additional Information: This meeting will be cancelled if the Commission is not open due to a funding lapse.

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694-1220.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Vicktoria J. Allen,

Deputy Secretary of the Commission.

[FR Doc. 2024-31067 Filed 12-20-24; 4:15 pm]

BILLING CODE 6715-01-P

FEDERAL RESERVE SYSTEM**Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors.

This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551-0001, not later than January 27, 2025.

A. Federal Reserve Bank of Boston (Prabal Chakrabarti, Senior Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02210-2204. Comments can also be sent electronically to BOS.SRC.Applications.Comments@bos.frb.org:

1. *ECSB Financial Corporation, Norwich, Connecticut*; to become a bank holding company by acquiring Eastern Connecticut Savings Bank, also of Norwich, Connecticut.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,
Associate Secretary of the Board.

[FR Doc. 2024-30727 Filed 12-23-24; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM**Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities**

The companies listed in this notice have given notice under section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a) (HOLA) and Regulation LL (12 CFR part 238) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 238.53 of Regulation LL (12 CFR 238.53). Unless otherwise noted, these activities will be conducted throughout the United States.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on whether the proposed transaction complies with the standards enumerated in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue, NW, Washington DC 20551-0001, not later than January 27, 2025.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414.

Comments can also be sent electronically to Comments.applications@chi.frb.org:

1. *Marathon MHC, Wausau, Wisconsin*; a mutual savings and loan holding company that indirectly controls Marathon Bank, Wausau, Wisconsin, to convert to stock form. As part of the conversion, Marathon MHC will merge with and into Marathon Bancorp, Inc., Wausau, Wisconsin, an existing mid-tier stock savings and loan holding company, with Marathon Bancorp, Inc. as the surviving entity.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,
Associate Secretary of the Board.

[FR Doc. 2024-30728 Filed 12-23-24; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-5051-N2]

Medicare Program; Rural Community Hospital Demonstration Program: Solicitation of Additional Participants

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces a solicitation for up to 10 additional eligible hospitals to participate in the Rural Community Hospital Demonstration program, to run through June 30, 2028.

DATES: To be assured consideration, applications must be received at the address provided below by 11:59 p.m. Eastern Standard Time (E.S.T.) on March 1, 2025.

ADDRESSES: Please email completed applications to the following email address: RCHDemo@cms.hhs.gov.

FOR FURTHER INFORMATION CONTACT: Alexis Lilly at 410-786-3501 or by email at alexis.lilly@cms.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 410A(a) of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (Public Law (Pub. L. 108-173) required the Secretary to establish a demonstration program to test the feasibility and advisability of establishing cost-based reimbursement for “rural community hospitals” to furnish covered inpatient hospital services to Medicare beneficiaries. The demonstration pays rural community hospitals for such services under a cost-based methodology for Medicare payment purposes for covered inpatient hospital services furnished to Medicare beneficiaries. A rural community hospital, as defined in section 410A(f)(1) of Public Law 108-173, is a hospital that—

- Is located in a rural area (as defined in section 1886(d)(2)(D) of the Social Security Act (the Act)) or is treated as being so located pursuant to section 1886(d)(8)(E) of the Act;
- Has fewer than 51 acute care inpatient beds (excluding beds in a distinct psychiatric or rehabilitation unit of the hospital) as reported in its most recent cost report;
- Provides 24-hour emergency care services; and

- Is not designated or eligible for designation as a critical access hospital under section 1820 of the Act.

The demonstration is designed to test the feasibility and advisability of reasonable cost reimbursement for inpatient services to small rural hospitals. The demonstration is aimed at increasing the capability of the selected rural hospitals to meet the needs of their service areas.

We began the demonstration in 2004 for the initial 5-year period mandated under section 410A of Public Law 108-173. The demonstration has been extended three times, each time for an additional 5-year period—first, by sections 3123 and 10313 of the Affordable Care Act (Pub. L. 111-148); then by section 15003 of the 21st Century Cures Act (Pub. L. 114-255), and again by section 128 of the Consolidated Appropriations Act of 2021 (Pub. L. 116-260). The current 5-year period of participation, mandated by Public Law 116-260, ends June 30, 2028.

As part of our broader rural strategy initiative and recognizing the health care challenges facing rural communities, we are conducting a new solicitation to select 10 additional qualifying hospitals to participate in the Rural Community Hospital Demonstration approving such hospitals on a rolling basis beginning May 1, 2025 through June 30, 2028. Please note that, although previous agreements ran for 5-year periods, agreements under this provision will run only until June 30, 2028. Given the upcoming statutory termination of the model, we are aligning performance dates for the selected hospitals with the last performance day for the last currently participating hospital in this performance cycle.

Section 410A(a)(4) of Public Law 108-173 specified that the Secretary was to select for participation from among the applicants in rural areas of States that the Secretary identified as having low population densities. Therefore, we will only accept applications to this solicitation from hospitals in the 20 least densely populated States, according to data for 2020 from the U.S. Census Bureau. These States are: Alaska, Arizona, Arkansas, Colorado, Idaho, Iowa, Kansas, Maine, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Vermont, and Wyoming. We will not accept applications from hospitals located in other States or in the US

territories.¹ The statute states that no more than 30 rural community hospitals can participate. Twenty hospitals are currently participating in the demonstration program as of November 1, 2024; therefore, up to 10 additional hospitals may be selected to be able to begin participation in the demonstration in 2025.

II. Provisions of the Notice

This notice announces the solicitation for up to 10 additional hospitals to participate in the Rural Community Hospital Demonstration Program. Hospitals that enter the demonstration under this solicitation will be able to participate from May 1, 2025 through June 30, 2028.

A. Demonstration Payment Methodology

Hospitals selected for the demonstration will be paid the reasonable costs of providing covered inpatient hospital services, with the exclusion of services furnished in a psychiatric or rehabilitation unit that is a distinct part of the hospital, using the following rules. For discharges occurring—

- In the first cost report period upon the hospital's participation in the demonstration, reasonable costs for covered inpatient services; and
- During the second or subsequent cost reporting period, the lesser of their reasonable costs or a target amount. The target amount in the second cost reporting period is defined as the reasonable costs of providing covered inpatient hospital services in the first cost reporting period, increased by the inpatient prospective payment system update factor (as defined in section 1886(b)(3)(B) of the Act) for that particular cost reporting period. The target amount in subsequent cost reporting periods is defined as the preceding cost reporting period's target amount increased by the hospital inpatient prospective payment system (IPPS) update factor for that particular cost reporting period.

Covered inpatient hospital services means inpatient hospital services (as defined in section 1861(b) of the Act) and includes extended care services furnished under an agreement under section 1883 of the Act (also known as “swing beds”).

Section 410A of Public Law 108-173 requires that, in conducting the demonstration program under this section, the Secretary shall ensure that the aggregate payments made by the

¹ See the United States Census Bureau: Historical Population Density Data (1910–2020) available at: <https://www.census.gov/data/tables/time-series/dec/density-data-text.html>.

Secretary do not exceed the amount which the Secretary would have paid if the demonstration program under this section was not implemented. To achieve budget neutrality for this demonstration program in fiscal years (FYs) since 2004, we have adjusted the national IPPS rates by an amount sufficient to offset the added costs of this demonstration program. We will present an estimate of the amount to offset additional costs due to the demonstration program in FY 2026, including the costs of additional rural community hospitals, in the FY 2026 IPPS/long-term care hospital (LTCH) PPS proposed rule.

B. Participation in the Demonstration

To participate in the demonstration, a hospital must be located in one of the identified States with low-population density and meet the criteria for a rural community hospital. Eligible hospitals that desire to participate in the demonstration must properly submit a timely application. Only applications that are received by the deadline specified in the **DATES** section of this notice will be considered “timely” and reviewed by the technical panel. Information about the demonstration and details on how to apply can be found on the CMS website: <https://www.cms.gov/priorities/innovation/innovation-models/rural-community-hospital>.

III. Collection of Information Requirements

The information collection requirements contained in this notice are subject to the Paperwork Reduction Act of 1995. As discussed in section II.B. of this notice, a hospital must submit the required information listed on the cover sheet of the CMS Medicare Waiver Demonstration Application to receive consideration by the technical review panel. The burden associated is the time and effort necessary to complete the Medicare Waiver Application and submit the information to CMS and is associated with OMB control number 0938–0880.

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Chyana Woodyard, who is the Federal Register Liaison, to electronically sign this document for

purposes of publication in the **Federal Register**.

Chyana Woodyard,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2024–30719 Filed 12–20–24; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Sexual Risk Avoidance Education (SRAE) National Evaluation Overarching Generic (New Collection)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families’ (ACF) Office of Planning, Research, and Evaluation (OPRE) requests Office of Management and Budget (OMB) approval for an overarching generic clearance to collect data from programs delivered by Sexual Risk Avoidance Education (SRAE) grant recipients on behalf of the SRAE National Evaluation. The generic mechanism will allow ACF to rapidly respond to research and evaluation opportunities that would not otherwise be feasible under the timelines associated with the Paperwork Reduction Act of 1995. The opportunities may relate to innovative implementation strategies and program components in use by SRAE grant recipients as they arise, and in particular, for youth subpopulations served by grant recipients. The purpose of the data collections submitted under the generic will be to inform ACF programming by building evidence about what innovations work to improve programming and outcomes across the SRAE grant recipients and the youth they serve.

DATES: *Comments due* February 24, 2025. In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing OPREinfocollection@acf.hhs.gov. Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Under the proposed umbrella generic, OPRE intends to conduct research and evaluation of innovative implementation strategies and program components used by SRAE grant recipients and in particular, for youth subpopulations served by grant recipients. There is not an extensive evidence base on SRAE programming to inform SRAE grant recipients’ implementation and program improvement efforts. To add to this limited body of evidence and to support ACF’s administration of the SRAE grant program, the SRAE National Evaluation includes data collection to identify strategies and components that have the potential to improve the delivery and/or quality of SRAE programming and to understand better how to meet the needs of the range of youth served by the programs. As the evaluation team identifies strategies that are ready for evaluation, the work will need to begin quickly so that the learnings can be disseminated back to SRAE grant recipients within the period of performance. Due to the need for this rapid decision making, OPRE is seeking approval for a generic clearance to conduct this research. Potential data collection efforts include conducting interviews with SRAE program staff, including front-line facilitators working directly with youth; staff from partner organizations that work with SRAE programs; brief exit tickets following individual program sessions, focus groups, and surveys of youth participating in SRAE programs; session logs completed by program facilitators after individual program sessions; and analysis plan and report templates that grant recipients can use to disseminate their own evaluation findings.

Under this generic clearance, information is meant to inform ACF activities and may be incorporated into documents or presentations that are made public such as through conference presentations, websites, or social media. The following are some examples of ways in which we may share information resulting from these data collections: technical assistance (TA) plans, webinars, presentations, infographics, issue briefs/reports, evaluation specific reports, or other documents relevant to the field, such as federal leadership and staff, grant recipients, local implementing agencies, researchers, and/or training/TA providers. In sharing findings, we will describe the study methods and limitations regarding generalizability and as a basis for policy.

Following standard OMB requirements, OPRE will submit an individual request for each specific data

collection activity under this generic clearance. Each request will include the individual instrument(s), a justification specific to the individual information collection, and any supplementary documents. Example instruments are available upon request.

Respondents: Staff and administrators of SRAE programs; staff from partner organizations; current or former

participants in SRAE programs; and grant recipients conducting their own evaluations.

Annual Burden Estimates: A variety of instruments and platforms will be used to collect information from respondents and each individual request will vary by number of respondents and average time per response. The burden table below is

illustrative to provide an estimated maximum level of burden for this overarching generic. While we will not exceed the total burden cap for this generic without requesting a change for updates, we may use more or less burden within each instrument type. Each individual request under the generic will provide information specific to the burden for that request.

Example instruments	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total burden (in hours)	Annual burden (in hours)
Youth survey	2,160	3	0.5	3,240	1,080
Administrator, staff, and partner interview topic guide	144	1	1.25	180	60
Youth focus group topic guide	120	1	1	120	40
Youth exit ticket	2,160	15	0.03	972	324
Facilitator Log	36	30	0.06	64.8	21.6
Analysis plan for local impact local evaluations	10	1	8	80	26.67
Analysis plan for local descriptive evaluations	10	1	8	80	26.67
Report template for local impact local evaluations	10	1	32	320	106.67
Report template for local descriptive evaluations	10	1	32	320	106.67

Estimated Total Annual Burden Hours: 1,792.28.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 710.

Mary C. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2024-30713 Filed 12-23-24; 8:45 am]

BILLING CODE 4184-83-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Data Collection for the NextGen Project's Well-Being Storytelling Exhibit (New Collection)

AGENCY: Office of Planning, Research, and Evaluation, Administration for

Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Planning, Research, and Evaluation (OPRE) in the Administration for Children and Families (ACF) is conducting additional data collection activities for the Next Generation of Enhanced Employment Strategies Project (NextGen Project) that provides an in-depth look at participant experiences. This effort includes photo elicitation methods and will be referred to as the Well-Being Storytelling Exhibit. The study team will use photo elicitation and human-centered design methods to explore how NextGen participants, staff, and community members conceptualize well-being. This data will help the study team explore the factors that may enhance or explain impact study findings.

DATES: Comments due February 24, 2025. In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing OPREinfocollection@acf.hhs.gov. Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: OPRE is conducting the NextGen Project to build the evidence on effective strategies for helping people with low incomes find and sustain

employment. The project is identifying and testing innovative employment programs designed to help people facing complex challenges secure economic independence. The project is partnering with the Social Security Administration to incorporate a focus on employment-related early interventions for people with current or foreseeable disabilities who have limited work history and are potential applicants for Supplemental Security Income. Primary data collection for the project is approved under Office of Management and Budget #0970-0545.

The study team is continuing primary data collection activities; while this request builds on those efforts, it is specific to new data collection activities that will create a Well-Being Storytelling Exhibit. First, the study team will use photo elicitation methods with NextGen participants and staff. Respondents will submit photos that show how they conceptualize well-being across several aspects of their lives, including economic security, physical and mental health, relationships, and safety. Then, the study team will use the photos as the basis for an interview with respondents. During the analysis phase, the study team will code photos and interviews using a codebook based on the NextGen programs' logic models, to make it easy to identify where participant- and staff-defined well-being overlaps (or does not) with the program's intended outcomes. After photo elicitation data collection is complete, the study team will create an exhibit that displays

photos, quotes, and findings from the photo elicitation data collection, alongside related findings from the NextGen descriptive studies. The exhibit will provide illustrative examples of how well-being has been influenced by program participation according to NextGen participants and staff. The exhibit will also include human-centered design activities that engage members of NextGen communities (where programs being evaluated for the NextGen Project were implemented) and researchers in

descriptive study and photo elicitation findings by collecting data on their reflections on the exhibit. The Well-Being Storytelling Exhibit is also intended to improve understanding and future dissemination of study findings, and to pilot the method and product of a storytelling exhibit as a culturally responsive evaluation strategy. The data collection instruments for this project include photo elicitation submission forms for participants and staff, photo elicitation interview guides for participants and staff, and human-

centered design activities at the photo exhibits.

Respondents: Program participants and frontline staff enrolled in the NextGen Project; NextGen community members including community partners, employers, policymakers, funders, and NextGen participants and staff; and human services researchers and practitioners. All NextGen participants will be able to opt out of the data collection activities.

ANNUAL BURDEN ESTIMATES				
Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total/annual burden (in hours)
Photo elicitation submission form—Participants	40	1	0.50	20
Photo elicitation submission form—Staff	40	1	0.50	20
Photo elicitation interview discussion guide—Participants	40	1	1.00	40
Photo elicitation interview discussion guide—Staff	40	1	1.00	40
Human-centered design activities at the exhibit	60	1	0.25	15
Estimated total annual burden hours: .....	.....	.....	.....	135

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Section 413 of the Social Security Act, as amended by the FY 2017 Consolidated Appropriations Act, 2017 (Pub. L. 115–31).

Mary C. Jones,
ACF/OPRE Certifying Officer.
[FR Doc. 2024–30709 Filed 12–23–24; 8:45 am]
BILLING CODE 4184–09–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Child Care; Statement of Organization, Functions, and Delegations of Authority; Correction

10 OCC Regional Offices and integrates regional work in central office planning.

Linda Hitt,
Director, Office of the Executive Secretariat.
[FR Doc. 2024–30650 Filed 12–23–24; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Statement of Organization, Functions, and Delegations of Authority

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice; correction.

SUMMARY: The Administration for Children and Families (ACF) published a document in the **Federal Register** on December 4, 2024, concerning minor adjustments made to the organization of the Office of Child Care (OCC) in adding a Regional Operations Division. The document contained an incorrect code.

FOR FURTHER INFORMATION CONTACT: Anne-Marie Twohie, Deputy Director, Office of Child Care, 330 C Street SW, Washington, DC 20201, (240) 935–1159.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** on December 4, 2024, in FR Doc. 2024–28368 at 89 FR 96255 in the second full paragraph of the third column, correct F to read:

F. *Regional Operations Division (KVAD):* The Regional Operations Division is responsible for providing oversight, direction, and guidance to the

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration’s (FDA), Center for Drug Evaluation and Research’s (CDER), Office of Surveillance and Epidemiology (OSE) and Office of New Drugs (OND) has modified their organizational structure. The new organizational structure was approved by the Secretary of Health and Human Services on November 20, 2014.

FOR FURTHER INFORMATION CONTACT: Jennifer Wade, Acting Director, Division of Reorganizations and Delegations of Authority, Office of Budget, Office of Finance, Budget, and Acquisitions, Food and Drug Administration, 10903

New Hampshire Ave., Silver Spring, MD 20993, 240-731-0192.

SUPPLEMENTARY INFORMATION:

I. Introduction

Part D, Chapter D-B, (Food and Drug Administration), the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, 60 FR 56606, November 9, 1995, 64 FR 36361, July 6, 1999, 72 FR 50112, August 30, 2007, 74 FR 41713, August 18, 2009, 76 FR 45270, July 28, 2011, and 84 FR 22854, May 20, 2019) is revised to reflect the Food and Drug Administration's reorganization of CDER's OSE and OND.

The purpose of this reorganization is to strengthen OSE and OND's ability to support FDA's mission and streamline its operations.

Within OSE, the newly elevated Office of Regulatory Science (ORS) will provide scientific and technical leadership in pharmacovigilance informatics, regulatory informatics systems, and science operations, including securing access to necessary data sources for drug product surveillance operations and overseeing applied research studies. While the newly elevated Office of Regulatory Operations (ORO) will manage strategic and operational projects associated with drug safety, particularly with drug safety reviews. The Executive Operations Staff (EOS) will liaise with stakeholders through the Center and the FDA as well as with external groups as appropriate to activities within OSE, coordinate executive operations of Office leadership, and support organizational development activities for OSE staff.

Within OND, this overall reorganization proposal addresses key priorities for the country as exhibited by their direct connection to multiple acts of Congress or declarations from the executive branch, including the Over-The-Counter (OTC) Monograph Reform, Biosimilars User Fee Act III (BsUFA III), Opioids Public Health Emergency Declaration, and the SUPPORT Act. Through this reorganization the FDA will be best organized and positions to address the critical workload, policy and oversight demands expected in the space of biosimilars, OTC drug products, rare disease drug development, and opioids.

The FDA's CDER has been restructured as follows:

DCDE ORGANIZATION. The CDER's OSE is headed by the Director, OSE and includes the following:

Office of Surveillance and Epidemiology (DCDE)
 Program Management and Analysis Staff (DCDE3)
 Executive Operations Staff (DCDE5)
 Office of Medication Error Prevention and Risk Management (DCDEA)
 Division of Medication Error Prevention and Analysis (DCDEAA)
 Division of Risk Management (DCDEAB)
 Office of Pharmacovigilance and Epidemiology (DCDEB)
 Division of Epidemiology I (DCDEBA)
 Division of Epidemiology I (DCDEBB)
 Division of Pharmacovigilance I (DCDEBC)
 Division of Pharmacovigilance I (DCDEBD)
 Office of Regulatory Science (DCDEC)
 Division of Regulatory Science and Applied Research (DCDECA)
 Division of Pharmacovigilance Informatics and Operations Management (DCDECB)
 Office of Regulatory Operations (DCDED)
 Division of Regulatory Project Management I (DCDEDA)
 Division of Regulatory Project Management II (DCDEDB)
 DCDG ORGANIZATION. The CDER's OND is headed by the Director, OND and includes the following organizational units:
 Office of Neuroscience (DCDGA)
 Division of Neurology I (DCDGAB)
 Division of Neurology II (DCDGAC)
 Division of Psychiatry (DCDGAD)
 Division of Pharmacology/Toxicology for Neuroscience (DCDGAF)
 Office of Cardiology, Hematology, Endocrinology, & Nephrology (DCDGB)
 Division of Metabolism & Endocrinology Products (DCDGBA)
 Division of Pulmonary, Allergy & Rheumatology Products (DCDGBB)
 Division of Anesthesia, Analgesia & Addiction Products (DCDGBC)
 Office of Immunology & Inflammation (DCDGC)
 Division of Gastroenterology & Urologic Products (DCDGCA)
 Division of Bones, Reproductive & Urologic Products (DCDGCB)
 Division of Dermatology & Dental Products (DCDGCC)
 Office of Infectious Diseases (DCDGD)
 Division of Anti-Infective Products (DCDGDA)
 Division of Anti-Viral Products (DCDGDB)
 Division of Transplant & Ophthalmology Products (DCDGDC)
 Office of Rare Diseases, Pediatrics, Urology & Reproductive Medicine (DCDGE)
 Division of Pediatrics and Maternal Health (DCDGEC)

Division of Pharmacology/Toxicology of Rare Diseases, Pediatrics, Urologic and Reproductive Medicine (DCDGED)
 Division of Urology, Obstetrics, and Gynecology (DCDGEF)
 Division of Rare Diseases (DCDGEG)
 Division of Medical Genetics (DCDGEH)
 Office of Oncologic Diseases (DCDGF)
 Office of Therapeutic Biologics & Biosimilars (DCDGG)
 Division of Policy (DCDGGGA)
 Division of Scientific Review (DCDGGGB)
 Office of Administrative Operations (DCDGH)
 Administrative Analysis Staff (DCDGH1)
 Administrative Operations Staff 1 (DCDGH2)
 Administrative Operations Staff 2 (DCDGH3)
 Administrative Operations Staff 3 (DCDGH4)
 Administrative Operations Staff 4 (DCDGH5)
 Administrative Operations Staff 5 (DCDGH6)
 Financial Services Staff (DCDGH7)
 Office of Nonprescription Drugs (DCDGI)
 Nonprescription Drugs Pharmacology Toxicology Staff (DCDGI1)
 Division of Nonprescription Drugs I (DCDGI A)
 Division of Nonprescription Drugs II (DCDGI B)
 Division of Nonprescription Drugs III (DCDGI C)
 Division of Pharmacology/Toxicology for Nonprescription Drugs (DCDGI D)
 Office of Specialty Medicine (DCDGJ)
 Division of Ophthalmology (DCDGJA)
 Division of Imaging & Radiation Medicine (DCDGJB)
 Office of New Drug Policy (DCDGK)
 Division of Clinical Policy (DCDGKA)
 Division of Regulatory Policy (DCDGKB)
 Office of Regulatory Operations (DCDGL)
 Division of Regulatory Operation for Infectious Disease (DCDGLA)
 Division of Regulatory Operations for Oncologic Disease (DCDGLB)
 Division of Regulatory Operations for Nonprescription Drugs (DCDGLC)
 Division of Regulatory Operations for Neuroscience (DCDGLD)
 Division of Regulatory Operations for Cardiology, Hematology, Endocrinology & Nephrology (DCDGLE)
 Division of Regulatory Operations for Immunology & Inflammation (DCDGLF)
 Division of Regulatory Operations for Rare Diseases, Pediatrics, Urology & Reproductive Medicine (DCDGLG)
 Division of Regulatory Operations for Specialty Medicine (DCDGLH)

Division of Regulatory Operations for Pain, Anesthesia, and Addiction Medicine (DCDGLI)
 Office of Program Operations (DCDGM)
 Executive Operations Staff (DCDGM1)
 Business Process & Analysis Staff (DCDGM2)
 Learning & Talent Development Staff (DCDGM3)
 Program Development, Implementation & Management Staff (DCDGM4)
 Office of Drug Evaluation Science (DCDGN)
 Division of Clinical Outcome Assessment (DCDGNA)
 Division of Biomedical Informatics, Research & Biomarker Development (DCDGNB)
 Office of Pain, Anesthesia, and Addiction Medicine (DCDGO)
 Division of Anesthesia and Pain Medicine (DCDGOA)
 Division of Substance Use Disorder Medicine (DCDGOB)
 Division of Pharmacology/Toxicology for Pain, Anesthesia, and Addiction Medicine (DCDGOC)

II. Delegations of Authority

Pending further delegation, directives, or orders by the Commissioner of Food and Drugs, all delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegations, provided they are consistent with this reorganization.

III. Electronic Access

This reorganization is reflected in FDA's Staff Manual Guide (SMG). Persons interested in seeing the complete Staff Manual Guide can find it on FDA's website at: <https://www.fda.gov/AboutFDA/ReportsManualsForms/StaffManualGuides/default.htm>.

Authority: 44 U.S.C. 3101.

Xavier Becerra,

Secretary of Health and Human Services.

[FR Doc. 2024–30334 Filed 12–23–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–5353]

Privacy Act of 1974; System of Records

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

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of Health and Human Services (HHS) is modifying an existing departmentwide system of records, “Federal Advisory Committee Membership Files,” System No. 09–90–0059. The modifications include, among other things, adding records about any prospective guest speakers at Federal advisory committee meetings who disclose financial interests and professional relationships related to the matter they will be speaking on, and changing the name of the system of records to “Federal Advisory Committee/Subgroup Member, Subscriber/Registrant, and Guest Speaker Records.”

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), the modified system of records is effective December 26, 2024. The new and revised routine uses will be effective January 27, 2025. Submit any comments by January 27, 2025.

ADDRESSES: The public should submit written comments, by mail or email, to Beth Kramer, HHS Privacy Act Officer, at 200 Independence Ave. SW, Suite 729H, Washington, DC 20201, or Beth.Kramer@hhs.gov.

FOR FURTHER INFORMATION CONTACT: General questions about the modified system of records should be submitted by mail, email, or telephone to Beth Kramer, HHS Privacy Act Officer, at 200 Independence Ave. SW, Suite 729H, Washington, DC 20201, or Beth.Kramer@hhs.gov or 202–690–6941.

SUPPLEMENTARY INFORMATION: This departmentwide system of records currently covers records retrieved by personal identifier about: (1) members and prospective members of HHS advisory committees established under the Federal Advisory Committee Act (FACA) and (2) members of the public who have requested to be included in mailing lists in order to receive publications or notices of information issued or posted by a particular HHS Federal advisory committee. The system of records notice (SORN) is being revised to add three additional categories of individuals and records, *i.e.*: (1) records about any members of working groups or subcommittees (*i.e.*, subgroups) of an HHS Federal advisory committee who are not appointed as members of the committee, which are similar to the committee member records currently covered in the SORN, (2) records about individuals who register to attend HHS Federal advisory

committee meetings, which are similar to the subscriber records currently covered in the SORN, and (3) records about prospective guest speakers at HHS Federal advisory committee meetings, which are described in section I., below; and to make other modifications. All modifications are summarized in section II., below.

I. Background on Guest Speaker Records

A “guest speaker” is an individual whose professional background or other qualifications are checked and/or who is screened for possible conflicts of interest (financial interests and professional relationships) related to a matter the guest speaker wishes to speak on at an HHS Federal advisory committee meeting, so that the agency can decide whether to invite the individual to speak and can publicly acknowledge the speaker's relevant qualifications and interests at the start of the meeting, to enable the committee members to objectively evaluate the speaker's presentation. The term “guest speaker” as used in SORN 09–90–0059 does not include agency employees speaking at an HHS Federal advisory committee meeting in an official, governmental capacity and individual participants in the public hearing portion of an advisory committee meeting. A guest speaker is either a non-Federal government employee (non-FGE) or a special government employee (SGEs) acting in a non-official, non-governmental capacity.

Only certain HHS components, such as the Food and Drug Administration (FDA), screen guest speakers for potential conflicts of interest (all FDA advisory committees must conduct conflict screening of potential guest speakers). Such screening promotes transparency and openness in the advisory committee process and supports compliance with the requirement in 5 U.S.C. 1004(b)(3) and 41 CFR 102–3.105(g) to prevent committees' advice and recommendations from being influenced by special interests. For FDA, such screening also supports compliance with the requirement in FDA regulations at 21 CFR 14.60(b)(2) to document in meeting minutes the “names and affiliations or interests of public participants.”

Guest speakers who are screened for conflicts are not required to complete a Federal confidential financial disclosure form. The invitation extended to them to participate as a guest speaker in an HHS Federal advisory committee meeting may be conditioned on their voluntary disclosure of potential

conflicts of interest and their consent to public acknowledgement of their relevant interests. The financial interests and professional relationships they report are reviewed by designated agency staff and may be made available to other agency staff if necessary to conduct a complete review. If the guest speaker is cleared to give a presentation at an HHS Federal advisory committee meeting, general information about the types, nature, and magnitude of the guest speaker's interests and/or professional relationships related to the meeting topic will be disclosed to the committee members and the public as part of the conflict-of-interest statement at the beginning of the meeting.

Note that financial and other conflict disclosure and waiver records about FGEs and SGEs are covered in other SORNs, so are not covered in SORN 09–90–0059 (see instead OGE/GOVT–1 Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records; OGE/GOVT–2 Executive Branch Confidential Financial Disclosure Reports; and 09–90–0008 Conflict of Interest Records).

II. Modifications to SORN 09–90–0059

HHS is making the following modifications to SORN 09–90–0059:

- The system of records name has been changed to “Federal Advisory Committee/Subgroup Member, Subscriber/Registrant, and Guest Speaker Records.”
- The System Location and System Manager sections have been updated to reflect current addresses and contact information for the components and officials responsible for the system of records, and to mention that the General Services Administration (GSA) maintains [facatabase.gov](https://www.facatabase.gov) as a third-party service provider.
- In the Authorities section, the citation to the FACA statute has been updated to cite “5 U.S.C. 1001 *et seq.*” instead of “5 U.S.C. App. I *et seq.*” and these additional authorities have been included: 5 U.S.C. 1004(b)(3) (FDA-specific authority) and 42 U.S.C. 282(b)(16) (NIH-specific authority).
- The Purpose(s) section now states purposes for which records about the three new categories of individuals (working group/subcommittee members, meeting registrants, and guest speakers) and one existing category (subscribers) are used; and also describes additional purposes for which records about the other existing category (committee members) are used, *i.e.*, to ensure that members are qualified and committees are balanced and diverse, and to communicate with the members.

- The Categories of Individuals and Categories of Records sections have been revised to add subcommittee/working group members, meeting registrants, and guest speakers and records about them, and to update the description of subscribers and records about them to mention that a subscriber may be included on a mailing “or emailing” list.

- The Routine Use(s) section has been revised to mention at the start that the routine uses are in addition to other disclosures authorized directly in the Privacy Act at 5 U.S.C. 552a(b); and to add nine new routine uses, revise four existing routine uses, and delete one routine use, as explained below:

- Existing routine use 1, which formerly authorized disclosures in the Annual Report to the President and in administrative reports to the Office of Management and Budget (OMB) and GSA, has been revised to limit the routine use to disclosures made to GSA when HHS enters or uploads information about committee members or guest speakers in [facatabase.gov](https://www.facatabase.gov).

- Routine use 2 is new; it authorizes HHS to publicly disclose on its websites and in [facatabase.gov](https://www.facatabase.gov) the names of and limited information about the qualifications and financial disclosures of members of FACA committees, subcommittees, and working groups, and guest speakers, limited to information that would be required to be disclosed to a requester under the Freedom of Information Act (FOIA).

- Existing routine use 3 (formerly listed second), which authorizes records indicating a violation or potential violation of law to be referred to the responsible investigatory or enforcement agency, has been revised to add “state, local, Tribal, and other” to the description of recipient agencies; to permit “relevant” records to be disclosed “when HHS becomes aware of evidence of” a potential violation of law; and to explain that, in most cases, the disclosures would be made after first referring the information to another HHS component, such as the HHS Office of the General Counsel or the HHS Office of the Inspector General, to determine if the information is appropriate to refer to an outside agency, and that if that component made the referral, the equivalent routine use published in that component's SORN would apply to the disclosure.

- The routine use that was formerly listed third has been deleted. It authorized disclosures to the Department of Justice (DOJ) to obtain its advice regarding whether particular records are required to be disclosed under FOIA. The routine use is

unnecessary, because such advice is provided by the HHS Office of the General Counsel, and any disclosures that need to be made to DOJ in connection with FOIA litigation are authorized in a separate, litigation-related routine use.

- Existing routine use 4, which authorizes disclosures to DOJ in litigation, has been revised to include “other adjudicative proceedings;” to add “a court or other adjudicative body” as disclosure recipients; to require that the information disclosed be “relevant and necessary” to the proceedings; and to remove the requirement that disclosures be compatible with the purpose for which the records were collected, because such wording repeats part of the definition of a routine use.

- Existing routine use 5, which authorizes disclosures about an individual in responding to an inquiry from a congressional office made at the individual's request, has been revised to require that the congressional inquiry and the individual's request to the congressional office be “written.”

- Existing routine use 6, which was added in 1994, is included without change.

- Routine uses 7 through 14 are new. They authorize disclosures to Federal agencies and contractors engaged by HHS to assist with matters related to this system of records (routine use 7); disclosures to the committee chairperson or vice chairperson for committee work purposes (routine use 8); disclosures to the Executive Office of the President, OMB, or other agencies for coordination on advisory committee member selection (routine use 9); disclosures to any source from which information is needed by HHS to support an HHS decision involving the individual (routine use 10); disclosures to aid another government agency's decision on a hiring, licensing, contracting, security clearance, or other matter involving the individual (routine use 11); disclosures to the National Archives and Records Administration (NARA) or other relevant Federal agencies in records management inspections (routine use 12); disclosures to Federal agencies and entities for program evaluation or assessment purposes (routine use 13); and disclosures to the Department of Homeland Security (DHS) for cybersecurity monitoring purposes (routine use 14).

- Existing routine uses 15 and 16, which were added in 2018, are included without change.

- The Storage section has been updated to remove references to “index cards” and “magnetic tape.”

- The Retrieval section has been revised to remove references to “an alphabetical index,” “a cross index,” and “individually identifiable computer identification codes,” and to simply state that records are retrieved by the subject individual’s name, with the exception of records about subscribers, which are retrieved by the subscriber’s name or email address.

- The Retention section, which previously stated that retention varies from 1 year to permanent depending on the type of record, now cites the applicable NARA-approved disposition schedules and itemizes the record types and disposition periods applicable to each.

- The Safeguards section has been updated to remove a reference to “locked magnetic tape libraries” and to list current safeguards used to protect records stored in electronic media, instead of “lockword-password computer access systems.”

- The sections specifying procedures for making access, amendment, and notification requests have been revised to specify the required contents for each type of request, including identity verification information that must be provided (the existing SORN specified the required contents of amendment requests only, and merely stated that identity was required to be verified in accordance with Department’s Privacy Act regulations).

Because some of these changes are significant, a report on the modified system of records has been sent to OMB and the Congressional committees that oversee privacy, in accordance with 5 U.S.C. 552a(r).

SYSTEM NAME AND NUMBER:

Federal Advisory Committee/
Subgroup Member, Subscriber/
Registrant, and Guest Speaker Records,
09–90–0059.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The addresses of the agency components responsible for the system of records are listed below. At HHS, Federal advisory committee records are not centralized at the Department level or Operating Division level; instead, each committee’s Designated Federal Officer (DFO) maintains the records pertaining to that committee. (Note that the manner of maintenance may vary. Records pertaining to a particular committee will constitute Privacy Act records only if the DFO maintains them in a paper-based or electronic recordkeeping system from which the

records are retrieved by the subject individuals’ names or other personal identifiers.) For purposes of simplification, one address is provided for each HHS Operating Division (OpDiv).

OS: Advisory Committee Oversight Staff, Immediate Office of the Secretary of HHS, 200 Independence Ave. SW, Washington, DC 20201, 1–877–696–6775.

ACF: Advisory Committee Oversight Staff, Administration for Children & Families, 330 C St. SW, Washington, DC 20201, 202–401–9215.

ACL: Advisory Committee Oversight Staff, Administration for Community Living, 330 C St. SW, Washington, DC 20201, 202–401–4634.

AHRQ: Advisory Committee Oversight Staff, Immediate Office of the Director, Administration for Healthcare Research and Quality, 540 Gaither Rd., Rockville, MD 20850, director@ahrq.hhs.gov.

ASPR: Advisory Committee Oversight Staff, Administration for Strategic Preparedness and Response, 400 7th St. SW, Washington, DC 20201; use the email address for the particular committee, shown on ASPR’s “Boards and Committees” web page.

CDC: Office of the FAC Act Program, Centers for Disease Control and Prevention, 1600 Clifton Rd. NE—M/S: TW–2, Atlanta, GA 30333, 770–488–4707, FACMT@cdc.gov.

CMS: Advisory Committee Oversight Staff, Centers for Medicare & Medicaid Services, 7500 Security Blvd., Baltimore, MD 21244, 410–786–3000.

FDA: Advisory Committee Oversight and Management Staff (ACOMS), Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, ACOMSSubmissions@fda.hhs.gov.

HRSA: FACA Management Officer, Executive Secretariat, Health Resources and Services Administration, 5600 Fishers Lane—13W18, Rockville, MD 20857, 301–443–1785.

IHS: Deputy Director for Intergovernmental Affairs, Indian Health Service, 5600 Fishers Lane, Rockville, MD 20857, Stacey.Ecoffey@ihs.gov.

NIH: Office of Federal Advisory Committee Policy, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892, ofacpinfo@od.nih.gov.

SAMHSA: Advisory Committee Oversight Staff, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, MD 20857, NationalAdvisoryCouncils@samhsa@hhs.gov.

GSA, as a third-party service provider, maintains the web-based

facadatabase.gov system that HHS uses to make certain records available to Congress and the public as required to inform them of the existence and activities of HHS Federal advisory committees. GSA’s address is: U.S. General Services Administration, Committee Management Secretariat, 1800 F St. NW, Washington, DC 20405.

SYSTEM MANAGER(S):

Each committee’s Committee Management Officer (CMO) is responsible for the records in this system of records that pertain to that committee, including records about any subcommittees, working groups, or other subgroups formed under the committee. Contact information for the current CMO for each active and recently (*i.e.*, within 1 fiscal year) terminated committee can be found on <https://www.facadatabase.gov>. Contact information for records pertaining to a committee which has been terminated and is no longer in that database may be obtained by contacting the relevant OpDiv at the OpDiv’s mailing address, email address, and/or telephone number shown in the System Location section, above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Advisory Committee Act (FACA), 5 U.S.C. 1001 *et seq.* See also 5 U.S.C. 1004(b)(3) (FDA-specific authority) and 42 U.S.C. 282(b)(16) (NIH-specific authority).

PURPOSE(S) OF THE SYSTEM:

Records in this system of records are used in the administration and management of Federal advisory committees (including any subgroups of same) in the Department, including for these specific purposes:

- Records about members or prospective members of a Federal advisory committee or subgroup are used (1) in the preparation of reports; quarterly alphabetical listings of past, present, and recommended members; lists of vacancies, acceptances, and separations; and documentation of nominations; (2) to identify the most qualified applicants and ensure that the makeup of the committee, subcommittee, or working group is sufficiently balanced and diverse (see 41 CFR part 102–3.30(c)); (3) to ensure compliance with ethics and conflict-of-interest requirements; and (4) to communicate with the members about committee or subgroup activities.

- Records about guest speakers are used to determine whether the speakers will be invited to give a presentation on the matter in question and to inform the committee members of the speakers’

qualifications and/or financial interests and professional relationships pertaining to the matter before the committee, so that the members can objectively evaluate each speaker's presentation.

- **Records about subscribers** (members of the public who subscribe to receive publications or other information issued or posted by a particular Federal advisory committee) are used for the purpose of maintaining the subscriber list (*i.e.*, to add, update, or remove a subscriber's contact information when requested by that individual) and may also be used to indicate if a particular subscriber needs to receive information in a particular format, as a reasonable accommodation, in order to provide information to that subscriber in that format.

- **Records about registrants** (members of the public who register as attendees for in-person and web-based Federal advisory committee meetings) are used for the purpose of maintaining the meeting registration lists and may also be used to indicate if a particular registrant needs a sign language interpreter, wheelchair access, or other accommodation to participate in a meeting.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records are about these categories of individuals:

- **Committee members.** Individuals who have been or presently are members of, or are being considered for, membership on a Federal advisory committee within the jurisdiction of HHS. Individuals may be appointed to serve on an advisory committee as a FGE pursuant to 42 CFR 102–3.130(a); as a NIH peer review consultant as authorized by 42 U.S.C. 282(b)(16); as a SGE pursuant to 5 U.S.C. 3109; or as a representative member when directed by statute or regulation (see, for example, 21 U.S.C. 360c(b) regarding representative members of FDA device panels, and 21 CFR 14.84 regarding representative members of standing technical advisory committees who represent consumer and industry interests).

- **Subcommittee and working group members** (some may also be committee members, covered in the preceding category).

- **Guest speakers.** Individuals whose professional background or other qualifications are checked and/or who are screened for possible conflicts of interest (financial interests and professional relationships) related to a matter they wish to speak on before an HHS Federal advisory committee (they

may be non-Federal government employees or special government employees acting in a non-official, non-governmental capacity).

- **Subscribers.** Individual members of the public who have asked to be included in a Federal advisory committee mailing or emailing list to receive publications and other information from the committee.

- **Meeting registrants.** Individual members of the public who register to attend public Federal advisory committee meetings.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records are:

- **Records about members and prospective members of HHS Federal advisory committees.** These records consist of membership records, accountability records, and management records, containing name and other data such as the following about each member or prospective member: title, gender, place and date of birth, contact information (*e.g.*, home address, business address, telephone number, email address), contact information for any assistant or organization contact assisting the member or prospective member, organizational affiliation, degrees held, general educational background, ethnic background, resume, curriculum vitae, dates of term on advisory committee, status on advisory committee, reason for leaving advisory committee, indication of previous or current membership on other advisory committees, special qualifications for the advisory committee membership, source or references who recommended the individual for membership on advisory committee, copies of any forms filed with the Office of Government Ethics (OGE) such as OGE Form 450, and miscellaneous correspondence. Additionally, memoranda justifying the individual's selection are included in the file if the individual doesn't meet certain statutory or other requirements for advisory committee membership (for example, where the individual has served repetitively on advisory committees and a policy requires a break in service).

- **Records about members or prospective members of HHS Federal advisory committee working groups or subcommittees (subgroups).** These records are similar to, but not co-extensive with, records about members and prospective members of committees, described above (for example, the OGE Form 450 isn't completed by subgroup members and prospective members unless they are also committee members or prospective members).

- **Records about guest speakers.** These consist of the completed disclosure form, containing the individual's identifying information and information about the individual's financial interests and professional relationships (such as: name, Federal employment status, securities held, contracts, grants, consulting, and professional relationships such as those with an employer, firm, organization or a person in the individual's professional network); and internal and external correspondence and associated information compiled by the agency in reviewing the disclosures.

- **Records about subscribers.** Such records typically are limited to the individual's name and mailing address or email address and, if applicable, preferred format.

- **Records about meeting registrants.** Such records include the individual's contact information and, if applicable, reasonable accommodation requests. Demographic information may also be included, if the particular registration form requests it.

RECORD SOURCE CATEGORIES:

All information about a subscriber or meeting registrant is obtained directly from that individual. The vast majority of information about a committee member or prospective member, or a subcommittee or working group member or prospective member, is obtained directly from that individual, or from the individual's administrative assistant or organization contact; other information in the form of references and recommendations is obtained from other private individuals, program personnel, biographical reference books, private organizations, former employers, regional offices of HHS, Members of Congress, and other government sources. Information about a prospective guest speaker is provided directly by the individual or is derived or obtained from materials supplied by the individual, from observation and analysis made by agency staff, from correspondence between the agency and the individual, and from any other relevant source necessary to conduct a complete review of the individual's disclosed qualifications and/or interests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to other disclosures which are authorized directly in the Privacy Act statute at 5 U.S.C. 552a(b), information about a subject individual may be disclosed from this system of records to non-HHS officers and employees, without the subject

individual's consent, as provided in these routine uses which are published pursuant to 5 U.S.C. 552a(b)(3):

1. Records about committee members and guest speakers may be disclosed to GSA when HHS enters and uploads committee information and records in GSA's facadatabase.gov system, for the purpose of keeping Congress and the public informed of the existence, membership, and activities of advisory committees as authorized by the FACA at 5 U.S.C. 1002(b)(5). Committee member names are also disclosed in administrative reports to the President and OMB.

2. HHS may publicly disclose the names of and limited information about qualifications (e.g., professional backgrounds) and financial disclosures of members of HHS Federal advisory committees, subcommittees, and working groups, and about guest speakers, on its websites and in facadatabase.gov. Information made public will be limited to information that HHS would be required to release to a requester under FOIA; meaning, information that would not result in a clearly unwarranted invasion of privacy.

3. Relevant records may be disclosed to appropriate Federal, State, local, or Tribal agencies; international agencies; or foreign governments responsible for investigating, prosecuting, enforcing, or implementing statutes, rules, regulations, or orders, when HHS becomes aware of evidence of a potential violation of civil or criminal law. In most cases, these disclosures will be made after first referring the information to another HHS component, such as the HHS Office of the General Counsel or the HHS Office of the Inspector General, to determine if the information is appropriate to refer to an outside law enforcement or other appropriate agency; if that component makes the disclosure to an outside agency, the equivalent routine use published in that component's SORN would apply instead of this routine use.

4. Records may be disclosed to DOJ or to a court or other adjudicative body in litigation or other adjudicative proceedings when HHS or any of its components, or any employee of HHS in his or her official capacity, or any employee of HHS in his or her individual capacity where the DOJ or HHS has agreed to represent the employee, or the United States, is a party to the proceedings or has an interest in the proceedings and, by careful review, HHS determines that the records are both relevant and necessary to the proceedings.

5. Disclosure may be made to a congressional office from the record of

an individual in response to a written inquiry from the congressional office made at the written request of that individual.

6. Records may be disclosed to student volunteers, individuals working under a personal services contract, and other individuals performing functions for the Department but technically not having the status of agency employees, if they need to access the records in order to perform their assigned agency functions.

7. Disclosures may be made to Federal agencies and HHS contractors that have been engaged by HHS to assist in accomplishment of an HHS function relating to the purposes of this system of records (including ancillary functions, such as compiling reports and evaluating program effectiveness and contractor performance) and that have a need to have access to the records in order to assist HHS in performing the activity. Any contractor will be required to comply with the requirements of the Privacy Act.

8. Records may be disclosed to the Chairperson or Vice Chairperson of the relevant advisory committee to use for purposes such as determining membership on subcommittees, assigning tasks to members, and distributing information to members for meeting or other committee work purposes.

9. Records may be disclosed to the Executive Office of the President, the Office of Management and Budget, or other agencies for coordination on advisory committee member selection.

10. Records about a member or prospective member or guest speaker may be disclosed to any source from which additional information is requested by HHS (to the extent necessary to identify the individual, inform the source of the purpose of the request, and identify the type of information requested) when necessary to obtain information relevant to an HHS decision involving the individual.

11. Records may be disclosed to a Federal, foreign, State, local, Tribal, or other public authority of the fact that this system of records contains information relevant to that entity's decision regarding hiring or retention of an employee, retention of a security clearance, letting of a contract, or issuance or retention of a license, grant or other benefit, so that it may then make a request supported by the written consent of the individual for further information if it so chooses. HHS will not make an initial disclosure unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to

another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

12. HHS may disclose records from this system of records to NARA, GSA, or other relevant Federal agencies in connection with records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

13. Records may be disclosed to Federal agencies and entities (e.g., the Office of Government Ethics, the Government Accountability Office, or the General Services Administration) for program evaluation and assessment purposes, if disclosure of identifiable records is deemed appropriate by HHS counsel.

14. Records may be disclosed to DHS if captured in an intrusion detection system used by HHS and DHS pursuant to a DHS cybersecurity program that monitors internet traffic to and from Federal government computer networks to prevent a variety of types of cybersecurity incidents.

15. Disclosures may be made to appropriate agencies, entities, and persons when (1) HHS suspects or has confirmed that there has been a breach of the system of records; (2) HHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HHS (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HHS efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

16. Disclosure may be made to another Federal agency or Federal entity, when HHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in hard-copy files and on electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by the subject individual's name, with the exception of

records about subscribers, which are retrieved by the subscriber's name or email address.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records about individuals who serve as members of Federal advisory committees and subgroups are retained and disposed of in accordance with NARA General Records Schedule (GRS) 6.2, Items 010, 040, and 050:

- *Item 010 Substantive Committee Records* requires substantive records related to committee and subgroup membership to be accessioned to the National Archives for permanent retention when the records are 15 years old or older or upon termination of the committee, whichever is sooner.
- *Item 040 Committee Accountability Records* (note that this item excludes forms filed under the Ethics in Government Act, and such forms are not covered by this SORN) authorizes accountability records (such as records about members' financial disclosures and conflicts of interest, and records documenting travel and other payments to or for committee members) to be destroyed when 6 years old unless longer retention is required for business use.
- *Item 050 Non-substantive Committee Records* authorizes records of an administrative nature, such as those documenting members' and prospective members' credentials, to be destroyed when superseded, obsolete, or no longer needed, or upon termination of the committee, whichever is sooner.

Records about prospective members of Federal advisory committees are retained and disposed of in accordance with GRS 6.2, Item 050 (see above).

Records about guest speakers are disposed of in accordance with GRS 6.2, Item 040 (see above).

Records about meeting registrants and subscribers are retained and disposed of in accordance with GRS 6.5, Item 020, which authorizes sign-up forms and distribution lists for distributing information such as publications and data produced by the agency to be deleted when superseded or obsolete or when the customer requests the agency to remove the records.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. Safeguards conform to the HHS Information Security and Privacy Program, <https://www.hhs.gov/ocio/securityprivacy/>. The safeguards include protecting the

facilities where records are stored or accessed with security guards, badges, and cameras; securing hard-copy records in locked file cabinets, file rooms or offices during off-duty hours; limiting access to electronic databases to authorized users based on roles, the principle of least privilege, and either two-factor authentication or user ID and password; using a secured operating system protected by encryption, firewalls, and intrusion detection systems; encrypting data transmissions and records stored on removable media; using secure destruction methods prescribed in National Institute of Standards and Technology Special Publication 800–88 to dispose of eligible records; and training personnel in Privacy Act and information security requirements.

RECORD ACCESS PROCEDURES:

An individual seeking access to records about him or her in this system of records must submit a written access request to the relevant System Manager, at the address indicated in the "System Manager(s)" section, above, in accordance with the Department's Privacy Act implementation regulations in 45 CFR. The request must contain the individual's full name and address, and, for identity verification purposes, signature, and date and place of birth. In addition, to verify the individual's identity, the individual must provide either a notarized request or a written certification that the individual is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act, subject to a fine of up to \$5,000.

CONTESTING RECORD PROCEDURES:

An individual seeking to amend a record about him or her in this system of records must submit a written amendment request to the relevant System Manager, at the address indicated in the "System Manager(s)" section, above, in accordance with the Department's Privacy Act implementation regulations in 45 CFR. The request must contain the same information required for an access request, and must reasonably identify the record, specify the information contested, state the corrective action sought, provide the reasons for the amendment, and include any supporting justification or documentation. The individual must verify his or her identity in the same manner required for an access request. The right to contest records is limited to information that is factually inaccurate,

incomplete, irrelevant, or untimely (obsolete).

NOTIFICATION PROCEDURES:

An individual who wishes to know if this system of records contains records about him or her must submit a written notification request to the relevant System Manager at the address indicated in the "System Manager(s)" section, above, in accordance with the Department's Privacy Act implementation regulations in 45 CFR. The request must contain the same information required for an access request, and the individual must verify his or her identity in the same manner required for an access request.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

47 FR 45514 (October 13, 1982); 59 FR 55845 (November 9, 1994); 83 FR 6591 (February 14, 2018).

Dated: December 13, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2024–30782 Filed 12–23–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–4776]

Export Lists for Human Food: Request for Information; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for information; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or we) is extending the comment period for the request for information, published in the **Federal Register** of November 8, 2024. In that notice, FDA invited comment relating to the listing requirements of other countries and FDA's approach to facilitating U.S. industry compliance with these requirements through the issuance of export certification for human food products provided in the form of lists (export lists). We are extending the comment period to allow interested persons additional time to submit comments on FDA's approach.

DATES: FDA is extending the comment period announced in the notice for request for information published November 8, 2024 (89 FR 88785).

Electronic or written comments must be submitted by February 21, 2025.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 21, 2025. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2024-N-4776 for "Export Lists for Human Food: Request for Information." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for

those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

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

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

FOR FURTHER INFORMATION CONTACT: Lauren Ferguson Baham, Office of Policy, Regulations, and Information, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-2371.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 8, 2024, we published a notice announcing a request for information. The notice explained our export certification for human foods and that FDA is considering charging firms fees for our export list services to offset our costs. The notice also explained that, as of

August 2024, we provide certification in the form of export lists that cover 19 categories of products for six destinations: Chile, China, the European Union, Saudi Arabia, Taiwan, and the United Kingdom. Further, the notice explained that, to better inform the continuing development of our export list program for human foods, we invited public comment on the following:

- There are many different types of establishment listing and certification procedures for establishments that produce human food products. Please share your experience with other countries' establishment listing, certification, and registration requirements.

- FDA requires those on export lists to reapply regularly if they wish to remain listed. Do reapplicants experience any challenges with the renewal process? If you have experienced challenges, how were those challenges resolved?

- For those included on export lists, please describe any challenges you have experienced with exporting human food products included on the export lists.

- FDA is authorized to collect up to \$175 per certification for each company and its human food products that FDA certifies through inclusion on an export list. For those that would be charged a fee, do you have any specific suggestions about how FDA should approach the implementation of fees? Please provide details relating to any suggestions you might have (89 FR 88785).

The docket for public comments was scheduled to close January 7, 2025.

We have received several requests to extend the comment period. In general, the requests explain that FDA's consideration to charge fees for its export list services to offset costs is a significant change from current Agency practice that will take firms time to fully evaluate the impacts of the proposed changes and to provide substantive comment that details firms' experiences and challenges with export lists. The requests also note that the comment period overlaps with the holiday season.

We have considered the requests and are extending the comment period until February 21, 2025. We believe that the extension will allow adequate time for interested persons to submit comments.

Dated: December 18, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2024-30784 Filed 12-23-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**[Document Identifier: OS-0937-new]****Agency Information Collection Request; 60-Day Public Comment Request****AGENCY:** Office of the Secretary, HHS.**ACTION:** Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before February 24, 2025.

ADDRESSES: Submit your comments to Sherrette.Funn@hhs.gov or by calling (202) 264-0041 and PRA@HHS.GOV.

FOR FURTHER INFORMATION CONTACT:

When submitting comments or requesting information, please include the document identifier 0937-New-60D and project title for reference, to Sherrette A. Funn, email: Sherrette.Funn@hhs.gov, PRA@HHS.GOV

[HHS.GOV](https://www.hhs.gov) or call (202) 264-0041 the Reports Clearance Officer.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Site Profiles for the Teen Pregnancy Prevention Fiscal Year 2023 Tier 1 and Tier 2 Rigorous Evaluation Grantees.

Type of Collection: New Collection. OMB No. 0937-NEW—Office of Population Affairs.

Abstract: The Office of Population Affairs (OPA), U.S. Department of Health and Human Services (HHS) is requesting one year of OMB approval on a new collection. The Teen Pregnancy Prevention 2023 (TPP23) Site Profile

Study will profile how 53 OPA Tier 1 grantees, funded in 2023, are implementing their programs to reduce rates of unintended teen pregnancy and sexually transmitted infections in their selected communities or priority areas. It will also profile how 12 OPA Tier 2 Rigorous Evaluation grantees, funded in 2023, are evaluating promising new programs to expand the evidence-base of teen pregnancy prevention programs. OPA anticipates that grantees will employ diverse strategies to implement their teen pregnancy prevention projects. To document these varied approaches, the study will survey a staff member of each grantee to identify key components of their projects to support the development of site profiles detailing each grantees' program or evaluation.

Type of respondent: Survey participants will include up to 53 Tier 1 grantee staff members and 12 Tier 2 Rigorous Evaluation grantee staff members.

Frequency: One time.

Affected public: Public and private businesses, and state and local government agencies.

ANNUALIZED BURDEN HOUR TABLE

Forms (if necessary)	Respondents (if necessary)	Number of respondents	Number of responses per respondents	Average burden per response	Total burden hours
Tier 1 Grantee Survey	Tier 1 grantee director and other designated staff.	53	1	.75	39.75
Tier 2 Rigorous Evaluation Grantee Survey.	Tier 2 Rigorous Evaluation grantee director and other designated staff.	12	1	.75	9
Total .....	.....	.....	65	.....	48.75

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2024-30673 Filed 12-23-24; 8:45 am]

BILLING CODE 4168-11-P**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Advisory Committee on Minority Health; Notice of Meeting Cancellation**

The Office of Minority Health (OMH) published a notice in the **Federal Register** concerning a meeting of the Advisory Committee on Minority Health. The meeting scheduled for Thursday, January 16, 2025 at 2 p.m. to 3 p.m. (EST) is cancelled. The notice for the January 16 meeting was published in the **Federal Register** on Friday, December 13, 2024 in FR Doc. 2024-29369, at 89 FR 101020.

For further information contact:

Violet Woo, Designated Federal Officer, OMH's Advisory Committee on Minority Health, OMH, HHS, Tower Building, 1101 Wootton Parkway, Suite 100, Rockville, Maryland 20852.

Telephone: (240) 453-6816; Email: OMH-ACMH@hhs.gov.

Violet Woo,

Designated Federal Officer, Advisory Committee on Minority Health.

[FR Doc. 2024-30704 Filed 12-23-24; 8:45 am]

BILLING CODE 4150-29-P**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Advisory Committee on Minority Health; Notice of Meeting Cancellation**

The Office of Minority Health (OMH) published a notice in the **Federal Register** concerning a meeting of the

Advisory Committee on Minority Health. The meeting scheduled for Tuesday, January 7, 2025 at 2 p.m. to 3 p.m. (EST) is cancelled. The notice for the January 7 meeting was published in the **Federal Register** on Monday, December 9, 2024 in FR Doc. 2024-28823, at 89 FR 97629-97630.

For further information contact:

Violet Woo, Designated Federal Officer, OMH's Advisory Committee on Minority Health, OMH, HHS, Tower Building, 1101 Wootton Parkway, Suite 100, Rockville, Maryland 20852.

Telephone: (240) 453-6816; Email: OMH-ACMH@hhs.gov.

Violet Woo,

Designated Federal Officer, Advisory Committee on Minority Health.

[FR Doc. 2024-30703 Filed 12-23-24; 8:45 am]

BILLING CODE 4150-29-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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; TEP 2A: SBIR Review Meeting.

Date: February 24, 2025.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Address: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W534, Rockville, Maryland 20850.

Meeting Format: Virtual Meeting.

Contact Person: Ivan Ding, M.D., Health Scientist Administrator, Division of Extramural Activities, Program and Review Extramural Staff Training Office, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W534, Rockville, Maryland 20850, 240-276-6444, dingi@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel; TEP-4: SBIR Contract Review Meeting.

Date: February 25-26, 2025.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate contract proposals.

Address: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W534, Rockville, Maryland 20850.

Meeting Format: Virtual Meeting.

Contact Person: Jeffrey E. DeClue, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, Division of Extramural Activities, Program and Review Extramural Staff Training Office, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W238, Rockville, Maryland 20850, 240-276-6371, decluej@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel; TEP 2B: SBIR Review Meeting.

Date: February 25, 2025.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Address: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W534, Rockville, Maryland 20850.

Meeting Format: Virtual Meeting.

Contact Person: Ivan Ding, M.D., Health Scientist Administrator, Division of Extramural Activities, Program and Review Extramural Staff Training Office, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W534, Rockville, Maryland 20850, 240-276-6444, dingi@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel; TEP 5A: SBIR Review Meeting.

Date: March 3, 2025.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Address: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W534, Rockville, Maryland 20850.

Meeting Format: Virtual Meeting.

Contact Person: Ivan Ding, M.D., Health Scientist Administrator, Division of Extramural Activities, Program and Review Extramural Staff Training Office, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W534, Rockville, Maryland 20850, 240-276-6444, dingi@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel; TEP 5B: SBIR Review Meeting.

Date: March 4, 2025.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Address: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W534, Rockville, Maryland 20850.

Meeting Format: Virtual Meeting.

Contact Person: Ivan Ding, M.D., Health Scientist Administrator, Division of Extramural Activities, Program and Review Extramural Staff Training Office, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W534, Rockville, Maryland 20850, 240-276-6444, dingi@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel; Innovative Molecular and Cellular Analysis Technologies.

Date: March 4-5, 2025.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W246, Rockville, Maryland 20850.

Meeting Format: Virtual Meeting.

Contact Person: Jun Fang, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W246, Rockville, Maryland 20850, 240-276-5460, jfang@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel; Assay Validation of High-Quality Markers for Clinical Studies in Cancer (UH2/UH3).

Date: March 5, 2025.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W552, Rockville, Maryland 20850.

Meeting Format: Virtual Meeting.

Contact Person: Xiaozhong Alex Bao, Ph.D., Scientific Review Officer, Program Coordination and Referral Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W552, Rockville, Maryland 20850, 240-276-5070, Baoux@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel; Translational Research Toward Development of a Kaposi Sarcoma Herpesvirus (KSHV) Vaccine.

Date: March 11, 2025.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W634, Rockville, Maryland 20850.

Meeting Format: Virtual Meeting.

Contact Person: Michael E. Lindquist, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W634, Rockville, Maryland 20850, mike.lindquist@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: December 18, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-30711 Filed 12-23-24; 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 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 Complementary and Integrative Health Special Emphasis Panel; Investigator Initiated Clinical Trials of Complementary and Integrative Interventions Delivered Remotely or via mHealth (R01 Clinical Trial Required).

Date: January 30, 2025.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Center for Complementary and Integrative, 6707 Democracy Blvd., Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Marta V. Hamity, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH/NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892, marta.hamity@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: December 18, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–30707 Filed 12–23–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7080–N–62; OMB Control No.: 2501–0038]

30-Day Notice of Proposed Information Collection; OCHCO Personnel Security Integrated System for Tracking (PerSIST)

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* January 27, 2025.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. 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. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and should be sent to: Anna Guido, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; telephone 202–402–5534 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anna Guido, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna.P.Guido@hud.gov, telephone 202–402–5534. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as

individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on October 15, 2024 at 89 FR 83034.

A. Overview of Information Collection

Title of Information Collection: OCHCO Personnel Security Integrated System for Tracking (PerSIST); 22019 PIV Pre-Screen Application.

MB Approval Number: 2501–0038.

Type of Request: Extension of a currently approved collection.

Form Number: HUD 22019.

Description of the need for the information and proposed use: The PII collected and maintained in PerSIST is relevant and necessary to carrying out the investigatory process used to document and support decisions regarding the suitability, eligibility, and fitness for service of applicants for federal employment and contract positions, including long-term students, interns, or volunteers to the extent that their duties require access to federal facilities, information, systems, or applications.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
22019 PIV Pre-Screen Application	1,625	1	1,625	.17	276.25	\$43.77	\$12,091.46
Total	1,625	1	1,625	.17	276.25	43.77	12,091.46

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) 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) The accuracy of the agency’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 those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

(5) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Colette Pollard,

*Department Reports Management Officer,
Office of Policy Development and Research,
Chief Data Officer.*

[FR Doc. 2024-30725 Filed 12-23-24; 8:45 am]

BILLING CODE 4210-67-P

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR-7080-N-64]

**60-Day Notice of Proposed Information
Collection: Application for the
Community Development Block Grant
(ICDBG) Program for Indian Tribes and
Alaska Native Villages; OMB Control
No.: 2577-0191**

AGENCY: Office of Policy Development
and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* January 27, 2025.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. 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. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and should be sent to: Anna Guido, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410-5000; telephone 202-402-5534 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT:

Anna Guido, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna.P.Guido@hud.gov, telephone 202-402-5534. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on October 21, 2024, at 89 FR 84184.

A. Overview of Information Collection

Title of Information Collection: Indian Community Development Block Grant Information Collection.

OMB Approval Number: 2577-0191.

Type of Request: Extension of currently approved collection.

Form Number: SF-425, HUD-2516, and Annual Status and Evaluation Report (ASER).

Description of the need for the information and proposed use: Title I of the Housing and Community Development Act of 1974 authorizes Indian Community Development Block Grants (ICDBG) and requires that grants be awarded annually on a competitive basis. The purpose of the ICDBG program is to develop viable Indian and Alaska Native communities by creating decent housing, suitable living environments, and economic opportunities primarily for low- and moderate-income persons. Consistent with this objective, not less than 70 percent of the expenditures are to benefit low- and moderate-income persons. Eligible applicants include Federally recognized tribes, which includes Alaska Native communities, and tribally authorized tribal organizations. Eligible categories of

funding include housing rehabilitation, land acquisition to support new housing, homeownership assistance, public facilities and improvements, economic development, and microenterprise programs. For a complete description of eligible activities, please refer to 24 CFR part 1003, subpart C.

The ICDBG program regulations are at 24 CFR part 1003. The ICDBG program requires eligible applicants to submit information to enable HUD to select the best projects for funding during annual competitions. Additionally, the information submitted is essential for HUD in monitoring grants to ensure that grantees are complying with applicable statutes and regulations and implementing activities as approved.

ICDBG recipients are required to submit annually a Federal Financial Report (SF-425) that describes the use of grant funds drawn from the recipient's line of credit. The reports are used to monitor cash transfers to the recipients and obtain expenditure data from the recipients. (2 CFR 200.327)

The regulations at 24 CFR part 200 require that grantees and sub-grantees take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. Consistent with these regulations, 24 CFR 1003.506(b) requires that ICDBG grantees report on these activities on an annual basis, with Contract and Subcontract Activity Report being due to HUD on October 10 of each year (HUD-2516).

The regulations at 24 CFR 1003.506 instruct recipients to submit to HUD an Annual Status and Evaluation Report (ASER) that describes the progress made in completing approved activities with a listing of work to be completed; a breakdown of funds expended; and when the project is completed, a program evaluation expressing the effectiveness of the project in meeting community development needs. The ASER is due by November 15 each year and at grant closeout. The information collected will allow HUD to accurately audit the program.

Respondents: Federally recognized Native American Tribes, Alaska Native communities and corporations, and tribal organizations.

ESTIMATED NUMBER OF RESPONDENTS, RESPONSES, AND BURDEN HOURS PER ANNUM

Type of submission	Number of respondents	Frequency of submissions	Total responses	Estimate average time (hours)	Estimate annual burden (hours)	Hourly rate *	Total annual cost
Federal Financial Report (SF-425)	240	1	0	0	0	0	0
Contract and Sub-contract Activity Report (HUD-2516)	240	1	240	1	240	\$43.55	\$10,452
Annual Status and Evaluation Report (ASER)	240	1	300	4	1,200	43.55	52,260
Total	720	.....	540	.....	1,440	.....	62,712

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) 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) The accuracy of the agency'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 those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

(5) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2024-30736 Filed 12-23-24; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7080-N-63; OMB Control No.: 2502-0581]

30-Day Notice of Proposed Information Collection: Supplement to Application for Federally Assisted Housing

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* January 27, 2025.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. 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. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and should be sent to: Anna Guido, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410-5000; telephone 202-402-5534 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT:

Anna Guido, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna.P.Guido@hud.gov, telephone 202-

402-5534. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on October 5, 2024, at 89 FR 81544.

A. Overview of Information Collection

Title of Information Collection: Supplement to Application for Federally Assisted Housing.

OMB Approval Number: 2502-0581.

Type of Request: Reinstatement, with change, of previously approved collection for which approval has expired.

Form Number: HUD Form 92006.

Description of the need for the information and proposed use: Section 644 of the Housing and Community Development Act of 1992 (42 U.S.C. 13604) imposed on HUD the obligation to require housing providers participating in HUD's assisted housing programs to provide any individual or family applying for occupancy in HUD-assisted housing with the option to include in the application for occupancy the name, address, telephone number, and other relevant information of a family member, friend, or person associated with a social, health, advocacy, or similar organization. The objective of providing such information, if this information is provided, and if

the applicant becomes a tenant, is to facilitate contact by the housing provider with the person or organization identified by the tenant, to assist in providing any the delivery of services or special care to the tenant and assist with resolving any tenancy issues arising during the tenancy of such tenant. This supplemental application information is to be maintained by the housing provider and maintained as confidential information.

Respondents: The respondents are individuals or families who are new admissions in the covered programs.

Estimated Number of Respondents: 302,770.

Estimated Number of Responses: 302,770.

Frequency of Response: Each individual or family only responds once unless they wish to update their information.

Average Hours per Response: 0.25 hours.

Total Estimated Burden: 75,693.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) 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) The accuracy of the agency'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 those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

(5) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Colette Pollard,

*Department Reports Management Officer,
Office of Policy Development and Research,
Chief Data Officer.*

[FR Doc. 2024-30724 Filed 12-23-24; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7092-N-42]

Privacy Act of 1974; System of Records

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice of a modified system of records.

SUMMARY: The Enterprise Income Verification System (EIV) is used to verify program participants/tenants, reported income, identify unreported income sources and/or amounts and identify substantial annual income discrepancies amongst households that receive HUD provided rental assistance through programs administered by HUD's Office of Public and Indian Housing and Office of Housing Multifamily program. Under the Privacy Act of 1974, the Department of Housing and Urban Development, the Office of Public and Indian Housing proposes to update the system of records titled EIV. The EIV System has been modified replacing the Income Discrepancy Report with the Income Validation Tool built on the MicroStrategy platform.

DATES: Comments will be accepted on or before January 27, 2025. This proposed action will be effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number or by one of the following methods:

Federal e-Rulemaking Portal: <https://www.regulations.gov>. Follow the instructions provided on that site to submit comments electronically.

Fax: 202-619-8365.

Email: privacy@hud.gov.

Mail: Attention: Privacy Office; LaDonne White, Chief Privacy Officer; The Executive Secretariat; 451 Seventh Street SW, Room 10139; Washington, DC 20410-0001.

Instructions: All submissions received must include the agency name and

docket number for this rulemaking. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

LaDonne White; 451 Seventh Street SW, Room 10139; Washington, DC 20410-0001; telephone number (202) 708-3054 (this is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

SUPPLEMENTARY INFORMATION: The EIV System is used to verify program participants/tenants, reported income, identify unreported income sources and/or amounts and identify substantial annual income discrepancies amongst households that receive HUD provided rental assistance through programs administered by HUD's Office of Public and Indian Housing and Office of Housing's Multifamily Housing Programs. The EIV System has been modified replacing the Income Discrepancy Report with the Income Validation Tool built on the MicroStrategy platform. This change was necessary to address OIG Audit #2014-FO-0004, Compliance with the Improper Payments and Elimination Recovery Act of 2010, findings and recommendations related to improper payments and the identification of tenant unreported and/or underreported income during mandatory reexaminations of family composition and income. The intended effect of this change is to eliminate false positives within EIV's Income Discrepancy Report which was estimated at approximately 50% of all income discrepancies, and to allow HUD to make better decisions for determination of rental subsidy and the degree of improper payments in HUD rental subsidy programs. Further, the IVT provides projections of discrepant income enabling users to analyze in detail, income, wage, and social security benefit information for a specific household and/or household member(s), detailing all captured income sources and dates of employment.

SYSTEM NAME AND NUMBER:

Enterprise Income Verification (EIV), HUD/PIH-05.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the NASA Stennis Space Center, John C. Stennis Space Center, MS 39529-0001.

SYSTEM MANAGER(S):

Shalene Domingo, System Owner, Office of Public and Indian Housing, 550 12th Street SW, First Floor, Washington, DC 20410-10001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 453(j) of the Social Security Act as amended, now codified at 42 U.S.C. 653(j), section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, as amended, now codified at 42 U.S.C. 3544, The Omnibus Budget Reconciliation Act of 1993 (Budget Reconciliation Act) 6103(l)(7) of title 26 of the United States Code (Internal Revenue Code).

PURPOSE(S) OF THE SYSTEM:

The EIV System is a web-based Upfront income verification System that allows authorized Public Housing Agencies, Multifamily Housing Owners/ Agents, and Contract Administrators to verify program participants/tenants, reported income, identify unreported income sources and/or amounts and identify substantial annual income discrepancies amongst households that receive HUD provided rental assistance through programs administered by HUD's Office of Public and Indian Housing and Office of Housing's Multifamily Housing Programs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Families participating in housing programs administered by HUD's Office of Public and Indian Housing (current and former participants), including Tribally Designated Housing Entities, participating in the public housing program, section 8 HCV program, Disaster Housing Assistance Programs and families currently participating in the Office of Housing, Multifamily Housing Division programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of unit address (subsidized property address), family composition (names, dates of birth and SSNs of Household Members), financial data such as tenant-reported income to PHAs, O/As, and C/As, and wage, unemployment compensation, SS and SSI benefit data obtained from Department of Health and Human Services (HHS) and Social Security Administration (SSA).

RECORD SOURCE CATEGORIES:

Inventory Management System/Public Housing Information Center, Tenant Rental Assistance Certification System (IMS/PIC, TRACS), Social Security Administration and the Department of Health and Human Services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

(A) To a congressional office from the record of an individual, in response to an inquiry from the congressional office made at the request of that individual.

(B) To appropriate Federal, State, and local governments, or persons, pursuant to a showing of compelling circumstances affecting the health or safety or vital interest of an individual or data subject, including assisting such agencies or organizations in preventing the exposure to or transmission of a communicable or quarantinable disease, or to combat other significant public health threats, if upon such disclosure appropriate notice was transmitted to the last known address of such individual to identify the health threat or risk.

(C) To Federal, State, and local agencies, their employees, and agents for the purpose of conducting computer matching programs as regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a).

(D) To Federal agencies, non-Federal entities, their employees, and agents (including contractors, their agents or employees; employees or contractors of the agents or designated agents); or contractors, their employees or agents with whom HUD has a contract, service agreement, grant, cooperative agreement, or computer matching agreement for the purpose of: (1) Detection, prevention, and recovery of improper payments; (2) detection and prevention of fraud, waste, and abuse in major Federal programs administered by a Federal agency or non-Federal entity; (3) detection of fraud, waste, and abuse by individuals in their operations and programs, but only to the extent that the information shared is necessary and relevant to verify pre-award and prepayment requirements prior to the release of Federal funds, prevent and recover improper payments for services rendered under programs of HUD or of those Federal agencies and non-Federal entities to which HUD provides information under this routine use.

(E) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government when necessary to

accomplish an agency function related to this system of records. Also, to a recipient who has provided the agency with advance, adequate written assurance that the record provided from the system of records will be used solely for statistical research or reporting purposes. Records under this condition will be disclosed or transferred in a form that does not identify an individual.

(F) To contractors, grantees, experts, consultants and their agents, or others performing or working under a contract, service, grant, or cooperative agreement with HUD, when necessary to accomplish an agency function related to a system of records. Disclosure requirements are limited to only those data elements considered relevant to accomplishing an agency function. Individuals provided information under these routine use conditions are subject to Privacy Act requirements and disclosure limitations imposed on the Department.

(G) To contractors, experts and consultants with whom HUD has a contract, service agreement, or other assignment of the Department, when necessary to utilize relevant data for the purpose of testing new technology and systems designed to enhance program operations and performance.

(H) To appropriate agencies, entities, and persons when (1) HUD suspects or has confirmed that there has been a breach of the system of records, (2) HUD has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, [the agency] (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the HUD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm. To another Federal agency or Federal entity, when HUD 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.

(I) To appropriate Federal, State, local, Tribal, or governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the

violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where HUD determines that the information would assist in the enforcement of civil or criminal laws. To third parties during a law enforcement investigation, to the extent necessary to obtain information pertinent to the investigation, provided the disclosure of such information is appropriate to the proper performance of the official duties of the officer making the disclosure.

(J) To a court, magistrate, administrative tribunal, or arbitrator while presenting evidence, including disclosures to opposing counsel or witnesses during civil discovery, litigation, mediation, or settlement negotiations; or in connection with criminal law proceedings; or in response to a subpoena or to a prosecution request when such records to be released are specifically approved by a court provided order.

(K) To appropriate Federal, State, local, Tribal, or governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where HUD determines that the information would assist in the enforcement of civil or criminal laws.

(L) To third parties during a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the officer making the disclosure.

(M) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency that maintains the record, specifying the portion desired and the law enforcement activity for which the record is sought.

(N) To any component of the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when HUD determines that the use of such records is relevant and necessary to the litigation and when any of the following is a party to the litigation or have an interest in such litigation: (1) HUD, or any component thereof; or (2) any HUD employee in his or her official capacity; or (3) any HUD employee in his or her individual capacity where the

Department of Justice or agency conducting the litigation has agreed to represent the employee; or (4) the United States, or any agency thereof, where HUD determines that litigation is likely to affect HUD or any of its components.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in paper and electronic storage media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by Name, Date of Birth, and/or SSN.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Destroy one year after System of Records is placed on inactive list.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

EIV Physical controls include, key cards, security guards and Identification badges. HUD will secure downloaded reports on HUD secure SharePoint site. Public Housing Agencies, Multifamily Housing Owners/Agents, and Contract Administrators must secure downloaded data to a secure/locked space and/or cabinet. Computer terminals are secured in controlled areas which are locked when unoccupied. Access to automated records is limited to authorized personnel who must use a password to gain access to the system. Administrative controls include methods to ensure only authorized personnel access to PII. Each EIV user must first have access to HUD' Web Access Secure Systems. Each EIV User must be re-certified to use the EIV System every April and October of the calendar year. EIV Technical controls include, Encryption of Data at Rest, Firewall, Role-based Access Controls, VPN, Encryption of Data in Transit, User ID and Password, and PIV Card.

RECORD ACCESS PROCEDURES:

Individuals requesting records of themselves should address written inquiries to the Department of Housing Urban and Development 451 7th Street SW, Washington, DC 20410-0001. For verification, individuals should provide their full name, current address, and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

CONTESTING RECORD PROCEDURES:

The HUD rule for contesting the content of any record pertaining to the individual by the individual concerned is published in 24 CFR 16.8 or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals requesting notification of records of themselves should address written inquiries to the Department of Housing Urban Development, 451 7th Street SW, Washington, DC 20410-0001. For verification purposes, individuals should provide their full name, office or organization where assigned, if applicable, and current address and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

87 FR 50635, August 17, 2022.

LaDonne White,

Chief Privacy Officer, Office of Administration.

[FR Doc. 2024-30645 Filed 12-23-24; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6506-N-01]

Nonavailability Waiver applicable to Domestically Assembled Solar Photovoltaics (PV) Panels Referred to as "Solar Modules" Under Build America, Buy America Manufactured Product Provisions as Applied to Recipients of Department of Housing and Urban Development Federal Financial Assistance

AGENCY: Office of the Secretary, U.S. Department of Housing and Urban Development (HUD).

ACTION: Notice and request for public comment.

SUMMARY: In accordance with the Build America, Buy America Act (BABA), this notice advises that HUD is proposing to issue a temporary, limited non-availability partial waiver of the manufactured product requirements in BABA included in the Infrastructure Investment and Jobs Act (IIJA) for domestically assembled solar modules used in Federal financial assistance (FFA) awarded for infrastructure projects. This waiver covers multiple projects that HUD anticipates will involve the installation of solar modules with the intent of addressing multiple project specific non-availability waivers into one document to reduce paperwork and support administrative efficiency. The narrowly tailored BABA waiver proposed in this notice would support the establishment of a domestic solar supply chain, increase benefits for

domestic solar manufacturing, and help reduce risks for vulnerable populations. HUD is seeking public comments on this proposed waiver.

DATES: HUD published this proposed waiver for public comment on its website on December 13, 2024. Pursuant to section 70914(c)(2) of BABA, HUD is soliciting comments from the public on this proposed waiver for a period of fifteen days from the date published on HUD's web page in this instance. Comments on the proposed waiver set out in this document are due on or before December 28, 2024. HUD will consider comments received in response to this Notice and announce its determination with respect to the adoption of this notice, including any changes that may be made in response to comments through a subsequent Notice. The proposed duration of the waiver would be from the effective date ("Effective Date") of the proposed waiver until December 31, 2025. The waiver applies to solar modules with Final Assembly in the United States (as defined below in the "Proposed Waiver" section).

ADDRESSES: Interested persons are invited to submit comments on this notice. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

To receive consideration as public comments, comments must be submitted through one of the two methods specified below. All submissions must refer to the above docket number and title. Commenters are encouraged to identify the number of the specific question or questions to which they are responding. Responses should include the name(s) of the person(s) or organization(s) filing the comment; however, because any responses received by HUD will be publicly available, responses should not include any personally identifiable information or confidential commercial information. Business confidential information can be submitted to BuildAmericaBuyAmerica@hud.gov.

1. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the

www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

2. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500.

No Facsimile Comments. Facsimile (FAX) comments will not be accepted.

Public Inspection of Comments. All comments and communications properly submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Faith Rogers, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10126, Washington, DC 20410-5000, at (202) 402-7082 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. HUD encourages submission of questions about this document be sent to BuildAmericaBuyAmerica@hud.gov.

I. Build America, Buy America

The Build America, Buy America Act ("BABA" or "the Act") was enacted on November 15, 2021, as part of the Infrastructure Investment and Jobs Act ("IIJA") (Pub. L. 117-58). The Act establishes a domestic content procurement preference, the BAP, for Federal infrastructure programs. Section

70914(a) of the Act establishes that no later than 180 days after the date of enactment, HUD must ensure that none of the funds made available for infrastructure projects may be obligated by the Department unless it has taken steps to ensure that the iron, steel, manufactured products, and construction materials used in a project are produced in the United States. In section 70912, the Act further defines a project to include "the construction, alteration, maintenance, or repair of infrastructure in the United States" and includes within the definition of infrastructure those items traditionally included along with buildings and real property. Thus, starting May 14, 2022, new awards of HUD FFA, and any of those funds newly obligated by HUD then obligated by the grantee for infrastructure projects, are covered under BABA provisions of the Act, 41 U.S.C. 8301 note, unless covered by a waiver.

Solar modules are manufactured products. Per sections 70912(6)(A) and (B) of the Act, manufactured products are considered to be produced in the United States if (i) the manufactured product was manufactured in the United States; and (ii) the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

II. HUD's Progress in Implementation of the Act Generally

The IIJA and the Inflation Reduction Act (Pub. L. 117-169, Aug. 16, 2022) provided historic investments for federal infrastructure, including \$1 billion in funding for green retrofits. These developments in addition to HUD's base funding, provide an opportunity for significant expansion of domestic manufacturing capacity for products. Since the enactment of the Act, HUD has worked diligently to develop a plan to fully implement the BAP across its FFA programs. HUD understands that advancing Made in America objectives is a continuous effort and believes setting forth a transparent schedule of future implementation for FFA programs provides recipients, stakeholders, and industry partners with the time and notice necessary to efficiently and effectively implement the BAP. HUD continues its efforts to implement the Act in HUD's FFA programs consistent

with the guidance and requirements of the Made in America Office of the Office of Management and Budget, including guidance concerning compliance with the BAP.

In order to ensure orderly implementation of the BAP across HUD's FFA programs, HUD has provided public interest, general applicability waivers in order to implement the BAP in phases in connection with the application of the BAP in such programs and announced a corresponding implementation plan. As part of those efforts, HUD has published two general applicability, public interest waivers covering Exigent Circumstances and De Minimis and Small Grants; a general applicability, public interest waiver applied to Pacific Island Territory Recipients of HUD FFA; and waivers that remain applicable to funds obligated by HUD during the relevant periods of applicability, all of which can be found at https://www.hud.gov/program_offices/general_counsel/build_america_buy_america/waiver.

III. Waivers

Under section 70914(b), HUD and other Federal agencies have authority to waive the application of a domestic content procurement preference when (1) application of the preference would be contrary to the public interest, (2) the materials and products subject to the preference are not produced in the United States at a sufficient and reasonably available quantity or satisfactory quality, or (3) inclusion of domestically produced materials and products would increase the cost of the overall project by more than 25 percent. All waivers must have a written explanation for the proposed determination; provide a period of not less than fifteen (15) calendar days for public comment on the proposed waiver; and submit the proposed waiver to the OMB Made in America Office for review to determine if the waiver is consistent with policy.

Section 70914(c) provides that a waiver under section 70914(b) must be published by the agency with a detailed written explanation for the proposed determination and provide a public comment period of not less than 15 days. Pursuant to section 70914(d)(2), when seeking to extend a waiver of general applicability, HUD is required to provide for a public comment period of not less than 30 days on the continued need such waiver.

IV. Proposed Waiver

HUD is proposing to issue a temporary, limited non-availability

partial waiver of the manufactured product requirements of Section 70914(a) of the Build America, Buy America Act ("BABA") included in the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58) for domestically assembled solar modules used in federal financial assistance awarded for infrastructure projects. This waiver covers multiple projects that HUD anticipates will involve the installation of solar modules with the intent of addressing multiple project specific non-availability waivers into one document to reduce paperwork and support administrative efficiency.

HUD's proposed waiver *requires domestic assembly* versus a waiver of the full manufactured product requirements, which would allow assembly to occur outside the United States. This waiver is intended to provide time needed for domestic solar module manufacturing capability to meet demand for BABA-compliant solar modules by supporting and encouraging continued investments while bringing the benefits of solar to the HUD's financial assistance recipients.

This proposed waiver would apply on or after the Effective Date of this notice until December 31, 2025 for all new solar modules with Final Assembly in the United States. Solar modules where final assembly occurred outside the United States are not eligible for coverage under this waiver. "Final Assembly" means all operations involved in the transformation of individual solar cells and all other module components into a fully functional encapsulated module, including deposition of electrically active PV absorber material (e.g., cadmium telluride on glass) etc. For recipient expenditures to be covered by this waiver, the solar modules will need to be installed by June 30, 2026. "Installed by" means modules being permanently fastened to an outdoor support structure at the project site. HUD proposes to apply this waiver, if approved, to all Federal Financial Assistance. For Awards and amendments that otherwise meet the criteria of the waiver but were obligated prior to the Effective Date, the waiver will apply to eligible expenditures incurred on or after the Effective Date of the final waiver for the period that the waiver is active.

In accordance with Section 70914(c) of the BABA, HUD is providing notice that it is seeking a limited, partial general applicability nonavailability waiver of the BABA manufactured product requirements for domestically assembled solar modules used in federal financial assistance awards for

infrastructure projects due to the determination that compliant solar modules are not available in sufficient quality or quantity for use in HUD-funded infrastructure projects. The Department of Energy conducted market research to determine availability of BABA compliant solar modules which included subject matter expert analysis of domestic solar production based on announcements and non-public manufacturing plans disclosed by manufacturers. Based on this market research, HUD proposes to find that BABA-compliant solar modules are not produced in the United States in sufficient and reasonably available quantities for use in HUD-assisted solar projects, and will not become available in sufficient and reasonably available quantities until December 2025 or later. This proposed waiver, if finalized, will ensure recipients can effectively carry out the activities of their award in a timely manner while promoting domestic solar module manufacturing. HUD seeks to issue this waiver on the basis of nonavailability in accordance with Section 70914(b)(2) of the BABA.

V. Waiver Justification

HUD is proposing a temporary, limited partial nonavailability waiver of BABA manufactured product requirements for solar modules to apply to the use of domestically assembled modules that may incorporate foreign components. The United States is the second largest market for solar hardware, representing about 10%–15% of global solar demand. Developing and enhancing United States solar manufacturing will mitigate global supply chain challenges and meet decarbonization goals as well as benefit United States' workers, employers, and the economy. To reestablish domestic solar manufacturing in the United States, entities that produce and sell solar components will require a holistic industrial strategy to offset the 30–40% higher cost of domestic solar production relative to imported components. A narrowly tailored BABA waiver will meet immediate solar demands while the domestic solar industry expands supply.

Domestically, the United States currently has 10,600 MWdc/year nameplate production capacity for CdTe modules and 47,000 MWdc/yr nameplate production capacity for c-Si modules. Market research indicates c-Si module production capacity was historically underutilized for a variety of reasons including foreign competition, workforce shortages, and obsolete production equipment, with about 3,700 MWdc actually produced

and sold in 2023 compared to a nameplate capacity of 15,000 MWdc/yr at the end of 2023. Capacity for c-Si modules has continued growing significantly in 2024 and as production is ramping, utilization rates are expected to grow. As of November 2024, domestic c-Si cell production in the United States has just restarted and production is also anticipated to grow. HUD has a portfolio of approximately 4.5 million public and assisted housing units. The HUD portfolio consumes an estimated 49,000 Gigawatt-hours of energy per year at a cost of \$5.5 billion in annual utilities. Electricity makes up approximately 59% of all energy usage and 78% of the utility cost, creating significant demand and incentive to deploy solar on HUD's portfolio. This demand is anticipated to increase with the rise of extreme heat across the country and growing need to providing cooling for homes.

There are a significant number of grant programs funded by HUD that could be used to pay for solar installations subject to BABA. Even where the funding was obligated by HUD prior to being subject to BABA any new funding source added to a project that becomes subject to BABA might make the entire project subject to BABA, for example in the Public Housing Capital Fund. However, more importantly, the demand for solar modules for projects funded by HUD subject to BABA will derive from projects funded not only by HUD itself, but also by projects where HUD funding is part of the "Capital Stack" of a project that may or may not be subject to BABA. Two significant examples of such programs are the Clean Energy Tax Credits and Solar for All.

A significant driver of demand for solar modules stems from the Investment Tax Credit (ITC). Projects that are funded with the ITC that also qualify for additional bonus credits will often be located on or directly benefit HUD-assisted housing. Under the Clean Electricity Low-Income Communities Bonus Credit under section 48E(h) of the Internal Revenue Code, HUD-assisted properties are categorically eligible for the highest bonus credit available under the allocation of for eligible property that is part of a qualified low-income residential building project also known as Category 3 facility. It is highly likely, therefore, that such projects will further spur demand for solar modules purchased with HUD Federal Financial Assistance that is subject to BABA. Furthermore, 100% of the 7-billion-dollar Solar for All program funded by the Environmental Protection Agency must

be spent in low and disadvantaged communities, which are often the same communities that receive some form of HUD funding subject to BABA and will likely be combined with such funding.

In addition to current production capacity, future domestic manufacturing indicates growth will result in substantially more BABA-compliant module supply. As of November 2024 over \$20 billion in planned solar investments have been announced at over 148 new and expanded manufacturing plants for modules, module parts and other hardware. U.S. Department of Energy subject matter experts performed a probabilistic analysis of these announcements to identify a date when full BABA compliance may be achievable. Subject matter expert review identified technical delays from announced dates due to site readiness as well as likelihood of project success and considered the time required to ramp to full production capacities. Overall analysis concludes that domestic manufactures will likely be capable of producing fully BABA-compliant modules in sufficient quantities for all Federal financial assistance recipients no sooner than December 31, 2025. Thus, HUD proposes to find that BABA-compliant solar modules are not produced in the United States in sufficient and reasonably available quantities for use in HUD-assisted solar projects and will not become available in sufficient and reasonably available quantities until December 2025.

To support BABA compliance verification, HUD is considering step-certification, which is a type of certification process under which each handler (supplier, fabricator, manufacturer, processor, etc.) of the subject products and materials certifies that their step in the process was domestically performed. Each time a step in the manufacturing process takes place, the manufacturer delivers its work along with a certification of its origin. This process is common practice for verifying Buy America requirements for iron and steel. A solar step process may include manufacture of the wafers, cells, as well as modules in the United States, or equivalent processes for other solar manufacturing technologies.

VI. Impact Absent the Waiver

Without a waiver, HUD anticipates most recipients with solar projects subject to BABA will develop, implement, and submit unavailability waiver packages for solar modules. This conclusion is based upon known well-established domestic sourcing challenges for BABA-compliant solar

modules. The corresponding administrative burden will impact the cost and schedule of recipients, and in some cases diminish the use of solar projects, or, in extreme cases, deter overall participation. For those that participate and propose solar projects, recipient resources will be required to perform market research and submit unavailability packages. Project schedules will need to be extended to account for waiver development and waiver processing though final approval. These anticipated delays adversely impact numerous agency goals of these projects, including climate action and energy justice.

The absence of a narrowly tailored BABA waiver will result in missed strategic opportunities to advance goals such as those within E.O. 14017 *American's Strategy to Secure the Supply Chain for a Robust Clean Energy Transition* and E.O. 14057 *Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability*, in addition to the goals of E.O. 14005. A narrowly tailored BABA waiver will support the establishment of a domestic solar supply chain. Fundamentally, the domestic content provisions in the IRA clean energy production and investment tax credits, including relating to Internal Revenue Code sections 45, 45X, 45Y, 48, and 48E, including the domestic content bonus credit, constitute the significant driver for increasing the overall demand for domestic solar modules. Requiring full BABA compliance for federal financial assistance projects, as opposed to the narrowly tailored BABA compliance proposed in this waiver, would produce limited benefits for domestic solar manufacturing while potentially placing projects targeting vulnerable populations at risk.

VII. Assessment of Cost Advantage of a Foreign-Sourced Product

Under OMB Memorandum M-24-02, agencies are expected to assess "whether a significant portion of any cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products" as appropriate before granting a waiver. HUD's analysis has concluded that this assessment is not applicable to this waiver, because this waiver is not based on cost advantage of foreign sourced products.

VIII. Duration of Waiver

This proposed waiver, if finalized, applies to expenditures on solar panels after the Effective Date and by December

31, 2025, so long as those panels are installed by June 30, 2026.

IX. Solicitation of Comments

As required under section 70914 of the Act, HUD is soliciting comment from the public on the proposed waiver described in this Notice for a period of 15 days from the date of publication on HUD's web page. HUD seeks public comment from all interested parties. Input is sought from the public; specifically, stakeholders, including, but not limited to, FFA applicants and recipients, manufacturers, installers and other stakeholders across sectors and geographies. In particular, HUD seeks comment regarding the scope of this waiver and the following:

- Proposed dates of applicability, including effective date of the waiver and installed by date.
 - Recommendations and comments regarding certification for BABA compliant solar modules. HUD is considering step-certification, a type of certification process under which each handler (supplier, fabricator, manufacturer, processor, etc.) of the subject products and materials certifies that their step in the process was domestically performed. Each time a step in the manufacturing process takes place, the manufacturer delivers its work along with a certification of its origin.
- Relevant information and comments will help HUD to understand

completely the facts surrounding the waiver request and the agency's proposed finding of nonavailability. If issued, this waiver will be applicable to FFA that HUD obligates on or after the effective date of the final waiver and in connection with the expenditure of FFA, which had been previously obligated by HUD, throughout the applicable waiver period.

Adrianne R. Todman,

Deputy Secretary Performing the Duties of the Secretary of HUD.

Appendix

HUD GREEN AND RESILIENT RETROFIT PROGRAM (GRRP) Awardees

	Property name	Owner entity name
1	Huntsville Summit	Meridian Commons Ltd.
2	Kings Road Apartments	Los Angeles County Development Authority.
3	Pullman Point	Carlson Boulevard, L.P.
4	Liggins Tower	Liggins Tower, LLLP.
5	Lincoln Terrace	Housing Authority of the City of Wray, Colorado.
6	Ainakea Elderly Housing Project	Ainakea Partners LP.
7	Scotland Yards I	Avanath Scotland Yard, LLC.
8	Country Acres Apartments	KCG Development LLC.
9	Edwardsville Court	The Green Dols, LLC.
10	Bayou Galion	Bayou Galion Limited Partnership.
11	Sharlo Terrace II	Sharlo II Terrace Apartments, LP.
12	St. John Berchman's Manor	St. John Berchman's Apartments, LLC.
13	St. Bernard III dba Rouquette IV	St. Bernard III.
14	Mei Wah Village	Mei Wah Village, Inc.
15	St. Botolph Terrace	Madison Botolph II Limited Partnership.
16	Autumn Woods Apartments	Autumn Woods LP.
17	Vista Village	TWV Limited Partnership, a MN Limited Partnership.
18	East Columbia Apartments	Columbia Development Program, Inc.
19	Traceway Villas	Mississippi Methodist Senior Services, Inc.
20	Turner Memorial Retirement Center	Greene County Retirement Systems, Inc.
21	Centennial Park	Centennial Park Preservation LLC.
22	Harbor View Plaza	Harbor View Plaza Ventures LLC.
23	Seven Greens Apartments	Seven Greens Apartments LLC.
24	Admiral Apartments	Wheeldon Admiral, LLC.
25	Powell Boulevard Apartments, Inc	Powell Boulevard Apartments, Inc.
26	Cobbs Creek NSA	South 54th Street Limited Partnership.
27	St. George Athenagoras	St. George Senior Housing Corporation.
28	Las Americas Housing	Anamar Developers Inc.
29	Los Flamboyanes Apartments	Los Flamboyanes Apartments Limited Partnership.
30	Pheasant Valley Courtyard	Pheasant Valley Courtyard, LLC.
31	River View Towers	River View Housing Associates LP.
32	Countryside Village Apartments	NHDC Countryside Village, LLC.
33	Pioneer Court	Pioneer Court Housing.
34	Wildwood Court Apartments	Wild Garden Housing LLC.
35	Prairie Estates	Valentine Good Samaritan Housing, Inc.
36	Bay Bridge Housing	Bay Bridge Corporation.
37	Aspen Court	Aspen Drive Housing, Inc.
38	Lamont House	Lamont House Inc.
39	Rouquette Lodge III	Rouquette III.
40	Lord Stirling Senior Housing	TCB Lord Stirling Urban Renewal L.P.
41	Inglis Gardens at Germantown	Germantown Section 811 Housing Corporation.
42	Savannah Gardens Senior Residences	Savannah Gardens Senior Residences, Inc.
43	Jackson Towers	Lake Metropolitan Housing Authority.
44	Forest Hills Village Apartments	Forest Hills Partners II, LLLP.
45	St. Charles Villas	St. Charles Villas, LP.
46	Hacienda Del Rio	Hacienda Senior Housing, L.P.
47	Providence Gardens	Providence Gardens Apartments, LP.
48	Marina Towers Annex	Marina Annex Housing Partners, LP.
49	Ocean View Gardens	OAHS Ocean View LP.
50	Playa Del Alameda Apartments	OAHS Playa Del Alameda LP.

HUD GREEN AND RESILIENT RETROFIT PROGRAM (GRRP) AWARDEES—Continued

	Property name	Owner entity name
51	Second St. Andrews Apartments	Second St Andrews Preservation Limited Partnership.
52	Gateway Village Apartments	Gateway Village Apartments LLLP.
53	Gateway Terrace Apartments	Gateway Terrace II LP.
54	Hillsborough County VOA Living Center Inc	Hillsborough Co VOA Living Center, Inc.
55	Riverside Park Apartments	Riverside Park Apartments LLLP.
56	Jack Hall Waipahu	JHW Kuhualua Partners LP.
57	Van Buren Place	Urban Van Buren, LP.
58	Forest Apartments	Standard Forest Owner LLC.
59	Madison Avenue Apartments	Madison Avenue Associates LLLP (via Purchase Agreement w/ SOCA YR Inc).
60	West Byron Place	Urban West Byron, LP.
61	Westminster Tower	Westminster Tower LP.
62	Hickory Townhouses	Hickory Revitalization LLC.
63	Elmtree Apartments	2020 Elmhurst Detroit LLC.
64	Harlem Gateway NSA Site 2	Hargate JV Owners LLC.
65	Georgetown Village	GV Preservation LLC.
66	Victory One HDFC	Victory One HDFC.
67	Burlwood Apartments	Hampstead Burlwood Limited Partnership.
68	Norgate Plaza	Norgate Development Associates, L.P.
69	Paul Robeson Houses	1990 ACP Jr. Blvd., LLC.
70	Lima Towers	Lima Towers Acquisition, L.P.
71	Delmont Plaza	Delmont Plaza 2024 L.L.C.
72	Rock Ridge	Rock Ridge, LP.
73	City View Towers	Linden Camilla, LLC.
74	Fountain Heights	B'nai B'rith New Haven LLC.
75	Luther Terrace	Luther Terrace Inc.
76	Oakhaven Village Apartments	Housing for the Elderly of Adamsville, Inc.
77	Forest Cove Apts I	Standard Forest Cove I Venture LP.
78	Forest Cove Apts II	Standard Forest Cove II Venture LP.
79	Coeur d'Alene Plaza	CDA Plaza, LP.
80	Lake Forest II	WHPC-Lake Forest II, LLC.
81	Talbot Bernard Senior Housing	Codman Square Neighborhood Development Corporation.
82	PRC Westchester Avenue	PRC Westchester Avenue LLC.
83	Carson Square	Carson Square Preservation LP.
84	The Heights at West Rock	The Glendower Group.
85	125th & Aurora Senior Housing	Low Income Housing Institute LIHI.
86	Bon Secours New Shiloh I Apartments	Bon Secours New Shiloh I Limited Partnership.
87	Parcel 9 Phase I—4%	Parcel 9 Phase I—4 LLC.
88	Parcel 9 Phase I—9%	Parcel 9 Phase I—9 LLC.
89	Courtview Towers	Courtview Towers Housing LLC.
90	Pleasant View Apartments	Pleasant View 2024 Limited Partnership.
91	North Hill Farms 2	NHF 2021 Limited Dividend Housing Association L.L.C.
92	Woodlen Place Apartments	Woodlen Place Associates, L.P.
93	Northgate II	Fair Share Northgate II Associates, LP.
94	Crafton Towers	Crafton Towers-AHI, Inc.
95	Gulfway Manor	Gulfway Housing Partners, LP.
96	Summit at Lexington Square Apartments	TXLS, LP.
97	Round Barn Apartments	Round Barn Housing Limited Partnership.
98	Mid-Columbia Manor	Mid-Columbia Manor.
99	Parkside	Parkside Apartments Preservation Limited Partnership.
100	Garfield Hills Apartments	Garfield Hills Preservation Associates Limited Partnership.
101	Riverside Apartments	Riverside 2023 L.L.C.
102	Summit at Prince Hall Village Apartments	TXPHV, LP.
103	Clement Kern Gardens	CK—2003 Limited Dividend Housing Association Limited Partnership.
104	Chelsea Plaza	Chelsea Plaza 2023 L.L.C.
105	Stonehedge Place Apartments	Stonehedge Apartments LLC.
106	Fairweather Apartments—Beverly, Danvers, & Peabody	Fairweather Preservation Associates Limited Partnership.
107	Southern Heights	Southern Heights Limited Partnership.
108	Russel Erskine	Russel Erskine, LP.
109	Travis Park Apartments	Travis Park Preservation LLC.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2024–N066;
FXES11130100000–234–FF01E00000]

Endangered Species; Receipt of
Recovery Permit Application

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Notice of receipt of permit
application; request for comments.

SUMMARY: We, the U.S. Fish and
Wildlife Service, have received an
application for a permit to conduct
activities intended to enhance the
propagation and survival of endangered
species under the Endangered Species
Act. We invite the public and local,
State, Tribal, and Federal agencies to
comment on this application. Before
issuing the requested permit, we will
take into consideration any information
that we receive during the public
comment period.

DATES: We must receive your written
comments on or before January 27,
2025.

ADDRESSES: *Document availability and
comment submission:* Submit a request
for a copy of the application and related
documents and submit any comments
by one of the following methods. All
requests and comments should specify
the applicant name and application
number (e.g., Dana Ross, ES001705):

- *Email:* permitsR1ES@fws.gov.

- *U.S. Mail:* Carolyn Menke, Acting
Regional Program Manager, Restoration
and Endangered Species Classification,
Ecological Services, U.S. Fish and
Wildlife Service, Pacific Regional
Office, 911 NE 11th Avenue, Portland,
OR 97232–4181.

FOR FURTHER INFORMATION CONTACT:
Karen Colson, Regional Recovery Permit
Coordinator, Ecological Services, (503)
231–6283 (telephone); permitsR1ES@fws.gov (email). Individuals in the
United States who are deaf, deafblind,
hard of hearing, or have a speech
disability may dial 711 (TTY, TDD, or
TeleBraille) to access
telecommunications relay services.
Individuals outside the United States
should use the relay services offered
within their country to make
international calls to the point-of-
contact in the United States.

SUPPLEMENTARY INFORMATION: We, the
U.S. Fish and Wildlife Service, invite
the public to comment on an
application for a permit under section
10(a)(1)(A) of the Endangered Species
Act of 1973, as amended (ESA; 16
U.S.C. 1531 *et seq.*). The requested
permit would allow the applicant to
conduct activities intended to promote
recovery of a species listed as
endangered under the ESA.

Background

With some exceptions, the ESA
prohibits activities that constitute take
of listed species unless a Federal permit
is issued that allows such activity. The
ESA’s definition of “take” includes such

activities as pursuing, harassing,
trapping, capturing, or collecting, in
addition to hunting, shooting, harming,
wounding, or killing.

A recovery permit issued by us under
section 10(a)(1)(A) of the ESA
authorizes the permittee to conduct
activities with endangered or threatened
species for scientific purposes that
promote recovery or for enhancement of
propagation or survival of the species.
These activities often include such
prohibited actions as capture and
collection. Our regulations
implementing section 10(a)(1)(A) for
these permits are found in the Code of
Federal Regulations (CFR) at 50 CFR
17.22 for endangered wildlife species,
50 CFR 17.32 for threatened wildlife
species, 50 CFR 17.62 for endangered
plant species, and 50 CFR 17.72 for
threatened plant species.

**Permit Application Available for
Review and Comment**

Proposed activities in the following
permit request are for the recovery and
enhancement of propagation or survival
of the species in the wild. The ESA
requires that we invite public comment
before issuing the requested permit.
Accordingly, we invite local, State,
Tribal, and Federal agencies and the
public to submit written data, views, or
arguments with respect to this
application. The comments and
recommendations that will be most
useful and likely to influence agency
decisions are those supported by
quantitative information or studies.

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
PER12866103	Lindsay Young, Honolulu, HI.	Fiji petrel (<i>Pseudobulweria macgillivrayi</i>).	Fiji	Harass by capture, tagging and band- ing, and collection of blood and feather samples.	New.

Public Availability of Comments

Written comments we receive become
part of the administrative record
associated with this action. Before
including your address, phone number,
email address, or other personal
identifying information in your
comment, you should be aware that
your entire comment—including your
personal identifying information—may
be made publicly available at any time.
While you can request in your comment
that we withhold your personal
identifying information from public
review, we cannot guarantee that we
will be able to do so. All submissions
from organizations or businesses, and
from individuals identifying themselves
as representatives or officials of
organizations or businesses, will be

made available for public disclosure in
their entirety.

Next Steps

If we decide to issue a permit to the
applicant listed in this notice, we will
publish a notice in the **Federal Register**.

Authority

We publish this notice under section
10(c) of the Endangered Species Act of
1973, as amended (16 U.S.C. 1531 *et
seq.*).

Carolyn Menke,

*Acting Regional Program Manager for
Restoration and Endangered Species
Classification, Pacific Region.*

[FR Doc. 2024–30716 Filed 12–23–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2024–0033;
FXIA16710900000–245–FF09A10000]

Conference of the Parties to the
Convention on International Trade in
Endangered Species of Wild Fauna
and Flora (CITES); Twentieth Regular
Meeting: Taxa Being Considered for
Amendments to the CITES Appendices
and Proposed Resolutions, Decisions,
and Agenda Items Being Considered;
Observer Information

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Notice.

SUMMARY: The United States, as a Party
to the Convention on International

Trade in Endangered Species of Wild Fauna and Flora (CITES), may propose amendments to the CITES Appendices for consideration at meetings of the Conference of the Parties. The twentieth regular meeting of the Conference of the Parties to CITES (CoP20) is scheduled to be held in Uzbekistan, November 24–December 5, 2025. With this notice, we respond to recommendations received from the public concerning proposed amendments to the CITES Appendices (species proposals) and proposed resolutions, decisions, and agenda items that the United States might submit for consideration at CoP20; invite your comments and information on these potential proposals and working documents; and provide information on how U.S. nongovernmental organizations can attend CoP20 as observers.

DATES:

Meeting: The meeting is scheduled to be held in Samarkand, Uzbekistan, November 24–December 5, 2025.

Submitting Information and Comments: We will consider written information and comments we receive by January 16, 2025.

ADDRESSES:

Comments: You may submit comments pertaining to species proposals for consideration at CoP20 by one of the following methods:

(1) *Electronically:* Using the Federal eRulemaking Portal: <https://www.regulations.gov>, search for and submit comments on FWS–HQ–IA–2024–0033, which is the docket number for this notice.

(2) *U.S. mail:* Submit by U.S. mail to Public Comments Processing; Attn: Docket No. FWS–HQ–IA–2024–0033; U.S. Fish and Wildlife Service; MS: PRB (JAO/3W); 5275 Leesburg Pike, Falls Church, VA 22041–3803.

Requesting Approval To Attend CoP20 as an Observer: Send your request via U.S. mail to the Division of Management Authority, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: IA, Falls Church, VA 22041; via email to managementauthority@fws.gov; or via fax to 703–358–2276.

FOR FURTHER INFORMATION CONTACT: For information pertaining to species proposals, contact Rosemarie Gnam, Head, Division of Scientific Authority, at 703–358–1708 (phone); 703–358–2276 (fax); or scientificauthority@fws.gov (email). For information pertaining to resolutions, decisions, and agenda items, contact Naimah Aziz, Head, Division of Management Authority, at 703–358–2028 (phone); 703–358–2298 (fax); or managementauthority@fws.gov (email).

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:**Background**

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter referred to as CITES or the Convention, is an international treaty designed to control and regulate international trade in certain animal and plant species that are or may be affected by trade and are now, or potentially may become, threatened with extinction. Species are included in the Appendices to CITES, which are available on the CITES Secretariat's website at <https://www.cites.org>. See <https://www.cites.org/eng/app/appendices.php>; 50 CFR 23.91(a) (How do I find out if a species is listed? The official CITES list includes species of wildlife and plants placed in Appendix I, II, and III in accordance with the provisions of Articles XV and XVI of the Treaty. This list is maintained by the CITES Secretariat (Secretariat) based on decisions of the Parties. You can access the official list from the CITES website (see § 23.7.); 50 CFR 23.7(f).

Currently there are 184 Parties to CITES—183 countries, including the United States, and one regional economic integration organization, the European Union. The Convention calls for regular biennial meetings of the Conference of the Parties (CoP) unless the Conference decides otherwise. At these meetings, the Parties review the implementation of CITES, make provisions enabling the Secretariat in Switzerland to carry out its functions, consider amendments to the species included in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of CITES. Any country that is a Party to CITES may propose amendments to Appendices I and II, as well as resolutions, decisions, and agenda items for consideration by all the Parties. The U.S. Fish and Wildlife Service (Service) regulations governing this public process are found in title 50 of the Code of Federal Regulations at 50 CFR 23.87.

The Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*), in part, implements CITES and incorporates its Appendices of CITES-listed species into U.S. law (see, e.g., 16 U.S.C. 1532(4), 1537a,

1538(c), 1538(g), 1539(g), 1540(f)), and the Service has promulgated U.S. CITES implementing regulations (see 50 CFR part 23). The Secretary of the Interior is designated the U.S. Management Authority and U.S. Scientific Authority for CITES purposes, and the respective functions of each are carried out by the Service. 16 U.S.C. 1537a; 50 CFR 23.6. The ESA prohibits, *inter alia*, “any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of the Convention, or to possess any specimens traded contrary to the provisions of the Convention.” 16 U.S.C. 1538(c); 16 U.S.C. 1532(4) (“The term “Convention” means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.”). U.S. CITES implementing regulations explain the administration of CITES, the CITES listing process, the effective dates of CITES listings, and where to find official CITES documents and the CITES Appendices, as set forth in 50 CFR 23.7 and 23.84–23.91. At least 150 days before any CoP is held, any Party may submit a proposed amendment to Appendix I or II (e.g., for a species to be included in, removed from, or transferred between the CITES Appendices). CITES Art. XV(1)(a); 50 CFR 23.87(b)(2). The Secretariat then makes publicly available and provides all Parties a list of proposed amendments. CITES Art. XV(1)(a), (2)(c); 50 CFR 23.7(f)(5). Pursuant to 50 CFR 23.7 and 23.86, as we receive information on the upcoming CoP, we notify the public through **Federal Register** notices or on our website. The CoP can adopt amendments to Appendices I and II by a two-thirds majority of those Parties in attendance. 50 CFR 23.85(a); CITES Art. XV(1)(b). Appendix-I and -II species listings adopted at the CoP are effective 90 days after the last day of the CoP, unless otherwise specified in the proposal. 50 CFR 23.91(b)(1); CITES Art. XV(1)(c); 72 FR 48402 at 48439 and 48492–48494, August 23, 2007; 71 FR 20168 at 20205–20207, April 19, 2006.

This is our second notice in a series of **Federal Register** notices that, together with an announced public meeting that we will hold approximately 2 to 3 months prior to CoP20, provide you with an opportunity to participate in the development of the U.S. submissions and negotiating positions for CoP20. With this notice, we describe proposed amendments to the CITES Appendices (species proposals) and proposed resolutions, decisions, and agenda items

that the United States might submit for consideration at CoP20; invite your comments and information on these proposals and other documents; and provide information on how U.S. nongovernmental organizations can attend CoP20 as observers.

We published our first CoP20-related **Federal Register** notice on March 22, 2024 (89 FR 20489), in which we requested information and recommendations on animal and plant species proposals, and information and recommendations on proposed resolutions, decisions, and agenda items for the United States to consider submitting for consideration at CoP20, and provided preliminary information on how to request approved observer status for nongovernmental organizations that wish to attend the meeting. Comments received on our March 22, 2024, notice can be viewed at <https://www.regulations.gov> in Docket No. FWS-HQ-IA-2024-0033.

Recommendations for Species Proposals for the United States To Consider Submitting for CoP20

In response to our March 2024 notice, we received 46 comments with recommendations from 19 individuals and 25 organizations for possible proposals involving almost 3,500 animal taxa and 13 plant taxa for amendments to the CITES Appendices. The commenters include organizations such as the Association of Zoos and Aquariums, Animal Welfare Institute, California Native Plant Society, Center for Biological Diversity, Humane Society International, International Fund for Animal Welfare, IUCN (International Union for Conservation of Nature) Species Survival Commission Specialist Groups, International Wood Products Association, League of American Orchestras, Natural Resource Defense Council, Safari Club International, Species Survival Network, United Plant Savers, Wildlife Conservation Society, and World Wildlife Fund. Additionally, the United States may consider two animal species (United States is a range country) proposals that previously resulted from the Periodic Review process (Resolution Conf. 14.8 (Rev. CoP17)) by the Animals Committee, and where that Committee recommended that Mexico, as a range country for the species being reviewed, bring forward a proposal to amend the Appendices.

We have undertaken initial evaluations of the available trade and biological information on many of these taxa, but we recognize that many of the commenters provided little biological, trade, and other information with which

to support their comments. Based on the limited information available, we made provisional evaluations of whether to proceed with the development of proposals for species to be included in, removed from, or transferred between the CITES Appendices. We made these evaluations by considering the best information available on the species; the presence, absence, and effectiveness of other mechanisms that may preclude the need for species' inclusion in the CITES Appendices (*e.g.*, range country actions or other international agreements); and availability of resources. We have also considered the following factors, as per the United States' approach for CoP20 discussed in the March 22, 2024, **Federal Register** notice (89 FR 20489):

(1) Does the proposed action address a serious wildlife or plant trade issue that the United States is experiencing as a range country for species in trade?

(2) Does the proposed action address a serious wildlife or plant trade issue for species not native to the United States?

(3) Does the proposed action provide additional conservation benefit for a species already covered by another international agreement?

Based on our initial evaluations, we have assigned each taxon to one of three categories, which reflects the likelihood of our submitting a proposal. In sections A, B, and C, below, we have listed the current status of each species proposal recommended by the public, as well as some species proposals we have been developing internally or from the Periodic Review process. Please note that we have provided here only a list of taxa and the proposed action of likely, unlikely, or undecided on whether to submit a species proposal for consideration at CoP20. We have posted an extended table version of this notice on our website (at <https://www.fws.gov/program/international-affairs/federal-register-notices>) with text describing in more detail certain proposed actions and explaining the rationale for the tentative U.S. position on these possible proposals. We also describe in this table the information that we are seeking for proposals where the United States is undecided on submission. Copies of the extended table version of the notice are also available from the Division of Scientific Authority at the above address or at <https://www.regulations.gov> at Docket No. FWS-HQ-IA-2024-0033.

We welcome your comments, especially if you are able to provide any additional biological or trade information on these species. Please note that, throughout this notice, an asterisk (*) indicates species that occur

in the United States of America or its territories.

A. What species proposals will the United States likely submit for consideration at CoP20?

The two taxa in this section have undergone review through the Periodic Review of the Appendices by the Animals Committee (AC), most recently at its 33rd meeting (AC33; Geneva, July 2024), in accordance with Resolution Conf. 14.8 (Rev. CoP17). This is a regular process under CITES to evaluate whether listings of taxa in CITES Appendices I and II continue to be appropriate, based on current biological and trade information.

Mexico undertook the periodic review evaluation for these two taxa and submitted the results of their review for consideration at AC33 (<https://cites.org/sites/default/files/documents/E-AC33-45-03.pdf> and <https://cites.org/sites/default/files/documents/E-AC33-45-04.pdf>). The Animals Committee supported Mexico's recommendation that the two seal taxa be transferred from Appendix I to Appendix II and invited Mexico to bring proposals to CoP20. Since the United States is a range country for these taxa, we invite comments on such proposals.

1. * Guadalupe fur seal (*Arctocephalus townsendi*)—Transfer from Appendix I to Appendix II (Periodic Review Process by Mexico)
2. * Caribbean monk seal (*Monachus tropicalis*)—Transfer from Appendix I to Appendix II (Periodic Review Process by Mexico)

B. On what species proposals is the United States undecided, pending additional information and consultations?

The United States is still undecided on whether to submit CoP20 proposals for the following taxa. In most cases, we have not completed our consultations with relevant range countries. In other cases, we expect meetings to occur in the immediate future, at which participants will generate important recommendations, trade analyses, or biological information on the taxon in question that may be useful to our final decision making.

Plants

3. * White sage (*Salvia apiana*)—Add to Appendix II
4. Apitong, keruing, yang, gurjan (*Dipterocarpus* spp. [65 species])—Add to Appendix II
5. * American ginseng (*Panax quinquefolius*) Araliaceae (ginseng) family—Transfer from Appendix II to Appendix I, or alternately a proposal

to amend Annotation #3 or to submit a working document to address issues relating to trade in American ginseng

Mammals

6. Painted woolly bat (*Kerivoula picta*)—Add to Appendix II
7. Sloths (*Bradypus* spp. and *Choloepus* spp.)—Add all non-CITES species to Appendix II

Birds

8. African hornbills (*Ceratogymna* and *Bycanistes*)—Add all species to Appendix II
9. * Peregrine falcon (*Falco peregrinus*)—Transfer from Appendix I to Appendix II

Reptiles

10. Order Testudines or all Freshwater turtles [~348 species, ~139 not listed in CITES or listed as Appendix III]—Include all species in at least Appendix II [~139 species]; transfer all IUCN-assessed threatened or endangered species from Appendix II to Appendix I (we are considering all native species not currently listed in Appendix II = 22 native species as well as 2 native species that are threatened or endangered species for Appendix I—see turtle species below)
11. * Western pond turtle (*Actinemys marmorata*)—Include all species not currently listed in Appendix II
12. * Southwestern pond turtle (*Actinemys pallida*)—Include all species not currently listed in Appendix II
13. * Painted turtle (*Chrysemys picta*) (including *C. p. dorsalis*)—Include all species not currently listed in Appendix II
14. * Chicken turtle (*Deirochelys reticularia*)—Include all species not currently listed in Appendix II
15. * Alabama red-bellied turtle (*Pseudemys alabamensis*)—Include all species not currently listed in Appendix II
16. * Eastern river cooter (*Pseudemys concinna*)—Include all species not currently listed in Appendix II
17. * Florida cooter (*Pseudemys floridana*)—Include all species not currently listed in Appendix II
18. * Rio Grande cooter (*Pseudemys gorzugi*)—Include all species not currently listed in Appendix II
19. * Florida redbelly turtle (*Pseudemys nelsoni*)—Include all species not currently listed in Appendix II
20. * Peninsula cooter (*Pseudemys peninsularis*)—Include all species not currently listed in Appendix II
21. * Northern red-bellied turtle (*Pseudemys rubriventris*)—Include all species not currently listed in Appendix II
22. * Texas river cooter (*Pseudemys texana*)—Include all species not currently listed in Appendix II
23. * Big Bend slider (*Trachemys gaigeae*)—Include all species not currently listed in Appendix II
24. * Red-eared slider (*Trachemys scripta*)—Include all species not currently listed in Appendix II
25. * Cagle's map turtle (*Graptemys caglei*)—Include all species not currently listed in Appendix II
26. * Northern map turtle (*Graptemys geographica*)—Include all species not currently listed in Appendix II
27. * Black-knobbed map turtle (*Graptemys nigrinoda*)—Include all species not currently listed in Appendix II
28. * Ringed map turtle (*Graptemys oculifera*)—Include all species not currently listed in Appendix II
29. * Ouachita map turtle (*Graptemys ouachitensis*)—Include all species not currently listed in Appendix II
30. * False map turtle (*Graptemys pseudogeographica*)—Include all species not currently listed in Appendix II
31. * Texas map turtle (*Graptemys versa*)—Include all species not currently listed in Appendix II
32. * Yellow-blotched sawback (*Graptemys flavimaculata*)—Include all species not currently listed in Appendix II
33. * Spotted turtle (*Clemmys guttata*)—Transfer from Appendix II to Appendix I
34. * Blanding's turtle (*Emydoidea blandingii*)—Transfer from Appendix II to Appendix I
35. Home's hingeback tortoise (*Kinixys homeana*)—Transfer from Appendix II to Appendix I
36. * Rattlesnakes (*Crotalus* spp. [44 species])—Add to Appendix II [44 species]
37. * Timber rattlesnake (*Crotalus horridus*)—Add to Appendix II
38. * Western rattlesnake (*Crotalus oreganus*)—Add to Appendix II
39. * Prairie rattlesnake (*Crotalus viridis*)—Add to Appendix II
40. Blue-spotted tree monitor (*Varanus macraei*)—Transfer from Appendix II to Appendix I

Amphibians

41. Sonoran Desert Toad (*Incilius alvarius*)—Add to Appendix II

Sharks and Rays

42. * Oceanic whitetip shark (*Carcharhinus longimanus*)—Transfer from Appendix II to Appendix I
43. Gulper sharks or deepwater sharks (Centrophoridae family)—Add to Appendix II

44. * Gulper shark (*Centrophorus granulosus*)—Add to Appendix I
45. * Mosaic gulper shark (*Centrophorus tessellatus*)—Add to Appendix I or II
46. * Little gulper shark (*Centrophorus uyato*)—Add to Appendix I or II
47. * Whale shark (*Rhincodon typus*)—Transfer from Appendix II to Appendix I

Bony fishes

48. Banggai cardinalfish (*Pterapogon kauderni*)—Add to Appendix II
49. * American eel (*Anguilla rostrata*)—Add to Appendix II

Invertebrates

50. * Chocolate chip or four-sided or three-rowed sea cucumber (*Isostichopus badionotus*)—Add to Appendix II
51. Brown sea cucumber (*Isostichopus fuscus*)—Transfer from Appendix III (Ecuador) to Appendix I
52. * Stichopod sea cucumber (*Isostichopus macroparentheses*)—Add to Appendix II
53. * Stichopod sea cucumber (*Isostichopus maculatus*)—Add to Appendix II
54. Golden sandfish (*Holothuria lessona*)—Add to Appendix II
55. * Curryfish, Herrmann's sea cucumber (*Stichopus herrmanni*)—Add to Appendix II (was suggested for Appendix I)
56. * American horseshoe crab (*Limulus polyphemus*)—Add to Appendix I or II
57. Red and pink coral (*Corallium* spp. [~20+ spp.])—Add to Appendix II

C. For which species is the United States unlikely to submit proposals for consideration at CoP20, unless we receive significant additional information?

The United States does not intend to submit proposals for the following taxa unless we receive significant additional information indicating that a proposal is warranted.

Plants

58. * California lady's slipper (*Cypripedium californicum*) Orchidaceae (orchid) family—Transfer from Appendix II to Appendix I
59. * Mountain lady's slipper (*Cypripedium montanum*) Orchidaceae (orchid) family—Transfer from Appendix II to Appendix I
60. * Sparrow's-egg lady's slipper (*Cypripedium passerinum*) Orchidaceae (orchid) family—Transfer from Appendix II to Appendix I
61. * Two-keeled hooded orchid (*Galeandra bicarinata*) Orchidaceae

- (orchid) family—Transfer from Appendix II to Appendix I
62. * American elm (*Ulmus americana*)—Add to Appendix I
63. * Green ash (*Fraxinus pennsylvanica*) Oleaceae (olive) family—Add to Appendix I
64. * Longleaf pine (*Pinus palustris*) Pinaceae (pine) family—Add to Appendix I
65. * Redbay (*Persea borbonia*) Lauraceae (laurels) family—Add to Appendix I
66. * Swamp bay (*Persea palustris*) Lauraceae (laurels) family—Add to Appendix I
67. * White ash (*Fraxinus americana*) Oleaceae (olive) family—Add to Appendix I

Animals

Mammals

68. Dorcas gazelle (*Gazella dorcas*)—Transfer from Appendix III to Appendix I
69. Dwarf musk deer (*Moschus berezovskii*)—Transfer from Appendix II to Appendix I
70. Goitered gazelle (*Gazella subgutturosa*)—Add to Appendix I
71. Hippopotamus (*Hippopotamus amphibius*)—Transfer from Appendix II to Appendix I
72. Hog deer (*Axis porcinus*)—Transfer from Appendix III to Appendix I
73. Javan deer (*Rusa timorensis*)—Add to Appendix I
74. Lowland tapir (*Tapirus terrestris*)—Transfer from Appendix II to Appendix I
75. Mountain nyala (*Tragelaphus buxtoni*)—Add to Appendix I
76. Musk deer (*Moschus moschiferus*)—Transfer from Appendix II to Appendix I
77. * Polar bear (*Ursus maritimus*)—Transfer from Appendix II to Appendix I
78. * Reindeer/caribou (*Rangifer tarandus*)—Add to Appendix I
79. Sambar deer (*Rusa unicolor*)—Add to Appendix I
80. * Sea otter (*Enhydra lutris*)—Transfer from Appendix II to Appendix I (one subspecies, *Enhydra lutris nereis*, is listed in Appendix I)
81. White-lipped peccary (*Tayassu pecari*)—Transfer from Appendix II to Appendix I

Birds

82. * Aleutian cackling goose, Aleutian Canada goose, Aleutian goose (*Branta canadensis leucopareia*)—Remove from Appendix II [i.e., remove from CITES Appendices]
83. *Copsychus* (genus) [Magpie-robins and shamas including *Kittacinca* spp.;

- 10 species; 1 species, *Copsychus malabaricus*, listed in Appendix II]—Add to Appendix II [9 species]
84. Great curassow (*Crax rubra*)—Transfer from Appendix III to Appendix I
85. Long-tailed parakeet (*Belocercus longicaudus*)—Transfer from Appendix II to Appendix I
86. Rüppell's vulture (*Gyps rueppelli*)—Transfer from Appendix II to Appendix I
87. Steppe eagle (*Aquila nipalensis*)—Transfer from Appendix II to Appendix I
88. White-backed vulture (*Gyps africanus*)—Transfer from Appendix II to Appendix I

Reptiles

89. Agama lizard (*Trapelus savignii*)—Add to Appendix II
90. Asian giant tortoise (*Manouria emys*)—Transfer from Appendix II to Appendix I
91. * Barbour's map turtle (*Graptemys barbouri*)—Transfer from Appendix II to Appendix I
92. Black marsh turtle (*Siebenrockiella crassicolis*)—Transfer from Appendix II to Appendix I
93. Burmese python (*Python bivittatus*)—Transfer from Appendix II to Appendix I
94. * Diamondback terrapin (*Malaclemys terrapin*)—Transfer from Appendix II to Appendix I
95. Dwarf chameleon (*Bradypodion thamnobates*)—Transfer from Appendix II to Appendix I
96. Egyptian spiny-tailed lizard (*Uromastix aegyptia*)—Transfer from Appendix II to Appendix I
97. King cobra (*Ophiophagus hannah*)—Transfer from Appendix II to Appendix I
98. Leopard fringe-fingered lizard (*Acanthodactylus pardalis*)—Add to Appendix I
99. Masked water snakes, puff-faced water snakes (*Homalopsis* spp. [5 species])—Add to Appendix II [5 species]
100. * Massasauga rattlesnake (*Sistrurus catenatus*)—Add to Appendix II
101. * Pascagoula map turtle (*Graptemys gibbonsi*)—Transfer from Appendix II to Appendix I
102. * Pearl River map turtle (*Graptemys pearlensis*)—Transfer from Appendix II to Appendix I
103. Pig nose turtle (*Carettochelys insculpta*)—Transfer from Appendix II to Appendix I
104. Senegal flapshell turtle (*Cyclanorbis senegalensis*)—Transfer from Appendix II to Appendix I
105. Red-headed rat snake (*Elaphe moellendorffi*)—Transfer from Appendix II to Appendix I

106. White-bellied snapping turtle (*Elseya branderhorsti*)—Add to Appendix II

Amphibians

107. Harlequin frogs, stubfoot toads (*Atelopus* spp. ~94+ species; 1 species already included in CITES Appendix I: *Atelopus zeteki*)—Add to Appendix I
108. Phantasmal poison frog (*Epipedobates tricolor*)—Transfer from Appendix II to Appendix I
109. Clown tree frog/harlequin poison frog (*Oophaga histrionica*)—Transfer from Appendix II to Appendix I
110. Lehmann's poison frog (*Oophaga lehmanni*)—Transfer from Appendix II to Appendix I
111. * Pigeon Mountain salamander (*Plethodon petraeus*)—Add to Appendix I

Sharks and Rays

112. * Scalloped hammerhead (*Sphyrna lewini*)—Transfer from Appendix II to Appendix I
113. * Smooth hammerhead (*Sphyrna zygaena*)—Transfer from Appendix II to Appendix I
114. * Silky shark (*Carcharhinus falciformis*)—Transfer from Appendix II to Appendix I
115. * Basking shark (*Cetorhinus maximus*)—Transfer from Appendix II to Appendix I
116. * Longfin mako (*Isurus paucus*)—Transfer from Appendix II to Appendix I
117. * Shortfin mako (*Isurus oxyrinchus*)—Transfer from Appendix II to Appendix I
118. * Common thresher (*Alopias vulpinus*)—Transfer from Appendix II to Appendix I
119. * Pelagic thresher shark (*Alopias pelagicus*)—Transfer from Appendix II to Appendix I
120. * Great White shark (*Carcharodon carcharias*)—Transfer from Appendix II to Appendix I
121. * Kitefin shark (*Dalatias licha*)—Add to Appendix I or III
122. * Tope (*Galeorhinus galeus*)—Add to Appendix I or II
123. * Porbeagle (*Lamna nasu*)—Transfer from Appendix II to Appendix I
124. * Spiny dogfish (*Squalus acanthias*)—Add to Appendix I
125. * Atlantic nurse shark (*Ginglymostoma cirratum*)—Add to Appendix II
126. Common smoothhound shark (*Mustelus mustelus*)—Add to Appendix I
127. * Sand tiger shark (*Carcharias taurus*)—Add to Appendix I

128. * Atlantic devilray (*Mobula hypostoma*)—Transfer from Appendix II to Appendix I
129. * Sicklefins devilray (*Mobula tarapacana*)—Transfer from Appendix II to Appendix I
130. * Spotted eagle ray (*Aetobatus ocellatus*)—Add to Appendix I
131. * Whitespotted eagle ray (*Aetobatus narinari*)—Add to Appendix II
132. * Bullnose eagle ray (*Myliobatis freminvillii*)—Add to Appendix II
133. * American cownose ray (*Rhinoptera bonasus*)—Add to Appendix II
134. * Spiny butterfly ray (*Gymnura altavela*)—Add to Appendix II
135. Porcupine ray (*Urogymnus asperrimus*)—Add to Appendix I
136. Tiger River stingray (*Potamotrygon tigrina*)—Add to Appendix I
137. Dasyatidae (stingrays from S. and SE Asia; ~68 ssp)—Add to Appendix II
138. * Winter skate (*Leucoraja ocellata*)—Add to Appendix I
139. * Thorny skate (*Amblyraja radiata*)—Add to Appendix I
- Jawless Fish
140. * Pacific hagfish (*Eptatretus stoutii*)—Add to Appendix I or II
- Bony Fishes
141. Freshwater eels (*Anguilla* spp.)—Add to Appendix II
142. European eel (*Anguilla anguilla*)—Add to Appendix I
143. Japanese eel (*Anguilla japonica*)—Add to Appendix I
144. Snowflake moray eel (*Echidna nebulosa*)—Add to Appendix II
145. Siberian sturgeon (*Acipenser baerii*)—Transfer from Appendix II to Appendix I
146. Russian sturgeon (*Acipenser gueldenstaedtii*)—Transfer from Appendix II to Appendix I
147. Sterlet (*Acipenser ruthenus*)—Transfer from Appendix II to Appendix I
148. Sakhalin sturgeon (*Acipenser schrenckii*)—Transfer from Appendix II to Appendix I
149. Stellate sturgeon (*Acipenser stellatus*)—Transfer from Appendix II to Appendix I
150. Kaluga sturgeon (*Huso dauricus*)—Transfer from Appendix II to Appendix I
151. Beluga sturgeon (*Huso huso*)—Transfer from Appendix II to Appendix I
152. White-seam betta (*Betta albimarginata*)—Add to Appendix I
153. Spotfin betta (*Betta macrostoma*)—Add to Appendix I
154. Sim's betta (*Betta simorum*)—Add to Appendix I
155. Black damselfish (*Chrysiptera niger*)—Add to Appendix I or II
156. * Atlantic bluefin tuna (*Thunnus thynnus*)—Add to Appendix I
157. * Pacific bluefin tuna (*Thunnus orientalis*)—Add to Appendix I
158. * Bigeye tuna (*Thunnus obesus*)—Add to Appendix I
159. * Brown-marbled grouper (*Epinephelus fuscoguttatus*)—Add to Appendix I
160. * Camouflage grouper (*Epinephelus polyphkadion*)—Add to Appendix I
161. * Nassau grouper (*Epinephelus striatus*; global and Gulf of Mexico)—Add to Appendix III
162. * Red grouper (*Epinephelus morio*)—Add to Appendix I
163. * Black grouper (*Mycteroperca bonaci*)—Add to Appendix I
164. * Yellow-fin grouper [Gulf of Mexico] (*Mycteroperca venenosa*)—Add to Appendix I
165. * Yellowmouth grouper (*Mycteroperca interstitialis*)—Add to Appendix I
166. * Squaretail coral grouper (*Plectropomus areolatus*)—Add to Appendix I
167. * Bluefish (*Pomatomus saltatrix*)—Add to Appendix I
168. * Blue marlin (*Makaira nigricans*)—Add to Appendix I
169. Cubera snapper (*Lutjanus cyanopterus*)—Add to Appendix I
170. * Red snapper (*Lutjanus campechanus*)—Add to Appendix I
171. * Vermilion snapper (Rhomboplites aurorubens)—Add to Appendix I
172. * Golden tilefish (*Lopholatilus chamaeleonticeps*)—Add to Appendix I
173. * Hogfish (*Lachnolaimus maximus*)—Add to Appendix I
174. * Humphead wrasse (*Cheilinus undulatus*)—Transfer from Appendix II to Appendix I
175. Naoko's fairy wrasse (*Cirrhitilabrus naokoae*)—Add to Appendix II
176. * Mexican blindcat (*Prietella phreatophila*)—Add to Appendix I
177. * Tarpon (*Megalops atlanticus*)—Add to Appendix I
178. Clown goby (*Callogobius amikami*)—Add to Appendix II
179. * Peppermint goby (*Coryphopterus lipernes*)—Add to Appendix I
180. * Glass goby (*Coryphopterus hyalinus*)—Add to Appendix II
181. * Masked goby (*Coryphopterus personatus*)—Add to Appendix II
182. Barber goby (*Elacatinus figaro*)—Add to Appendix II
183. Broadstripe goby (*Elacatinus prochilos*)—Add to Appendix I or II
184. Striped catfish (*Pangasianodon hypophthalmus*)—Add to Appendix I
185. Phraya giant catfish (*Pangasius sanitwongsei*)—Add to Appendix I
186. Mekong tiger perch (*Datnioides undecimradiatus*)—Add to Appendix I
187. Harlequin sweetlips (*Plectorhinchus chaetodonoides*)—Add to Appendix II
188. Boeseman's rainbowfish (*Melanotaenia boesemani*)—Add to Appendix I
189. Blackspotted croaker (*Protonibea diacanthus*)—Add to Appendix II
190. Tiger-tail seahorse (*Hippocampus comes*)—Transfer from Appendix II to Appendix I
191. * Lined seahorse (*Hippocampus erectus*)—Transfer from Appendix II to Appendix I
192. * Thorny seahorse (*Hippocampus histrix*)—Transfer from Appendix II to Appendix I
193. * Giant seahorse (*Hippocampus ingens*)—Transfer from Appendix II to Appendix I
194. Great seahorse (*Hippocampus kelloggi*)—Transfer from Appendix II to Appendix I
195. * Spotted seahorse (*Hippocampus kuda*)—Transfer from Appendix II to Appendix I
196. * Long-snout seahorse (*Hippocampus reidi*)—Transfer from Appendix II to Appendix I (individual request to add to Appendix II, but is already in Appendix II)
197. Flat-faced seahorse (*Hippocampus trimaculatus*)—Transfer from Appendix II to Appendix I
- Invertebrates
198. Cardinal shrimp (*Caridina dennerli*)—Add to Appendix I
199. Mangrove horseshoe crab (*Carcinoscorpius rotundicauda*)—Add to Appendix I or II
200. Coastal horseshoe crab (*Tachypleus gigas*)—Add to Appendix I or II
201. Tri-spine horseshoe crab (*Tachypleus tridentatus*)—Add to Appendix I or II
202. * Blue coral (*Heliopora coerulea*)—Transfer from Appendix II to Appendix I
203. * Cactus coral (*Pavona cactus*)—Transfer from Appendix II to Appendix I
204. * Cactus coral (*Pavona decussata*)—Transfer from Appendix II to Appendix I
205. * Daisy coral (*Alveopora allingi*)—Transfer from Appendix II to Appendix I
206. * Disc coral (*Turbinaria mesenterina*)—Transfer from Appendix II to Appendix I
207. * Disc coral (*Turbinaria peltata*)—Transfer from Appendix II to Appendix I
208. * Disc coral (*Turbinaria reniformis*)—Transfer from Appendix II to Appendix I

209. * Galaxy coral (*Galaxea astreata*)—Transfer from Appendix II to Appendix I
210. * Montipora coral (*Montipora angulata*)—Transfer from Appendix II to Appendix I
211. * Montipora coral (*Montipora calcarea*)—Transfer from Appendix II to Appendix I
212. * Montipora Coral (*Montipora caliculata*)—Transfer from Appendix II to Appendix I
213. * Porites coral (*Porites horizontalata*)—Transfer from Appendix II to Appendix I
214. * Porites coral (*Porites nigrescens*)—Transfer from Appendix II to Appendix I
215. * Scleractinian coral (*Psammocora stellata*)—Transfer from Appendix II to Appendix I
216. * Staghorn coral (*Acropora acuminata*)—Transfer from Appendix II to Appendix I
217. * Staghorn coral (*Acropora aspera*)—Transfer from Appendix II to Appendix I
218. * Staghorn coral (*Acropora horrida*)—Transfer from Appendix II to Appendix I
219. * Staghorn coral (*Acropora paniculata*)—Transfer from Appendix II to Appendix I
220. * Staghorn coral (*Acropora polystoma*)—Transfer from Appendix II to Appendix I
221. Elegance coral (*Catalaphyllia jardinei*)—Transfer from Appendix II to Appendix I
222. * Elephant skin coral (*Pachyseris rugosa*)—Transfer from Appendix II to Appendix I
223. * Large polyped stony corals (*Euphyllia* spp.)—Transfer from Appendix II to Appendix I
224. Lettuce coral (*Pectinia lactuca*)—Transfer from Appendix II to Appendix I
225. Long-tentacled plate coral (*Heliofungia actiniformis*)—Transfer from Appendix II to Appendix I
226. Pearl bubble coral (*Physogyra lichtensteini*)—Transfer from Appendix II to Appendix I
227. Small polyped stony corals (*Acropora suharsonoi*)—Transfer from Appendix II to Appendix I
228. * Deep-water redfish (*Actinopyga echinites*)—Add to Appendix II
229. * Surf redfish (*Actinopyga mauritiana*)—Add to Appendix I or II
230. Panning's blackfish (*Actinopyga palauensis*)—Add to Appendix II
231. Burrowing blackfish (*Actinopyga spinea*)—Add to Appendix II
232. * Donkey dung sea cucumber (*Holothuria mexicana*)—Add to Appendix II
233. Japanese spikey sea cucumber (*Apostichopus japonicus*)—Add to Appendix I
234. * White teatfish (*Holothuria fuscogilva*)—Transfer from Appendix II to Appendix I
235. * Florida cone (*Conus anabathrum*)—Add to Appendix II
236. * Freshwater pearl mussel (*Margaritifera margaritifera*)—Add to Appendix I or II
237. * Hihiwai (*Neritina granosa*)—Add to Appendix I or II
238. * Pink abalone (*Haliotis corrugata*)—Add to Appendix I or II
239. * Green abalone (*Haliotis fulgens*)—Add to Appendix I or II
240. * Pinto abalone (*Haliotis kamtschatkana*)—Add to Appendix I or II
241. Giant armored trapdoor spider (*Liphistius malayanus*)—Add to Appendix I
242. Indian tarantula (*Thrigmopoeus insignis*)—Add to Appendix I
243. Tarantulas (*Typhochlaena* spp. [5 species])—Add to Appendix I [5 species]
244. Tarantula family (Theraphosidae) [all ~1,080 unlisted spp.]—Add to Appendix II
245. Mexican orange beauty tarantula (*Brachypelma baumgarteni*)—Transfer from Appendix II to Appendix I
246. Mexican fireleg tarantula (*Brachypelma boehmei*)—Transfer from Appendix II to Appendix I
247. Mexican redknee tarantula (*Brachypelma hamorii*)—Transfer from Appendix II to Appendix I
248. Mexican blackvelvet tarantula (*Brachypelma <TLITOCATL> schroederi*)—Transfer from Appendix II to Appendix I
249. Wallace's giant bee (*Megachile pluto*, synonym *Chalicodoma pluto*)—Add to Appendix I

Recommendations for Resolutions, Decisions, and Agenda Items for the United States To Consider Submitting for CoP20

In response to the request in our first notice concerning possible CoP20 submissions of resolutions, decisions, and agenda items, we received information and recommendations from the following organizations: Animal Welfare Institute, Association of Zoos & Aquariums, Center for Biological Diversity, Defenders of Wildlife, Environmental Investigation Agency, Humane Society International, International Fund for Animal Welfare, International Wood Products Association, Jamma International, League of American Orchestras, Natural Resources Defense Council, Panthera,

Safari Club International, Species Survival Network, Wildlife Conservation Society, and World Wildlife Fund. We also received comments from two individuals.

We evaluated the recommendations submitted by the above organizations and individuals, as well as the factors described in the U.S. approach for CoP20, discussed in our March 22, 2024, **Federal Register** notice (89 FR 20489), in considering resolutions, decisions, and agenda items that the United States may submit for consideration by the Parties at CoP20. We also considered potential submissions that we identified internally or based on discussions with other CITES Parties. The United States may consider submitting documents on some of the issues for which we are currently undecided or not considering submitting at this time, depending on the outcome of discussions of these issues in the CITES Standing Committee at its 78th meeting (SC78; scheduled to be held February 3–8, 2025), additional consultations with range country governments and subject matter experts, or comments we receive during the public comment period for this notice.

We welcome your comments and information regarding the resolutions, decisions, and agenda items discussed below. Please review the information under **ADDRESSES** on how to submit information and comments in response to this notice.

A. What resolutions, decisions, and agenda items is the United States likely to submit for consideration at CoP20?

Due to the significant number of issues that are subject to ongoing discussions in the Standing Committee, to date, we have not identified any issues for which we are likely to submit a document to CoP20. As described in this notice, we will make a final decision on whether to submit a document to CoP20 for many issues described in this document pending the outcomes and discussions at SC78.

B. On what resolutions, decisions, and agenda items is the United States still undecided, pending additional information and consultations?

1. *Asian big cats*: The World Wildlife Fund (WWF) notes that Resolution Conf. 12.5 (Rev. CoP19) on *Conservation of and trade in tigers and other Appendix-I Asian big cat species* instructs the Secretariat to report to the Standing Committee and the Conference of the Parties on the status of Asian big cats in the wild, their conservation, and trade controls, using information provided by the range countries and

other relevant countries. However, noting that the Secretariat rarely receives many responses from Asian big cat range countries, WWF recommends that the United States support the production of an independently produced report for each meeting of the CoP, similar to the process directed in Resolution Conf. 9.14 (Rev. CoP17) on *Conservation of and trade in African and Asian rhinoceroses* for rhinoceroses. While the United States shares the concerns over the lack of information to help inform the preparation of robust reports, we are also cognizant of the ongoing financial and administrative challenges on the Secretariat and the Parties. Therefore, the United States is currently undecided on whether to propose amendments to Resolution Conf. 12.5 (Rev. CoP19) along the lines of WWF's suggestion. We will continue to review this recommendation to determine a path forward on this issue before CoP20.

2. *Compliance matters:* Noting the increase in the workload of the Standing Committee to identify, investigate, and resolve potential instances of non-compliance with the Convention, the Wildlife Conservation Society (WCS) proposes that the compliance framework for the Convention be reviewed holistically. WCS notes that this effort could build on the outcomes from existing processes, including review of the National Ivory Action Plan (NIAP) process, recent country-wide reviews under the Review of Significant Trade (RST) process, etc., and suggests that the United States either propose amendments to Resolution Conf. 18.2 on *Establishment of committees*, to direct the establishment of a Compliance and Enforcement Committee of CoP or submit a discussion document that consolidates, standardizes, and strengthens approaches to identifying and addressing non-compliance with the Convention. Noting ongoing resource and capacity constraints, we are unlikely to propose the establishment of a new committee of the CoP. However, based on additional discussions internally and with like-minded Parties, we may consider submitting a discussion document to examine options for improving and strengthening approaches to identify and address compliance matters.

3. *Prioritization of sharks and rays in the review of significant trade (RST) process:* The International Fund for Animal Welfare (IFAW), WCS, and Humane Society International (HSI) request that the United States prioritize shark and ray species for all discussions related to the RST and Article XIII compliance processes, to ensure CITES

listings are being implemented effectively and in line with CITES obligations. Additionally, IFAW, WCS, and HSI recommend the United States consider submitting draft amendments to Resolution Conf. 12.8 (Rev. CoP18) on *Review of Significant Trade in specimens of Appendix-II species* to increase the flexibility of the Animals Committee and the Plants Committee to select a number of taxon/country or taxon/multiple country or geographic area combinations of greatest concern, as appropriate.

The United States regards the RST process in CITES as an extremely important and essential tool to ensure that trade in Appendix-II species is biologically sustainable in the short and long term. The ability to select an appropriate number of species/country combinations of greatest concern already exists within the Resolution, and the RST process is flexible to address the conservation concerns raised. We understand the concerns notably for migratory and marine species such as sharks that would allow for the selection of taxa at a broader level, especially at geographic levels, and the concerns specifically expressed at the 32nd meeting of the Animals Committee (AC32; Geneva, June 2023). Any apparent constraints noted at recent meetings were unrelated to the structure of the Resolution and were instead largely a function of the time and resource constraints of the scientific committees and the Secretariat, in particular with the added workload during this intersessional period from work that was delayed during the Covid-19 pandemic. We have actively engaged in the RST review process at Animals, Plants, and Standing Committee meetings and support efforts to build the capacity of CITES Parties. We are concerned about the continued threats to sharks and rays. Therefore, we are considering options to complement the RST process that have conservation benefits to these species. We remain undecided on how best to accomplish such objectives and seek input on possible solutions.

4. *Trade in deepwater sharks and stingrays:* IFAW, WCS, and HSI recommend that the United States consider developing a proposal to include internationally traded deepwater sharks in the Appendices. In addition, IFAW, WCS, and HSI express concerns about the wider trades of stingray leather (particularly the family Dasyatidae), and shark and ray meat, and recommend the United States consider submitting any information it may have on such trade to the relevant CITES committees and consider if

additional species should be included in Appendix II. Please refer to the Recommendations for Species Proposals for the United States To Consider Submitting for CoP20 section of this notice on possible species proposals for information on what the United States is likely, undecided, or unlikely to propose at CoP20.

5. *Mismatch of trade in CITES-listed shark species:* IFAW, WCS, and HSI encourage the United States to make mismatch of the trade in products of CITES-listed sharks a priority at CoP20, ensuring that firm steps are taken to address the issue of underreporting of CITES-listed sharks and rays in trade. The Standing Committee at SC78 is expected to discuss numerous ongoing CITES compliance issues, including those regarding CITES-listed sharks. The United States takes CITES compliance issues seriously. The mismatch of the trade in products of CITES-listed sharks recorded in the CITES Trade Database remains a concern to the United States. We will closely monitor the outcomes and recommendations from SC78 and determine whether it will be appropriate to submit a document to CoP20 on this matter.

6. *Confiscation of live animals:* IFAW recommends that the United States consider amendments to Resolution Conf. 17.8 (Rev. CoP19) on *Disposal of illegally traded and confiscated specimens of CITES-listed species*, and its annexes, revising terms such as “disposal” and “euthanasia” to more accurately reflect the task required of Parties. They note that disposal generally refers to non-sentient beings and humane killing would be a more accurate alternative to euthanasia. They also suggest updating Resolution Conf. 17.8 (Rev. CoP19) to align it with the IUCN *Guidelines for the management of confiscated, live organisms*, and call for adding guidance to the Resolution on immediate handling of confiscated live animals to assist enforcers in decision making, and how to repatriate healthy animals to their country of origin to contribute to conservation of the wild populations.

While the United States appreciates the recommendation to review the terms “disposal” and “euthanasia” to ensure they accurately reflect the task required of Parties, we believe that the current terms are adequate. “Management” is a term typically used when describing stockpiles (parts and products, and not live specimens). Similarly, disposal refers to specifying a destination for the specimens. Regarding the recommendation to update Resolution Conf. 17.8 (Rev. CoP19), we are undecided at this time, including

regarding the suggestion to better align it with the IUCN *Guidelines* and otherwise, pending the outcome of discussions related to Decision 19.174 on *Disposal of confiscated specimens* at SC78.

7. *National Ivory Action Plans (NIAP) process*: IFAW encourages the United States to ensure that CoP20 delivers outcomes regarding Decisions 19.68 to 19.70 on *Review of the National Ivory Action Plans Process*, which direct the Secretariat, subject to external funding, to contract a consultant to review the NIAP process in order to improve its ability to enable action on the ground and provide capacity support for countries that have been identified as sources of significant concern in the global ivory trade.

The United States continues to support the NIAP process and is an active participant in the Standing Committee's intersessional working group that is currently considering the relationship between the Elephant Trade Information System, which informs NIAP decisions, and the CITES Annual Illegal Trade Report. We are concerned with the lack of progress toward implementing the NIAP review recommendations and will consider ways to advance these initiatives at CoP20.

8. *Expiration of permits in transit*: In Section XII (Regarding permits and certificates for timber species included in Appendices II and III with the annotation 'Logs, sawn wood and veneer sheets') of Resolution Conf. 12.3 (Rev. CoP19) on *Permits and certificates*, *inter alia*, the Parties recognize that there are certain circumstances where it may be appropriate to extend the period of validity of an export permit or re-export certificate beyond the normal maximum of 6 months after the date of issuance for timber shipments. The International Wood Products Association (IWPA) urges the United States to work with other Parties to update the language to reflect current processes and ensure that shipments of properly permitted timber species included in Appendices II and III are not refused entry due to the realities of international supply chains that rely on ocean shipping. The United States is undecided on whether to submit a discussion document to CoP20 proposing to update this guidance and will make a final decision based on further review of available information, internal discussions, and discussions with other Parties.

9. *Trade in wood pellets*: In joint comments submitted by the Natural Resources Defense Council (NRDC), the Center for Biological Diversity (CBD),

and Defenders of Wildlife (Defenders), they urge the United States to consider submitting a draft decision, resolution, or agenda item seeking to examine international trade in wood pellets and the tree species used in their production. NRDC, CBD, and Defenders assert that the southeastern United States is the primary source for trees converted to wood pellets and then exported to Europe and elsewhere as renewable bioenergy. We are currently undecided on whether to submit a document on this issue but will evaluate available information and undertake additional internal discussions to determine if the United States will submit a discussion document or agenda item on this issue.

10. *Identification of corals*: CBD expresses concerns regarding the ongoing challenges with documenting live coral and coral rock trade, including identification challenges. CBD urges the United States to propose continued consideration of this issue, including a potential CITES workshop to develop additional identification resources and reconsideration of Resolution Conf. 12.3 (Rev. CoP19) on *Permits and certificates*. As a major importer of live corals, the United States remains committed to ensuring trade in Appendix-II stony corals is legal and biologically sustainable. The United States supports further examination of issues surrounding trade of live stony corals. We are currently undecided on whether to submit a document on this issue and will consider it further pending outcomes and recommendations from the SC78.

11. *Trade suspension against Mexico and advocacy for the vaquita (Phocoena sinus)*: Animal Welfare Institute (AWI), CBD, Environmental Investigation Agency (EIA), and NRDC request that the United States submit draft decision text for consideration at CoP20 to recommend a trade suspension against Mexico for its ongoing failure to: (1) stop the illegal trade in totoaba (*Totoaba macdonaldi*); (2) implement its Compliance Action Plan on totoaba; or (3) take other measures as directed by the Parties. The United States remains gravely concerned about the status of the vaquita and illegal trade in totoaba. The United States led efforts at the 19th meeting of the Conference of the Parties (CoP19; Panama, November 2022) to strengthen several draft decisions considered during CoP19 to combat the illegal harvest and trade of totoaba. The Standing Committee will discuss this issue at its next meeting. In light of the above, the United States is currently undecided on whether to submit a document on the issue to CoP20. We

will make a decision on submitting a totoaba-related document to CoP20 pending outcomes and recommendations from SC78.

12. *Law Enforcement Management Information System (LEMIS) database*: AWI encourages the United States to submit an information document for consideration at CoP20 that provides an overview of the Service's Law Enforcement Management Information System (LEMIS), to encourage other Parties to consider implementing similar databases. AWI also suggests that the United States consider hosting a side event at CoP20 to discuss LEMIS.

The United States is a longtime active participant in the Standing Committee's intersessional working group on Electronic Systems and Information Technologies. This working group is the main conduit for developing standards and best practices for electronic permit issuance and enforcement and data reporting. Additionally, staff from the U.S. Fish and Wildlife Service, Office of Law Enforcement, engage in technical assistance activities with other Parties interested in developing their own LEMIS-like processes for collecting legal and illegal CITES trade data, as well as data on legal and illegal trade in non-CITES species consistent with stricter domestic measures such as the U.S. Endangered Species Act and Lacey Act. Each Party has a unique set of circumstances regarding regulations and governance, and there is no one-size-fits-all approach to data system development. That said, it is possible for interested Parties to learn from the U.S. experience as well as the experiences of other Parties that are also developing their own data systems. The United States will consider whether a CoP20 information document on LEMIS or side event at CoP20 would be useful for other Parties. In addition, we will explore the possibility of coordinating with other Parties to present a more comprehensive view of the options available for creating systems similar to LEMIS in collecting and reporting data.

13. *Transparency in the Secretariat's activities*: The Species Survival Network (SSN) observes that the Secretariat regularly notes its increasing workload while also routinely proposing new analyses, reports, and other work. To address this issue, SSN believes it is important for Parties to have an opportunity to assess the proposed new work against existing work and financial and personnel needs. SSN encourages the United States to propose mechanisms to ensure greater transparency in the Secretariat's activities, operations, and priorities, including submitting a draft decision

requiring the adoption of terms of reference by the relevant committee prior to hiring consultants. SSN also encourages the United States to submit a draft decision directing the Secretariat to report to each meeting on all outstanding commitments from existing Decisions and all new work it proposes to undertake, along with estimated budget and staff resources required.

The United States acknowledges the importance of transparency and comprehensive decision making to the CITES processes. Although we are currently undecided on submitting a document to CoP20 specifically calling for the proposed changes, we strongly support the need for ensuring transparency in the Secretariat's activities and operations, including in its implementation of CITES Decisions. We believe that this is particularly the case with regard to the development of terms of reference and selection of consultants to carry out the mandates of Decisions, which we believe are crucial for delivering meaningful outputs that respond to the expectations of the CoP. Consequently, although we are currently undecided, we may submit a discussion document to CoP20 on this issue.

14. Disposal of confiscated specimens: SSN provides a list of what it considers unresolved issues with Resolution Conf. 17.8 (Rev. CoP19) on *Disposal of illegally traded and confiscated specimens of CITES-listed species* and its annexes; and requests that the United States consider submitting a working document to CoP20 to address those issues. Specifically, SSN requests that the United States submit amendments to the preambular language in Resolution Conf. 17.8 (Rev. CoP19) along with changes to the Annexes to the Resolution to address the need to prevent confiscated CITES-listed specimens, both living and dead specimens or their parts that have been confiscated and returned to their country of origin, from reentering trade; review the language used in the Resolution that considers the advantages of euthanasia of a confiscated specimen to ensure it is not used as a default option, since it is inconsistent with Article VIII of the Convention; review and revise the language pertaining to the placement of confiscated live animals in research laboratories, as it is inconsistent with Article VIII.4 and .5 of the Convention, since such facilities are not established to "look after the welfare of live animals, particularly those that have been confiscated"; make appropriate revisions to the decision tree analysis; and point to the need for greater

guidance at the point of confiscation, consideration of the disposal by experts, and the development of a program to help with placing animals in the most appropriate facility regardless of its location within or outside the country of import.

With regard to the recommendation to revise Resolution Conf. 17.8 (Rev. CoP19), we are undecided at this time, pending the outcome of discussions under Decision 19.174 on *Disposal of confiscated specimens* at SC78. We continue to believe amendments to question 7 of the decision tree analysis in the Resolution are necessary to ensure there are no grounds for concern that any transfer of Appendix-I species will stimulate further illegal or irregular trade or benefit those involved in the illegal or irregular transaction that gave rise to confiscation. We will carefully consider the outcomes at SC78 prior to determining whether to submit a document for consideration at CoP20.

We are unlikely to review language on the advantages and disadvantages of euthanasia because we believe it is consistent with Article VIII of the Convention. We make determinations about the disposal of confiscated specimens on a case-by-case basis, consistent with the Resolution and U.S. regulations. The most important factor to consider in the disposal of confiscated live specimens is the welfare of the wildlife or plants. For live specimens, generally, the disposal options are maintenance in captivity, return to the wild, or euthanasia. In the absence of other options, euthanasia may be the most humane or appropriate option. Although under Article VIII returning confiscated live specimens to the country of export is one available option, it is often not possible. Return to the wild of confiscated specimens can carry risks for existing wild populations, such as introduction of disease, and can result in the death of the specimens released due to starvation, disease, or predation. Before considering return to the wild, a country must decide if that action would make a significant contribution to the conservation of the species or might be harmful to the conservation of the species in the wild. In many countries, including the United States, some confiscated specimens are donated to sanctuaries, zoos, aquariums, or botanical gardens. This option may not be available when a seizure involves a large number of common species, as placement of specimens of lower conservation value in limited space may benefit those individuals but may not support conservation efforts as a whole. We are undecided on whether additional guidance is needed in the

Resolution for placement of confiscated live specimens in research laboratories and would welcome additional information on this matter.

15. Implementation of Introduction from the sea provisions: SSN strongly encourages the United States to take action to ensure that CITES continues to monitor and, where needed, actively enhance implementation of provisions relating to Introduction from the Sea (IFS). With new marine species included in the Appendices at each meeting of the CoP since the 14th meeting of the Conference of the Parties (CoP14, The Hague, June 2007), applying the practical guidance included in Resolution Conf. 14.6 (Rev. CoP16) on *Introduction from the sea* is becoming increasingly important for the conservation of these species and to ensure effective implementation of the Convention. Ensuring clear and consistent guidance on implementation of IFS in accordance with the provisions of the Convention remains a key issue for the United States, and several current Decisions are intended to address challenges regarding implementation of IFS. We are undecided on submitting a document on this issue. We will closely monitor the outcomes and recommendations from SC78 and determine whether it will be necessary to submit a document to CoP20 on this matter.

16. Implementation of CITES listings for sharks and rays: SSN encourages the United States to consider what actions could be taken at CoP20 to improve implementation of CITES listings for sharks and rays. SSN urges the United States to consider submitting proposals to include deepwater shark species in Appendix II and proposals to transfer species that are critically endangered but for which trade is continuing (e.g., oceanic whitetip (*Carcharhinus longimanus*) shark) to Appendix I, and to be flexible for biologically vulnerable species that fall outside of the range specified in the aquatic footnote when considering any new listing proposals for sharks, rays, and other relevant aquatic species. Please refer to the Recommendations for Species Proposals for the United States To Consider Submitting for CoP20 section of this notice on possible species proposals for information on what the United States is likely, undecided, or unlikely to propose at CoP20.

17. International trade in swim bladders: The United States is concerned about the increasing demand in international trade for swim bladders of teleost fish in the family Sciaenidae. The increased harvest may be putting these species at risk of overexploitation

and is contributing to high rates of bycatch and associated mortality of small marine mammals, sharks and rays, and marine turtles. The United States is considering submitting a document to CoP20 to raise awareness of this issue calling for appropriate actions to help ensure that the international trade in these species does not jeopardize their survival in the wild and put protected species that are incidentally caught in target fisheries at further risk of extinction. However, we require further consultations with Parties, and additional fish trade or biological information/data regarding international trade, before making a decision regarding this submission.

18. *Personal and household effects:* Based on internal discussions and discussions with other range, transit, and consumer countries, the United States may consider proposing or co-sponsoring an amendment to Resolution Conf. 13.7 (Rev. CoP17) on *Control of trade in personal and household effects* to amend the weight, volume, or number of specimens of certain species to be included in the list in paragraph 3. b) iv) for which the Parties have agreed that CITES documents are not required unless the specimens being carried as a personal or household effect exceeds the weight, volume, or number specified. Based on these additional considerations, we may consider submitting an amendment to the weight, volume, or number with regard to agarwood-producing species that are currently included in the Resolution. We solicit information on what may be appropriate quantities if we decide to submit or co-sponsor such a proposal.

C. What resolutions, decisions, and agenda items is the United States not likely to submit for consideration at CoP20, unless we receive significant additional information?

1. *CITES enforcement:* Noting concerns regarding low penalties for violations and other enforcement concerns, an individual recommends that the United States increase funding and support to build the capacity of Parties to implement CITES. We recognize the importance of effective implementation of the provisions of the Convention, including compliance and enforcement. The United States has long been a leader in supporting CITES capacity-building and continues to be actively involved in such support, and we are unlikely to submit a document on this issue to CoP20.

2. *Reservations under the Convention:* A commenter believes that the ability of a Party to take a reservation under CITES weakens the spirit of the

Convention and suggests that the United States seek to amend the Convention text to phase out the ability of Parties to enter reservations or create a requirement that reserving Parties provide data demonstrating that trade in the reserving species is non-detrimental. The Articles of the Convention are not open for amendment at regular meetings of the Conference of the Parties, and therefore the United States will not seek to amend the Convention text at CoP20.

Additionally, as noted in the Convention text, CITES is not subject to general reservations and Parties have the ability to enter specific reservations to amendments to the Appendices in accordance with the provisions of Articles XV, XVI, and XXIII. In Resolution Conf. 4.25 (Rev. CoP19) on *Reservations*, the Parties have agreed to specific guidance on the application of reservations, including a call for Parties that have entered a reservation to maintain and communicate information on trade in the species concerned in their CITES Annual Reports. The United States has never taken a reservation under CITES, and we strongly encourage other Parties to follow our consistent practice in CITES to ensure effective international cooperation in the conservation of species included in the Appendices. Nevertheless, there are avenues to address specific concerns, and therefore we are unlikely to pursue amending the current guidance at CoP20.

Additionally, as noted in the Convention text, CITES is not subject to general reservations and Parties have the ability to enter specific reservations to amendments to the Appendices in accordance with the provisions of Articles XV, XVI, and XXIII. In Resolution Conf. 4.25 (Rev. CoP19) on *Reservations*, the Parties have agreed to specific guidance on the application of reservations, including a call for Parties that have entered a reservation to maintain and communicate information on trade in the species concerned in their CITES Annual Reports. The United States has never taken a reservation under CITES, and we strongly encourage other Parties to follow our consistent practice in CITES to ensure effective international cooperation in the conservation of species included in the Appendices. Nevertheless, there are avenues to address specific concerns, and therefore we are unlikely to pursue amending the current guidance at CoP20.

3. *Streamlining processes under CITES:* The Association of Zoos & Aquariums (AZA) recommends that any resolutions, decisions, or agenda items that the United States submits for

consideration at CoP20 focus on streamlining processes to decrease burdens on Parties and the wait time for permit processing, such as for activities that pose little or no risk to wild populations. The United States has a long history of working in CITES to streamline processes and enhance strategies for effective implementation of the Convention, and we will continue to do so. Additionally, the Parties are engaged in ongoing discussions on facilitating the efficient international movement of wildlife samples for diagnostic purposes and/or conservation purposes and the non-commercial movement of musical instruments for purposes of performance, display, or competition. In light of the above, the United States is unlikely to submit a document on the issue to CoP20.

4. *CITES implementation:* AZA recommends that the United States develop implementation plans for any new CITES listings or increased regulatory controls and share these plans before CoP20 so that the decisions taken at CoP20 include assurances of effective implementation, and that the Service include associated funding requirements in its FY 2026 budget request. The Service, as the U.S. CITES Management and Scientific Authority, will continue to work with the relevant U.S. Government entities and stakeholders, as appropriate, to ensure effective implementation and enforcement of new listings and associated regulatory controls to facilitate legal, traceable, and biologically sustainable trade in CITES-listed species.

5. *Illicit financial flows:* WWF believes that a resolution on illicit financial flows arising from trade in contravention of CITES would complement and reinforce Resolution Conf. 17.6 (Rev. CoP19) on *Prohibiting, preventing, detecting and countering corruption, which facilitates activities conducted in violation of the Convention*. These issues are already considered in the context of existing Resolutions including Resolution Conf. 11.3 (Rev. CoP19) on *Compliance and enforcement* and Resolution Conf. 17.6 (Rev. CoP19). Therefore, we are unlikely to propose a new resolution on this issue to CoP20; however, we will continue to look for opportunities to ensure effective implementation of these Resolutions.

6. *Traceability:* WWF recommends that the United States introduce an agenda topic on the adoption of a resolution on traceability. WWF thinks that the current definition and guidance as adopted by CITES is not sufficient and more species need traceability

systems. WWF believes that there is a need for a stronger emphasis on the use of traceability for products from CITES-listed species that would best be served through the adoption of a resolution on traceability. WWF cites studies that have looked at the use of traceability for CITES-listed species and increasingly specific taxonomic groups included in the Appendices, such as sharks and rays, which have been identified through the Standing and Animals Committees' processes as potential candidates that could benefit from use of traceability.

The United States appreciates WWF's recommendation to introduce a draft resolution on traceability. At the 17th meeting of the Conference of the Parties (CoP17; Johannesburg, September/October 2016), the Parties adopted a working definition for traceability and guidance on its application, which is available to Parties on the CITES website with links to the associated documents. The 70th meeting of the Standing Committee (SC70; Sochi, October 2018) and the 18th meeting of the Conference of the Parties (CoP18; Geneva, August 2019) considered whether a resolution on traceability should be drafted and decided it was not warranted at that time. We continue to support those conclusions and are not convinced that a resolution is needed at this time. Therefore, we are unlikely to submit one to CoP20 unless additional information becomes available that warrants reassessing this issue.

7. Immortal cell lines, genome libraries, and trace DNA samples: Citing the importance of immortal cell lines, genome libraries, and trace DNA for conservation genetics and wildlife forensics, and the length of time and cost associated with obtaining CITES documents, two individuals recommend that the United States submit a proposal to CoP20 to amend Resolution Conf. 9.6 (Rev. CoP19) on *Trade in readily recognizable parts and derivatives*, to exclude them from CITES requirements.

With regard to immortal cell lines and genome libraries, the individuals contend that they do not have "any template of the organism from which they are derived . . . and are considered as synthetic DNA, eligible for exclusion under CITES." With regard to trace DNA, the individuals argue that amounts of 50 micrograms or less have no anticipated financial value and, therefore, should be excluded from CITES requirements.

We note that the Parties in Resolution Conf. 9.6 (Rev. CoP19) have agreed that "the term 'readily recognizable part or derivative,' as used in the Convention, is interpreted to include any specimen

that appears from an accompanying document, the packaging or a mark or label, or from any other circumstances, to be a part or derivative of an animal or plant of a species included in the Appendices." As defined by the commenters, immortal cells, genome libraries, and trace DNA all meet the current CITES definition of a readily recognizable part or derivative.

We note that the potential financial value of specimens of CITES-listed species is not the determining factor for regulating international trade in the species. Also, recognizing that the trade in many biological samples, because of their special nature or because of the special purpose of such trade, requires expedited processing of permits and certificates to allow for the timely movement of shipments, the Parties have adopted simplified procedures to issue permits and certificates for such samples, subject to certain requirements (see Resolution Conf. 12.3 (Rev. CoP19) on *Permits and certificates*). Additionally, the Parties are engaged in ongoing discussions to examine the development of additional mechanisms to facilitate the efficient international movement of wildlife samples for diagnostic and/or conservation purposes. In light of the above, the United States is unlikely to submit a proposed amendment to Resolution Conf. 9.6 (Rev. CoP19) to CoP20.

8. Elephant taxonomy: IFAW recommends that the United States consider the taxonomy of the African elephant and that any change to the current listing for the African elephant in the Appendices should list them as *Loxodonta* spp. and that such a change would not alter the scope of the current species listing. As IFAW notes, this issue is the subject of current intersessional discussions by the Animals Committee and the Standing Committee. At AC33, the Animals Committee accepted the new taxonomy for African elephants and referred use of *Loxodonta* spp. for consideration at SC78. We support the conclusions of the Animals Committee and will develop positions consistent with that approach for SC78 and CoP20, and therefore, we are unlikely to submit a document to CoP20 on this issue.

9. Recognizing the role of rangers in CITES implementation: IFAW recommends that the United States submit a standalone resolution, or amendments to Resolution Conf. 10.4 (Rev. CoP14) on *Cooperation and synergy with the Convention on Biological Diversity* or Resolution Conf. 11.3 (Rev. CoP19) on *Compliance and enforcement* to recognize the

fundamental importance of rangers to CITES implementation.

The United States recognizes the importance of enforcement officers, including rangers, in the effective implementation and enforcement of CITES. However, we are unlikely to submit a document on this subject to CoP20. We will continue to seek opportunities to support the recognition, protection, and support of rangers and other enforcement officers.

10. Annotations for CITES-listed tree species: The League of American Orchestras (LAO) reiterates its longstanding concerns that the imposition of CITES requirements on the transboundary movement of musical instruments (for performance and resale) has hindered trade and cultural activity with little associated conservation value. As the discussions proceed, particularly in the Standing Committee, LAO emphasizes the need for the CITES controls to apply where they have the greatest conservation value. The United States has been involved in, and led, the annotations-related discussions in CITES and will continue to be actively involved in such discussions, including in stressing the need to apply the guidance adopted by the Parties in Resolution Conf. 11.21 (Rev. CoP19) on *Use of annotations in Appendices I and II*, including that the conservation impact of excluding certain specimens from CITES provisions and the enforceability of the annotation should be considered, that controls should concentrate on those commodities that first appear in international trade as exports from range States, and that controls should include those commodities that dominate the trade from the wild. Given the ongoing discussions, we do not see a need to submit a discussion document on this matter to CoP20.

11. Travel with instruments containing CITES-listed species: LAO, on behalf of multiple musical instrument stakeholders, requests that Parties consider recommendations for efficiencies for transportation and commerce of musical instruments containing CITES-listed species from the Standing Committee's working group on rapid movement of wildlife diagnostic samples and of musical instruments. They also request that Parties undertake consideration of permit exemptions for musical instruments transported by cargo under an ATA carnet. The United States is a member of the working group on rapid movement of wildlife diagnostic samples and of musical instruments and is actively engaged in discussions to consider additional efficiencies, in

accordance with the requirements of the Convention, for non-commercial movement of musical instruments containing CITES-listed species. We are unlikely to submit a recommendation for permit exemptions for musical instruments as we cannot propose or support the adoption of a new exemption from CITES requirements that does not exist under the Convention. We will continue to work with the Parties, musicians, and other stakeholders in an effort to ensure that Parties utilize the existing efficiencies.

12. *Engagement of Indigenous Peoples as well as local communities*: Jamma International, on behalf of the Community Leaders Network and Resource Africa, expresses its support for a proposal to establish a technical advisory body to continue the work of the Standing Committee's intersessional working groups on livelihoods and engagement of Indigenous Peoples. They wish for a technical advisory body to discuss opportunities, including formation of an informal Indigenous Peoples as well as local communities caucus; funding sources to cover range country costs of national-level consultation with Indigenous Peoples as well as local communities; improved registration processes or recognition of a separate Indigenous Peoples as well as local communities observer category for CITES meetings; and other international level engagement mechanisms. They urge the United States to support continuation of the working group at SC78 and through CoP20.

The United States is a member of the intersessional working group and will continue to actively engage in its work. We acknowledge that achieving the conservation aim of CITES can result in important positive benefits to Indigenous Peoples as well as local communities, while on the other hand illegal trade and unsustainable use that CITES is designed to prevent can have serious negative consequences for Indigenous Peoples as well as local communities. The United States believes that effective engagement of Indigenous Peoples as well as local communities in CITES decision making is critical to the successful implementation of CITES decisions. However, we believe that Parties should engage Indigenous Peoples as well as local communities in their national processes via the consultative processes already provided in existing CITES Resolutions, with the addition of supportive, non-binding guidance that is being developed through current CITES Decisions. We maintain that it is up to Parties as to whether and how their national Indigenous Peoples as

well as local communities would be included in international meetings, including as delegation members of those Parties, consistent with Resolution Conf. 16.6 (Rev. CoP18) on *CITES and livelihoods*.

Considering the workload and financial impact to Parties and the Secretariat, we do not support the establishment of another permanent committee. We will continue to engage in discussions in the working group but do not support a separate Indigenous Peoples as well as local communities registration category within the CITES process, as it is not in line with text of the Convention and would put additional burdens on the Secretariat. We are open to other ideas to engage Indigenous Peoples as well as local communities in CITES, and we have expressed that perspective in the intersessional working group.

13. *Emergency listing mechanism*: CBD recommends that the United States submit a working document proposing amendments to the CoP Rules of Procedure or a draft resolution to consider proposals to amend Appendix I or Appendix II on an emergency basis outside of meetings of the CoP. Article XV of the Convention provides for a postal procedure to consider proposed amendments to Appendix I or II between meetings of the CoP. In accordance with Article XVI, any Party may at any time include in Appendix III a species that it identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the cooperation of other Parties in the control of trade (see also Resolution Conf. 9.25 (Rev. CoP18) on Implementation of the Convention for species in Appendix III). Considering the mechanisms in the Convention, the United States is unlikely to submit to CoP20 proposed amendments to the CoP Rules of Procedure or a draft resolution on this issue.

14. *Marine ornamental fishes*: Given the high volume of specimens and species in international trade and the risk that trade presents to some species, CBD recommends that the United States propose a draft decision to continue the discussions on trade in marine ornamental fishes during the next intersessional period. The United States has long played a leadership role in considering international trade in marine ornamental fishes and continues to be actively involved in the discussions. We support the recommendations of the workshop on marine ornamental fishes that took place in May 2024, as well as the outcomes from AC33. We note that the

Animals Committee agreed to propose draft decisions to CoP20 to continue the work during the next intersessional period, including encouraging Parties to develop methods or analytical tools to support prioritization of marine ornamental fishes that may warrant further research or other considerations. Given this information, the United States is unlikely to submit a document on this issue to CoP20.

15. *Sea cucumbers*: CBD recommends that the United States propose a draft decision on sea cucumber trade that would call for convening a second global workshop to consider the status, conservation, and management of sea cucumbers globally. We are unlikely to submit a draft decision calling for additional work, subject to external funding, for which we do not currently envision having funding to support. Therefore, we are unlikely to submit a draft decision on this issue.

Nevertheless, consistent with our efforts to ensure that international trade in sea cucumbers is legal and biologically sustainable, we are considering several species of sea cucumbers found in the Caribbean to assess their conservation status and determine whether international trade could pose a threat to their survival in the wild and therefore warrant potential inclusion in the Appendices.

16. *Compliance matters*: CBD recommends that the United States seek to improve CITES compliance mechanisms by making clear that Technical Advisory Groups (TAGs) can and should be used in the process to provide technical knowledge and ensure transparency and accountability. The United States notes that the CITES compliance procedures outlined in Resolution Conf. 14.3 (Rev. CoP19) on *CITES compliance procedures* already provide an avenue for undertaking necessary consultations, including with outside experts as appropriate, and accountability and transparency are key parts of the existing processes. Therefore, the United States is unlikely to take action related to this recommendation.

17. *Global trade in swim bladders*: AWI encourages the United States to submit a draft resolution on the global trade in swim bladders of croaker species (*Sciaenidae* spp.) for consideration at CoP20. The United States is unlikely to submit a draft resolution on the global trade in croaker swim bladders to CoP20, as most croaker species are not included in the Appendices. It would be more appropriate and effective for species conservation, where the CITES listing criteria are met, to propose species of

concern for inclusion in the Appendices to ensure international trade is legal, traceable, and biologically sustainable. As noted in the previous section, based on internal discussions, the United States is considering submitting a document to CoP20 to raise awareness regarding the international trade in swim bladders and calling for appropriate actions to help ensure that the international trade in the species does not jeopardize their survival in the wild and put protected species that are incidentally caught in target fisheries at further risk of extinction.

18. *Confiscations and welfare:* With reference to Resolution Conf. 17.8 (Rev. CoP19) on Disposal of confiscated specimens of CITES-listed species, AWI encourages the United States to: (1) consider submitting a working document to CoP20 directing the Secretariat, subject to the availability of external funding, to prepare a report examining how animal welfare issues are currently addressed under the Convention and its implementation, and to identify how CITES could integrate additional welfare considerations into its implementation; (2) submit revisions to Resolution Conf. 17.8 (Rev. CoP19) to ensure that the Resolution text is consistent with the intent of the Convention, and to incorporate an animal welfare ethic into the treatment of any seized/confiscated specimens; and (3) join other Parties in opposing ex-situ trade in live, wild-caught African and Asian elephants with limited exceptions.

With regard to the recommendation to update Resolution Conf. 17.8 (Rev. CoP19), we are unlikely to recommend them at this time but will make a final decision based on additional discussions and pending the outcome of discussions at SC78. Consistent with the guidance in Resolution Conf. 17.8 (Rev. CoP19), the most important factor we consider in the disposal of confiscated living specimens is the welfare of the wildlife or plants, and we make such determinations on a case-by-case basis, consistent with the Resolution and our regulations. Additional work on transport of live specimens is already taking place under several Decisions, including to ensure that Parties have the resources and guidance necessary to implement and enforce the Convention's requirements (Articles III, IV, V, and VII) that "any living specimens are so prepared and shipped" and "transported and cared for as to minimize the risk of injury, damage to health or cruel treatment" and further requirements (Article VIII) that "all living specimens, during any period of transit, holding or shipment,

are properly cared for so as to minimize the risk of injury, damage to health or cruel treatment." Therefore, we are unlikely to submit a document directed at the suggested revisions. We are also unlikely to submit a document on trade in live elephants, as current Decisions and ongoing discussions are already considering these issues.

19. *Compliance measures:* AWI encourages the United States to make clear that the compliance procedures set out in Article XIII are not only triggered when the provisions of the Convention are violated but also when a species included in Appendix I or II is being affected adversely by trade. AWI argues that such overly limited interpretations will substantively weaken the impact of CITES. AWI also encourages the United States to advocate for compliance processes to be applied equally to transit and consumer countries, in addition to range countries. We agree regarding the importance of ensuring compliance with CITES requirements and believe that sufficient mechanisms already exist to consider and take appropriate actions when trade is determined to be adversely affecting species included in Appendix I or II and when transit and consumer States fail to comply with the provisions of the Convention. Therefore, we are unlikely to submit a discussion document or agenda item to CoP20 on these issues.

20. *Potential submissions and implementation costs:* Safari Club International (SCI) encourages the United States to submit no new resolutions, decisions, agenda items, or species proposals for consideration at CoP20 without careful consideration for costs and how effective each proposal would be at achieving the desired outcomes. We remain cognizant of workload and resource issues and strive to use existing measures, where applicable. The United States will carefully consider each resolution, decision, or agenda item, including whether they could be effectively implemented. Additionally, the United States works closely with States, Native American Tribes, and other national stakeholders, to ensure that species are appropriately included in the Appendices. We also consult range countries for foreign species, and for species whose range the United States shares with one or more other countries.

The United States also remains concerned regarding the funding and prioritization of core CITES work and will continue to work through the Standing Committee's Finance and Budget Subcommittee and the CoP to address these issues. Currently, we do

not intend to submit draft decisions on this matter to CoP20.

21. *Funding for CITES implementation and enforcement:* Noting the proliferation of new work streams under CITES while longstanding and operational work remains incomplete, SSN encourages the United States to ensure that programmatic work subject to external funding is prioritized in line with the core mandate of CITES rather than to reflect national or organizational interests. SSN also suggests that the United States consider proposing a process to ensure that the status of current priorities is evaluated and regularly shared, especially prior to a meeting of the Conference of the Parties, to enable Parties to assess the relative financial costs of the adoption of new work streams and/or the continuation of others. The United States remains concerned regarding the funding and prioritization of core CITES work and will determine, based on further internal discussions, additional opportunities to influence such discussions.

22. *Funding for meetings of the CoP:* Noting the importance of ensuring that meetings of the CoP are held in different regions and the financial constraints with being able to do that, SSN urges the United States to submit a draft decision to CoP20 directing the Secretariat and the Standing Committee's Finance and Budget Subcommittee to explore funding mechanisms with the aim of guaranteeing that future CoPs will not have to be postponed or withdrawn for financial reasons. The United States shares SSN's concerns and is actively engaged in discussions with the Secretariat and in the work of the Subcommittee to consider funding for CoPs and other key CITES activities. Because these considerations are already included in the ongoing discussions, the United States is unlikely to submit the suggested draft decisions.

23. *Leopards:* SSN requests the United States to consider further review of, or amendments to, Resolution Conf. 10.14 (Rev. CoP19) on *Quotas for leopard hunting trophies and skins for personal use*, aimed at strengthening the scientific oversight of annual leopard quotas and reducing overexploitation of the species. Panthera also recommends review of Resolution Conf. 10.14 (Rev. CoP19) and suggested that amendments may be needed to ensure that exports and imports of specimens will not be detrimental to the survival of the species, in particular amendments requiring the Animals Committee to

review the approach of leopard trophy hunting quotas established by the CoP and non-detriment finding reports, as well as reducing the mandated interval for review of quotas as called for in Resolution Conf. 9.21 (Rev. CoP18) on *Interpretation and application of quotas for species included in Appendix I*.

Each of the current quotas for leopards from range countries were reviewed by the Animals Committee at its 30th or 31st meeting (AC30: Geneva 2018; AC31: online 2021). Decisions were taken and each of the export quotas were approved at either CoP18 (Geneva 2019) or CoP19 (Panama 2022). At AC33, the Animals Committee agreed to propose draft decisions for consideration at CoP20 that concern consolidating and sharing information related to the management and monitoring of leopard and hunting quotas that assist Parties in making non-detriment findings for trade in leopard hunting trophies in accordance with Resolution Conf. 10.14 (Rev. CoP19). Therefore, we are unlikely to propose amendments to Resolution Conf. 10.14 (Rev. CoP19) to CoP20.

24. *Trade and conservation in Old World porcupines*: SSN recommends that the United States submit a working document on the trade and conservation of Old World porcupines (Hystricidae) with accompanying draft decisions instructing the Secretariat to commission a study on the scale and scope of the trade in the species, current knowledge on status of the species, management by range countries, status of captive-sourced production, and also including recommendations regarding the conservation and management of the species, including through possible actions under CITES. In light of existing workloads and priorities, the United States is unlikely to submit a document on this issue. However, we will carefully consider any proposals or discussion documents submitted to CoP20 on trade in these species, and we will develop our position based on available information, internal discussions, and public input.

25. *International trade in frogs for consumption*: SSN urges the United States to submit a working document to CoP20 calling for a study on the international trade in frogs, including frogs' legs, for human consumption, in order to identify actions that CITES might take to ensure that this trade is not detrimental to the survival of wild populations of frogs. During the current intersessional period, the Secretariat, the Parties, and the Animals Committee have undertaken work in accordance with Decisions 19.197 to 19.199 on *Conservation of amphibians (Amphibia*

spp.). In response to the work undertaken to date on this issue, including in consideration of the outcomes from the CITES Online workshops on conservation of amphibians (*Amphibia* spp.) (November/December 2023), the Animals Committee at AC33 agreed to submit draft decisions to CoP20 to undertake additional work on the conservation of and trade in amphibians during the next intersessional period. Therefore, the United States is unlikely to submit a document to CoP20 on this issue.

Request for Information and Comments

We invite information and comments concerning any of the possible CoP20 species proposals, resolutions, decisions, and agenda items discussed above. Please note that we are unlikely to submit any suggested species proposals to amend the Appendices that contained no information (or minimal information) for consideration other than species name and Appendix suggestion. We have limited resources with which to analyze and prepare potential species proposals for consideration by the Conference of the Parties to CITES and are unable to prioritize consideration of these recommendations for preparation of U.S. proposals to CoP20 where no information (or minimal information) has been presented demonstrating the CITES criteria are met for the suggested species proposal. We may still consider these possible proposals if we receive information demonstrating the CITES criteria in Resolution Conf. 9.24 are met.

We note that in our request for information in our first **Federal Register** notice for CoP20 (89 FR 20489; March 22, 2024), we encouraged the submission of information on possible species proposals, including if these species are subject to international trade that is, or may become, detrimental to the survival of the species. We outlined the information that should be submitted, and we included information on the CITES criteria for inclusion of species in Appendices I and II and the format for proposals to amend the Appendices (in Resolution Conf. 9.24 (Rev. CoP17) <https://cites.org/sites/default/files/document/E-Res-09-24-R17.pdf>). We also asked that commenters submit convincing information describing: (1) The status of the species, especially trend information; (2) conservation and management programs for the species, including the effectiveness of enforcement efforts; and (3) the level of international trade as well as domestic

trade in the species, especially trend information.

Public Availability of Comments

You must submit your information and comments to us no later than the date specified in DATES, above, to ensure that we consider them. We will not consider comments sent by email or fax, or to an address not listed in

ADDRESSES.

Comments and materials received will be posted for public inspection on <https://www.regulations.gov> (see **ADDRESSES**). Our practice is to post all comments, including names and addresses of respondents, and to make comments, including names and home addresses of respondents, available for public review. There may be circumstances in which we would withhold from public review a respondent's name and/or address, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment, but we cannot guarantee that we will be able to do so. We will make all comments and materials submitted by organizations or businesses, and by individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Observers

Article XI, paragraph 7, of CITES states that "any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless at least one-third of the Parties present object:

(a) international agencies or bodies, either governmental or non-governmental, and national governmental agencies and bodies; and

(b) national non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located. Once admitted, these observers shall have the right to participate but not to vote."

Persons wishing to be observers representing international nongovernmental organizations (which must have offices in more than one country) at CoP20 may request approval directly from the Secretariat. Persons wishing to be observers representing U.S. national nongovernmental organizations at CoP20 must receive prior approval from the U.S. Division of Management Authority (**ADDRESSES**).

Once we grant our approval, a U.S. national nongovernmental organization is eligible to register with the Secretariat and must do so at least 6 weeks prior to the opening of CoP20 to participate in the meeting as an observer. Individuals who are not affiliated with an organization may not register as observers. An international nongovernmental organization with at least one office in the United States may register as a U.S. nongovernmental organization if it prefers.

An organization seeking approval from our office to attend CoP20 as an observer must include in their request evidence of their technical qualifications in protection, conservation, or management of wild fauna or flora, for both the organization and the individual representative(s). The request must also include copies of the organization's charter and any bylaws, and a list of representatives it intends to send to CoP20.

Organizations seeking approval for the first time should detail their experience in the protection, conservation, or management of wild fauna or flora, as well as their purposes for wishing to participate in CoP20 as an observer. An organization that we have approved within the past 5 years as an observer to a meeting of the Conference of the Parties does not need to provide as much detailed information concerning its qualifications as an organization seeking approval for the first time. Requests should be sent to the Division of Management Authority at the address provided in **ADDRESSES**, above; via email to managementauthority@fws.gov; or via fax to 703-358-2276.

Once we approve an organization as an observer, we will direct them to the location on the CITES website where they can obtain instructions for registering with the Secretariat and obtain logistical information about the meeting. A list of organizations approved for observer status at CoP20 will be available upon request from the Division of Management Authority immediately prior to the start of CoP20.

Future Actions

The Secretariat will prepare a provisional agenda for CoP20 following the submission of documents for the meeting. We will publish the CoP20 provisional agenda in the **Federal Register** and on our website at <https://www.fws.gov/international-affairs/cites/cop20>.

The United States must submit any proposals to amend Appendix I or II and any draft resolutions, decisions, or agenda items for discussion at CoP20 to

the Secretariat at least 150 days (*i.e.*, by June 27, 2025) prior to the start of the meeting. In order to meet this deadline and to prepare for CoP20, we have developed a tentative U.S. schedule. We will consider all available information and comments we receive during the comment period for this **Federal Register** notice as we decide which species proposal items warrant submission by the United States for consideration by the Parties.

Approximately 4 months prior to CoP20, we will post on our website an announcement of the species proposals, draft resolutions, draft decisions, and agenda items submitted by the United States to the Secretariat for consideration at CoP20.

Through additional notices and website postings in advance of CoP20, we will inform you about preliminary negotiating positions on resolutions, decisions, and proposals to amend the Appendices proposed by other Parties for consideration at CoP20. We will also publish an announcement of a public meeting to be held approximately 2 to 3 months prior to CoP20, to receive public input on our positions regarding CoP20 issues. The procedures for developing U.S. documents and negotiating positions for a meeting of the Conference of the Parties to CITES are outlined in 50 CFR 23.87. As noted in paragraph (c) of that section, we may modify or suspend the procedures outlined there if they would interfere with the timely or appropriate development of documents for submission to the CoP and of U.S. negotiating positions.

Authors

The primary authors of this notice are Thomas E.J. Leuteritz, Ph.D., Branch Chief, Division of Scientific Authority, and Anne St. John, Biologist, Division of Management Authority, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Martha Williams,

Director, U.S. Fish and Wildlife Service.

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DEPARTMENT OF THE INTERIOR

Geological Survey

[GX25AC0000EXP00]

Public Meetings of the Advisory Committee for Science Quality and Integrity

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA) of 1972, the U.S. Geological Survey (USGS) is publishing this notice to announce that a meeting of the Advisory Committee on Scientific Quality and Integrity will take place and is open to members of the public.

DATES: The following meetings will be held as a webinar:

- January: Monday, January 13, 2025, from 12 p.m.–4 p.m. Eastern Time; Tuesday, January 14, 2025, from 12 p.m.–4 p.m. Eastern Time
- October: Tuesday, October 7, 2025, from 12 p.m.–4 p.m. Eastern Time; Wednesday, October 8, 2025, from 12 p.m.–4 p.m. Eastern Time, Thursday, October 9, 2025, from 12 p.m.–4 p.m. Eastern Time

The following meeting will be held in person:

- June: Tuesday, June 17, 2025, from 9 a.m.–4 p.m. Eastern Time; Wednesday, June 18, 2025, from 9 a.m.–4 p.m. Eastern Time

ADDRESSES: The January 13–14, 2025, and October 7–9, 2025, meetings will be held online and via teleconference. The June 17–18, 2025, meetings will be held at the USGS National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192. The meetings are open to the public. Members of the public may attend any of the meetings, whether in person or virtually. Registration instructions for both the online and in-person meetings will be posted at <https://www.usgs.gov/office-of-science-quality-and-integrity/federal-advisory-committee-science-quality-and-integrity>.

FOR FURTHER INFORMATION CONTACT: Dr. Maggie Hardy, Designated Federal Officer, by email at mhardy@usgs.gov or by telephone at 928-556-7235. Comments may be sent by email to: GS-FACSQSI@usgs.gov.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the FACA of 1972 (5 U.S.C. Ch. 10), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR part 102-3.

Purpose of the Meeting: The Advisory Committee advises the Department of

the Interior through the Director of the USGS on matters relating to the responsibilities of the Office of Science Quality and Integrity (OSQI) including monitoring and enhancing the integrity, quality, and health of all USGS science through executive oversight and development of strong practices, policy, and supporting programs. Functional areas in the OSQI include Scientific Integrity; Science Quality; Fundamental Science Practices; Office of Tribal Relations; Youth and Education in Science (YES); Science, Technology, Engineering, and Mathematics (STEM); Laboratories; Postdoctoral Research; and Research and Equipment Development Grade Evaluations of USGS scientists. Additional information about the Advisory Committee is available at: Federal Advisory Committee for Science Quality and Integrity, U.S. Geological Survey.

Agenda Topics:

- Charter Focus Areas
 - Identification of key science quality and integrity processes to advance the USGS mission.
 - Effective mechanisms for engaging the next generation USGS workforce and others through the YES program and with other federal agencies in STEM and underserved communities.
 - The nature and effectiveness of mechanisms to provide oversight of science quality within USGS laboratories.
 - Mechanisms that may be employed by the USGS to ensure high standards of science quality and integrity in its programs and products.

- *Subcommittee:* Recommendation to form a Subcommittee on Laboratory Quality.

- Public Comment

Meeting Accessibility/Special

Accommodations: Please make requests in advance for sign language interpreter services, assistive listening devices, language translation services, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least ten (10) business days prior to the meeting to give the USGS sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis. Seating for in person attendees may be limited due to room capacity. Webinar/conference line instructions will be provided to registered attendees prior to the meeting.

Public Disclosure of Comments: There will be an opportunity for public comment during each day of the meeting. Depending on the number of

people who wish to speak and the time available, the time for individual comments may be limited. Written comments may also be sent to the Advisory Committee for consideration. To allow for full consideration of information by Advisory Committee members, written comments must be provided to Maggie Hardy (see **FOR FURTHER INFORMATION CONTACT** section) at least three (3) business days prior to the meeting. Any written comments received will be provided to Advisory Committee members before the meeting.

Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you may ask us in your comment to withhold your PII from public review, we cannot guarantee we will be able to do so.

Authority: 5 U.S.C. Ch. 10.

Margaret Hardy,

Designated Federal Officer, Advisory Committee for Science Quality and Integrity.

[FR Doc. 2024–30746 Filed 12–23–24; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[256A2100DD/AAKC001030/
A0A501010.999900]

Indian Gaming; Approval by operation of Law Tribal-State Class III Gaming Compacts in the State of California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces the approval by operation of law of Tribal-State gaming compacts (Compacts) governing the operation and regulation of class III gaming activities between the State of California and the Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Table Mountain Rancheria, Timbisha Shoshone Tribe; Tule River Indian Tribe of the Tule River Reservation, California.

DATES: The Compacts takes effect on December 26, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington,

DC 20240, *IndianGaming@bia.gov*; (202) 219–4066.

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act of 1988, 25 U.S.C. 2701 *et seq.*, (IGRA) provides the Secretary of the Interior (Secretary) with 45 days to review and approve or disapprove any Tribal-State compact governing the conduct of class III gaming activity on the Tribe's Indian lands. See 25 U.S.C. 2710(d)(8). If the Secretary does not approve or disapprove a Tribal-State compact within the 45 days, IGRA provides the Tribal-State compact is considered to have been approved by the Secretary, but only to the extent the compact is consistent with IGRA. See 25 U.S.C. 2710(d)(8)(D). The IGRA also requires the Secretary to publish a notice in the **Federal Register** of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. See 25 U.S.C. 2710(d)(8)(D). The Department's regulations at 25 CFR 293.4 require all compacts and amendments to be reviewed and approved by the Secretary prior to taking effect.

The Secretary took no action on the Compacts between the State of California and the Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; the Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California, the La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; the Table Mountain Rancheria; the Timbisha Shoshone Tribe; and the Tule River Indian Tribe of the Tule River Reservation, California, within the 45-day statutory review period. Therefore, the Compacts are considered to have been approved, but only to the extent they are consistent with IGRA. See 25 U.S.C. 2710(d)(8)(C).

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2024–30744 Filed 12–23–24; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[256A2100DD/AAKC001030/
A0A501010.999900]

Rate Adjustments for Indian Irrigation Projects

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) owns or has an interest in irrigation projects located on or associated with various Indian reservations throughout the United States. We are required to establish irrigation assessment rates to recover the costs to administer, operate, maintain, and rehabilitate these projects. We request your comments on the proposed rate adjustments.

DATES: Interested parties may submit comments on the proposed rate adjustments on or before February 24, 2025.

ADDRESSES: All comments on the proposed rate adjustments must be in writing. You may send comments via email to comments@bia.gov. Please reference “Rate Adjustments for Indian Irrigation Projects” in the subject line. Or you may submit comments to the Program Specialist, Division of Water and Power, Office of Trust Services, 2021 4th Avenue North, Billings, Montana 59101.

FOR FURTHER INFORMATION CONTACT: Leslie Underwood, Program Specialist, Division of Water and Power, Office of Trust Services, (406) 657–5985. For details about a particular irrigation project, please use the table in the **SUPPLEMENTARY INFORMATION** section to contact the BIA regional or local office where the project is located.

SUPPLEMENTARY INFORMATION: The first table in this notice provides contact information for individuals who can give further information about the irrigation projects covered by this notice. The second table provides the proposed rates for calendar year (CY) 2026 for all irrigation projects.

What is the meaning of the key terms used in this notice?

In this notice:

Administrative costs mean all costs we incur to administer our irrigation projects at the local project level and are a cost factor included in calculating your operation and maintenance assessment. Costs incurred at the local project level do not normally include agency, region, or central office costs unless we state otherwise in writing.

Assessable acre means lands designated by us to be served by one of our irrigation projects, for which we collect assessments in order to recover costs for the provision of irrigation service. (See also “total assessable acres.”)

BIA means the Bureau of Indian Affairs.

Bill means our statement to you of the assessment charges and/or fees you owe the United States for administration,

operation, maintenance, and/or rehabilitation. The date we mail or hand-deliver your bill will be stated on it.

Costs means the costs we incur for administration, operation, maintenance, and rehabilitation to provide direct support or benefit to an irrigation facility. (See administrative costs, operation costs, maintenance costs, and rehabilitation costs).

Customer means any person or entity to whom or to which we provide irrigation service.

Due date is the date on which your bill is due and payable. This date will be stated on your bill.

I, me, my, you and *your* mean all persons or entities that are affected by this notice.

Irrigation project means a facility or portion thereof for the delivery, diversion, and storage of irrigation water that we own or have an interest in, including all appurtenant works. The term “irrigation project” is used interchangeably with irrigation facility, irrigation system, and irrigation area.

Irrigation service means the full range of services we provide customers of our irrigation projects. This includes our activities to administer, operate, maintain, and rehabilitate our projects in order to deliver water.

Maintenance costs means costs we incur to maintain and repair our irrigation projects and associated equipment and is a cost factor included in calculating your operation and maintenance assessment.

Operation and maintenance (O&M) assessment means the periodic charge you must pay us to reimburse costs of administering, operating, maintaining, and rehabilitating irrigation projects consistent with this notice and our supporting policies, manuals, and handbooks.

Operation or operating costs means costs we incur to operate our irrigation projects and equipment and is a cost factor included in calculating your O&M assessment.

Past due bill means a bill that has not been paid by the close of business on the 30th day after the due date as stated on the bill. Beginning on the 31st day after the due date, we begin assessing additional charges accruing from the due date.

Rehabilitation costs means costs we incur to restore our irrigation projects or features to original operating condition or to the nearest state which can be achieved using current technology and is a cost factor included in calculating your O&M assessment.

Responsible party means an individual or entity that owns or leases

land within the assessable acreage of one of our irrigation projects and is responsible for providing accurate information to our billing office and paying a bill for an annual irrigation rate assessment.

Total assessable acres mean the total acres served by one of our irrigation projects.

Water delivery is an activity that is part of the irrigation service we provide our customers when water is available.

We, us, and our mean the United States Government, the Secretary of the Interior, the BIA, and all who are authorized to represent us in matters covered under this notice.

Does this notice affect me?

This notice affects you if you own or lease land within the assessable acreage of one of our irrigation projects or if you have a carriage agreement with one of our irrigation projects.

Where can I get information on the regulatory and legal citations in this notice?

You can contact the appropriate office(s) for the irrigation project that serves you. Please use the table in the **SUPPLEMENTARY INFORMATION** section to contact the regional or local office where the project is located.

Why are you publishing this notice?

We are publishing this notice to inform you that we propose to adjust our irrigation assessment rates. This notice is published in accordance with the BIA’s regulations governing its operation and maintenance of irrigation projects, found at 25 CFR part 171. This regulation provides for the establishment and publication of the proposed rates for annual irrigation assessments as well as related information about our irrigation projects.

What authorizes you to issue this notice?

Our authority to issue this notice is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583; 25 U.S.C. 385). The Secretary has in turn delegated this authority to the Assistant Secretary—Indian Affairs under part 209, Chapter 8.1A, of the Department of the Interior’s Departmental Manual.

When will you put the rate adjustments into effect?

We will put the rate adjustments into effect for CY 2026.

How do you calculate irrigation rates?

We calculate annual irrigation assessment rates in accordance with 25

CFR 171.500 by estimating the annual costs of operation and maintenance at each of our irrigation projects and then dividing by the total assessable acres for that particular irrigation project. The result of this calculation for each project is stated in the rate table in this notice.

What kinds of expenses do you consider in determining the estimated annual costs of operation and maintenance?

Consistent with 25 CFR 171.500, these expenses include the following:

(a) Personnel salary and benefits for the project engineer/manager and project employees under the project engineer/manager's management or control;

(b) Materials and supplies;

(c) Vehicle and equipment repairs;

(d) Equipment costs, including lease fees;

(e) Depreciation;

(f) Acquisition costs;

(g) Maintenance of a reserve fund available for contingencies or emergency costs needed for the reliable operation of the irrigation facility infrastructure;

(h) Maintenance of a vehicle and heavy equipment replacement fund;

(i) Systematic rehabilitation and replacement of project facilities;

(j) Contingencies for unknown costs and omitted budget items; and

(k) Other expenses we determine necessary to properly perform the activities and functions characteristic of an irrigation project.

When should I pay my irrigation assessment?

We will mail or hand deliver your bill notifying you (a) the amount you owe to the United States; and (b) when such amount is due. If we mail your bill, we will consider it as being delivered no later than five (5) business days after the day we mail it. You should pay your bill by the due date stated on the bill.

What information must I provide for billing purposes?

All responsible parties are required to provide the following information to the

billing office associated with the irrigation project where you own or lease land within the project's assessable acreage or to the billing office associated with the irrigation project with which you have a carriage agreement:

(1) The full legal name of the person or entity responsible for paying the bill;

(2) An adequate and correct address for mailing or hand delivering our bill; and

(3) The taxpayer identification number or social security number of the person or entity responsible for paying the bill.

Why are you collecting my taxpayer identification number or social security number?

Public Law 104–134, the Debt Collection Improvement Act of 1996, requires that we collect the taxpayer identification number or social security number before billing a responsible party and as a condition to servicing the account.

What happens if I am a responsible party, but I fail to furnish the information required to the billing office responsible for the irrigation project within which I own or lease assessable land or for which I have a carriage agreement?

If you are late paying your bill because of your failure to furnish the required information listed above, you will be assessed interest and penalties as provided below, and your failure to provide the required information will not provide grounds for you to appeal your bill or any penalties assessed.

What can happen if I do not provide the information required for billing purposes?

We can refuse to provide you irrigation service.

If I allow my bill to become past due, could this affect my water delivery?

Yes. 25 CFR 171.545(a) states: "We will not provide you irrigation service until: (1) Your bill is paid; or (2) You make arrangement for payment pursuant

to § 171.550 of this part." If we do not receive your payment before the close of business on the 30th day after the due date stated on your bill, we will send you a past due notice. This past due notice will have additional information concerning your rights. We will consider your past due notice as delivered no later than five (5) business days after the day we mail it. We follow the procedures provided in 31 CFR 901.2, "Demand for Payment," when demanding payment of your past due bill.

Are there any additional charges if I am late paying my bill?

Yes. We are required to assess interest, penalties, and administrative costs on past due bills in accordance with 31 U.S.C. 3717 and 31 CFR 901.9. The rate of interest is established annually by the Secretary of the United States Treasury (Treasury) and accrues from the date your bill is past due. If your bill becomes more than 90 days past due, you will be assessed a penalty charge of no more than six percent per year, which accrues from the date your bill became past due. Each time we try to collect your past due bill, you will be charged an administrative fee of \$12.50 for processing and handling.

What else will happen to my past due bill?

If you do not pay your bill or make payment arrangements to which we agree, we are required to transfer your past due bill to Treasury for further action. Pursuant to 31 CFR 285.12, bills that are 120 days past due will be transferred to Treasury.

Who can I contact for further information?

The contact table below contains the regional and project/agency contacts for our irrigation facilities. 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.

Northwest Region Contacts

Rudy Peone, Acting Regional Director, Bureau of Indian Affairs, Northwest Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4169. Telephone: (360) 291–7684.

Flathead Indian Irrigation Project.	Eric Bruguier, Irrigation Project Manager, 220 Project Drive, St. Ignatius, MT 59865. Telephone: (406) 745–2661.
Fort Hall Irrigation Project	David Bollinger, Irrigation Project Manager, 36 Bannock Avenue, Fort Hall, ID 83203–0220. Telephone: (208) 238–1992.
Wapato Irrigation Project	Pete Plant, Project Administrator, 413 South Camas Avenue, Wapato, WA 98951–0220. Telephone: (509) 877–3155.

Rocky Mountain Region Contacts

Lorna Babby, Acting Regional Director, Bureau of Indian Affairs, Rocky Mountain Regional Office, 2021 4th Avenue North, Billings, MT 59101. Telephone: (406) 247-7943.

Blackfeet Irrigation Project ...	Kenneth Bird, Superintendent, Greg Tatsey, Irrigation Project Manager, P.O. Box 880, Browning, MT 59417. Telephones: Superintendent (406) 338-7544; Irrigation Project Manager (406) 338-7519.
Crow Irrigation Project	Harold "Jess" Brien, Superintendent, Richard Taptto, Acting Irrigation Project Manager (BIA), (Project O&M performed by Water Users Association), P.O. Box 69, Crow Agency, MT 59022. Telephones: Superintendent (406) 638-2672; Acting Irrigation Project Manager (406) 698-5631.
Fort Belknap Irrigation Project.	Mark Azure, Superintendent, Richard Taptto, Acting Irrigation Project Manager (BIA), (Project O&M contracted to Tribes under PL 93-638), 158 Tribal Way, Suite B, Harlem, MT 59526. Telephones: Superintendent (406) 353-2901; Irrigation Project Manager, Tribal Office (406) 353-8454.
Fort Peck Irrigation Project ..	Anna Eder, Superintendent, Richard Taptto, Acting Irrigation Project Manager (BIA), (Project O&M performed by Fort Peck Water Users Association), P.O. Box 637, Poplar, MT 59255. Telephones: Superintendent (406) 768-5312; Acting Irrigation Project Manager (406) 698-5631.
Wind River Irrigation Project	Leslie Shakespeare, Superintendent, Richard Taptto, Acting Irrigation Project Manager (BIA), (Project O&M for Little Wind, Johnstown, and Lefthand Units contracted to Tribes under PL 93-638; Little Wind-Ray and Upper Wind Units O&M performed by Ray Canal, A Canal, and Crowheart Water Users Associations), P.O. Box 158, Fort Washakie, WY 82514. Telephones: Superintendent (307) 332-7810; Acting Irrigation Project Manager (406) 698-5631.

Southwest Region Contacts

Patricia L. Mattingly, Regional Director, Bureau of Indian Affairs, Southwest Regional Office, 1001 Indian School Road NW, Albuquerque, NM 87104. Telephone: (505) 563-3100.

Pine River Irrigation Project	Priscilla Bancroft, Superintendent, Vickie Begay, Irrigation Project Manager, P.O. Box 315, Ignacio, CO 81137-0315. Telephones: Superintendent (970) 563-4511; Irrigation Project Manager (970) 563-9484.

Western Region Contacts

Jessie Durham, Regional Director, Bureau of Indian Affairs, Western Regional Office, 2600 North Central Avenue, 4th Floor Mailroom, Phoenix, AZ 85004. Telephone: (480) 535-1552.

Colorado River Irrigation Project.	Davetta Ameelyenah, Superintendent, Gary Colvin, Irrigation Project Manager, 12124 1st Avenue, Parker, AZ 85344. Telephones: Superintendent (928) 669-7111; (928) 662-4392 Irrigation Project Manager.
Duck Valley Irrigation Project	Jane Jackson-Bear, Superintendent, (Project O&M compacted to Shoshone-Paiute Tribes under PL 93-638), 2719 Argent Avenue, Suite 4, Gateway Plaza, Elko, NV 89801. Telephones: Superintendent (775) 738-5165; Tribal Office (208) 759-3100.
Yuma Project, Indian Unit	Maureen Brown, Superintendent, (Bureau of Reclamation (BOR) owns the Project and is responsible for O&M), 256 South Second Avenue, Suite D, Yuma, AZ 85364. Telephones: Superintendent (928) 782-1202; BOR Area Office Manager (928) 343-8100.
San Carlos Irrigation Project (Indian Works and Joint Works).	Ferris Begay, Project Manager (BIA), Clarence Begay, Supervisory Civil Engineer (BIA), (Portions of Indian Works O&M compacted to Gila River Indian Community under PL 93-638; Joint Control Board is responsible for portions of Joint Works maintenance pursuant to Gila River Indian Community Water Rights Settlement Act of 2004, 118 Stat. 3499), 13805 North Arizona Boulevard, Coolidge, AZ 85128. Telephones: Project Manager (520) 723-6225; Supervisory Civil Engineer (520) 723-6203; Gila River Indian Irrigation & Drainage District (520) 562-6720; Joint Control Board (520) 562-9760, (520) 723-5408.
Uintah Irrigation Project	Antonio Pingree, Superintendent, Ken Asay, Irrigation System Manager (BIA), (Project O&M performed by Uintah Indian Irrigation Project Operation and Maintenance Company), P.O. Box 130, Fort Duchesne, UT 84026. Telephones: Superintendent (435) 722-4300; Irrigation System Manager (435) 722-4344; Uintah Indian Irrigation Operation and Maintenance Company (435) 724-5200.
Walker River Irrigation Project.	Colleen Labelle, Superintendent, 311 East Washington Street, Carson City, NV 89701. Telephone: (775) 887-3500.

What irrigation assessments or charges are proposed for adjustment by this notice?

The rate table below contains final CY 2025 rates for irrigation projects where

we recover costs of administering, operating, maintaining, and rehabilitating them. The table also contains proposed CY 2026 rates for all irrigation projects. An asterisk

immediately following the rate category notes irrigation projects where rates are proposed for adjustment.

Project name	Rate category	Final 2025 rate	Proposed 2026 rate
Northwest Region Rate Table			
Flathead Irrigation Project (See Note #1)	Basic per acre—A *	\$39.00	\$44.00
	Basic per acre—B *	19.50	22.00
	Minimum Charge per tract *	75.00	200.00
Fort Hall Irrigation Project	Basic per acre *	66.50	68.00
	Minimum Charge per tract *	43.00	44.50
	Basic per acre *	45.50	46.50
Fort Hall Irrigation Project—Minor Units	Minimum Charge per tract *	43.00	44.50

Project name	Rate category	Final 2025 rate	Proposed 2026 rate
Fort Hall Irrigation Project—Michaud Unit	Basic per acre *	75.50	77.50
	Pressure per acre *	117.00	120.00
	Minimum Charge per tract *	43.00	44.50
Wapato Irrigation Project—Toppenish/Simcoe Units	Minimum Charge per bill	28.00	28.00
	Basic per acre	28.00	28.00
Wapato Irrigation Project—Ahtanum Units	Minimum Charge per bill	35.00	35.00
	Basic per acre	35.00	35.00
Wapato Irrigation Project—Satus Unit	Minimum Charge per bill	100.00	100.00
	"A" Basic per acre	86.00	86.00
	"B" Basic per acre	92.00	92.00
Wapato Irrigation Project—Additional Works	Minimum Charge per bill	100.00	100.00
	Basic per acre	87.00	87.00
Wapato Irrigation Project—Water Rental	Minimum Charge per bill	100.00	100.00
	Basic per acre	100.00	100.00

Rocky Mountain Region Rate Table

Blackfeet Irrigation Project	Basic-per acre *	21.50	22.00
Crow Irrigation Project—Willow Creek O&M (includes Agency, Lodge Grass #1, Lodge Grass #2, Reno, Upper Little Horn, and Forty Mile Units).	Basic-per acre *	30.00	34.00
Crow Irrigation Project—All Others (includes Bighorn, Soap Creek, and Pryor Units).	Basic-per acre *	30.00	34.00
Crow Irrigation Project—Two Leggins Unit	Basic-per acre *	15.00	17.00
Crow Irrigation Two Leggins Drainage District	Basic-per acre *	3.00	5.00
Fort Belknap Irrigation Project	Basic-per acre *	20.00	25.00
Fort Peck Irrigation Project	Basic-per acre *	29.00	35.00
Wind River Irrigation Project—Units 2, 3 and 4	Basic-per acre *	26.00	28.00
Wind River Irrigation Project—Unit 6	Basic-per acre *	23.00	28.00
Wind River Irrigation Project—LeClair District (See Note #2)	Basic-per acre	47.00	47.00
Wind River Irrigation Project—Crow Heart Unit	Basic-per acre *	16.50	17.50
Wind River Irrigation Project—A Canal Unit	Basic-per acre *	16.50	17.50
Wind River Irrigation Project—Riverton Valley Irrigation District (See Note #2).	Basic-per acre	30.65	30.65

Southwest Region Rate Table

Pine River Irrigation Project	Minimum Charge per tract	\$75.00	\$75.00
	Basic-per acre *	24.00	24.50

Western Region Rate Table

Colorado River Irrigation Project	Basic per acre up to 5.75 acre-feet *	\$69.00	\$85.00
	Excess Water per acre-foot over 5.75 acre-feet.	18.00	18.00
Duck Valley Irrigation Project	Basic per acre *	11.00	12.00
Yuma Project, Indian Unit (See Note #3)	Basic per acre up to 5.0 acre-feet ..	(+)	(+)
	Excess Water per acre-foot over 5.0 acre-feet.	(+)	(+)
	Basic per acre up to 5.0 acre-feet (Ranch 5).	(+)	(+)
San Carlos Irrigation Project (Joint Works) (See Note #4)	Basic per acre *	\$26.00	\$28.00
	Proposed 2026 Construction Water Rate Schedule:		
		Off Project Construction	On Project Construction— Gravity Water
			On Project Construction— Pump Water
	Administrative Fee Usage Fee	\$300.00	\$300.00
		\$250.00 per month.	No Fee
	Excess Water Rate †.	\$5.00 per 1,000 gal.	No Charge
			No Charge
San Carlos Irrigation Project (Indian Works) (See Note #5)	Basic per acre *	\$93.85	\$98.85
Uintah Irrigation Project	Basic per acre	25.00	25.00
	Minimum Bill	25.00	25.00
Walker River Irrigation Project	Basic per acre	32.00	32.00

* Notes irrigation projects where rates are adjusted.

+ These rates have not yet been determined.

† The excess water rate applies to all water used in excess of 50,000 gallons in any one month.

Note #1: The Minimum Charge per tract for Flathead Irrigation Project is currently applied to parcels sized 2.00 acres or smaller. Starting in 2026, the Minimum Charge per tract is proposed to apply to parcels sized 4.54 acres or smaller.

Note #2: O&M rates for LeClair and Riverton Valley Irrigation Districts apply to Trust lands that are serviced by each irrigation district. The annual O&M rates are based on budgets submitted by LeClair and Riverton Valley Irrigation Districts, respectively.

Note #3: The O&M rate for the Yuma Project, Indian Unit has two components. The first component of the O&M rate is established by the Bureau of Reclamation (BOR), the owner and operator of the Project. BOR's rate, which is based upon the annual budget submitted by BOR, has not been established for 2025 or 2026. The second component of the O&M rate is established by BIA to cover administrative costs, which includes billing and collections for the Project. The final 2025 BIA rate component is \$4.50 per acre. The proposed 2026 BIA rate component is \$4.50 per acre.

Note #4: The Construction Water Rate Schedule identifies fees assessed for use of irrigation water for non-irrigation purposes.

Note #5: The O&M rate for the San Carlos Irrigation Project—Indian Works has three components. The first component is established by BIA San Carlos Irrigation Project—Indian Works, the owner and operator of the Project; the final 2025 rate is \$55.85 per acre, and proposed 2026 rate is \$55.85 per acre. The second component is established by BIA San Carlos Irrigation Project—Joint Works; the final 2025 rate is \$26.00 per acre, and proposed 2026 rate is \$28.00 per acre. The third component is established by the San Carlos Irrigation Project Joint Control Board (comprised of representatives from the Gila River Indian Community and the San Carlos Irrigation and Drainage District); the 2025 rate is \$12.00 per acre, and 2026 rate is \$15.00 per acre.

Consultation and Coordination With Tribal Governments (Executive Order 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this notice under the Department's consultation policy and under the criteria of Executive Order 13175 and have determined there to be substantial direct effects on federally recognized Tribes because the irrigation projects are located on or associated with Indian reservations. To fulfill its consultation responsibility to Tribes and Tribal organizations, BIA communicates, coordinates, and consults on a continuing basis with these entities on issues of water delivery, water availability, and costs of administration, operation, maintenance, and rehabilitation of projects that concern them. This is accomplished at the individual irrigation project by project, agency, and regional representatives, as appropriate, in accordance with local protocol and procedures. This notice is one component of our overall coordination and consultation process to provide notice to, and request comments from, these entities when we adjust irrigation assessment rates.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Executive Order 13211)

The proposed rate adjustments are not a significant energy action under the definition in Executive Order 13211. A statement of energy effects is not required.

Regulatory Planning and Review (Executive Order 12866), as Amended by Executive Order 14094)

These proposed rate adjustments are not a significant regulatory action and do not need to be reviewed by the Office

of Management and Budget under Executive Order 12866, as amended by Executive Order 14094.

Regulatory Flexibility Act

These proposed rate adjustments are not a rule for the purposes of the Regulatory Flexibility Act because they establish "a rule of particular applicability relating to rates." 5 U.S.C. 601(2).

Unfunded Mandates Reform Act of 1995

These proposed rate adjustments do not impose an unfunded mandate on State, local, or Tribal governments in the aggregate, or on the private sector, of more than \$130 million per year. They do not have a significant or unique effect on State, local, or Tribal governments or the private sector. Therefore, the Department is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Takings (Executive Order 12630)

These proposed rate adjustments do not effect a taking of private property or otherwise have "takings" implications under Executive Order 12630. The proposed rate adjustments do not deprive the public, State, or local governments of rights or property.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, these proposed rate adjustments do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement because they will not affect the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This notice complies with the requirements of Executive Order 12988. Specifically, in issuing this notice, the Department has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct as required by section 3 of Executive Order 12988.

Paperwork Reduction Act of 1995

These proposed rate adjustments do not affect the collections of information which have been approved by the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. The OMB Control Number is 1076-0141 and expires March 31, 2026.

National Environmental Policy Act

The Department has determined that these proposed rate adjustments do not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the proposed rate adjustments are of an administrative, financial, legal, technical, or procedural nature. (For further information *see* 43 CFR 46.210(i)). We have also determined that the proposed rate adjustments would not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2024-30743 Filed 12-23-24; 8:45 am]

BILLING CODE 4337-15-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****[PO4820000251]****Public Meeting of the Alaska Resource Advisory Council****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Alaska Resource Advisory Council (RAC) will meet as follows.

DATES: The RAC will meet February 12 and 13, 2025, from 9 a.m. to 3 p.m. Alaska time. A virtual participation option will be available.

ADDRESSES: The meeting will be held at the BLM Alaska State Office, 4th floor, 222 W. 7th Avenue, Anchorage AK, 99516. Attendees who wish to participate virtually are required to register online at https://blm.zoomgov.com/webinar/register/WN_O4nSHmitRrOW-EpezgYmBQ.

FOR FURTHER INFORMATION CONTACT: RAC Coordinator, Azure Hall, email: ahall@blm.gov or telephone: 307-775-6208. Individuals in the United States who are deaf, blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Alaska RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with BLM-managed public lands in Alaska. Agenda topics include a briefing on land use planning projects, the BLM Alaska Strategic Plan, Tribal relations, recreation projects, youth and hiring initiatives, and cooperative efforts.

RAC meetings are open to the public. A public comment period will be offered both days at 2 p.m. Alaska Time. Each RAC meeting has time allotted for public comments. Depending on the number of people wishing to speak and the time available, the amount of time for verbal comments may be limited. Written public comments may be sent to the BLM Alaska State Office or RAC Coordinator listed in the **FOR FURTHER INFORMATION CONTACT** section of this

notice. Written public comments will be provided to the Alaska RAC members.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Meeting Accessibility/Special Accommodations: Please make requests in advance for sign language interpreter services, assistive listening devices, language translation services, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least 14 business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

A final agenda and meeting information will be made widely available to the public via news media, social media, the BLM Alaska RAC web page at blm.gov/Alaska/RAC, and through personal contact 2 weeks prior to the meeting. Detailed minutes for the RAC meetings are maintained by the BLM Alaska State Office. Minutes are also posted to the BLM Alaska RAC web page at www.blm.gov/Alaska/RAC.

(Authority: 43 CFR 1784.4-2)

Steven M. Cohn,

State Director, Bureau of Land Management Alaska.

[FR Doc. 2024-30696 Filed 12-23-24; 8:45 am]

BILLING CODE 4331-10-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****[BLM_NV_FRN_MO4500181547]****Realty Action: Modified Competitive Sale of 11 Parcels of Public Land in Clark County, Nevada****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) proposes to offer 11 parcels of public land totaling 89.35 acres in the Las Vegas Valley (Valley) by modified competitive sale at no less than each parcel's Fair Market Value (FMV) pursuant to the Southern Nevada

Public Land Management Act of 1998 (SNPLMA), as amended. The sale will be processed in conformance with applicable provisions of the Federal Land Policy and Management Act of 1976 (FLPMA) and BLM regulations.

DATES: The sale will take place on March 18, 2025, at 8 a.m. Pacific time (PT), on the EnergyNet website at: https://www.EnergyNet.com/govt_listing.pl. Submit written comments regarding the sale until February 10, 2025. The BLM will publish this Notice of Realty Action (NORA) once a week for three consecutive weeks in the *Las Vegas Review-Journal* newspaper.

ADDRESSES: Prior to the sale, a sales matrix will be published on the following website: https://www.EnergyNet.com/govt_listing.pl. The sales matrix provides information specific to each sale parcel such as legal description, physical location, encumbrances, reservations, rights-of-way, acreage, and FMV. The FMV for each parcel will be available in the sales matrix at least 30 days prior to the sale. Mail written comments to the BLM Las Vegas Field Office (LVFO), Assistant Field Manager, Division of Lands, 4701 North Torrey Pines Drive, Las Vegas, NV 89130.

FOR FURTHER INFORMATION CONTACT: Brad Gallimore, Supervisory Realty Specialist, Las Vegas Field Office, by email: blm_nv_lvfo_landtenureteam@blm.gov, or by telephone: 702-515-5017. For general information on previous BLM public land sales, go to <https://www.blm.gov/snplma>. Information concerning the sale parcels, including encumbrances of record, condition of boundary evidence, appraisals, reservations, procedures and conditions, Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9620(h) (CERCLA) documents, and other environmental documents that may appear in the BLM public files for the sale parcels are available for review by appointment only during business hours from 8:00 a.m. to 4:00 p.m. PT, Monday through Friday, at the BLM LVFO, except during Federal holidays.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: It is the buyer's responsibility to be aware of all applicable Federal, State, and local government laws, regulations, and policies that may affect the subject lands, including any required dedication of lands for public uses. It is the buyer's responsibility to be aware of existing or prospective uses of nearby properties. When conveyed out of Federal ownership, the lands will be subject to any applicable laws, regulations, and policies of the applicable local government for proposed future uses. It is the responsibility of the purchaser to be aware through due diligence of those laws, regulations, and policies, and to seek any required local approvals for future uses. Buyers should make themselves aware of any Federal or State law or regulation that may impact the future use of the property. Any land lacking access from a public road or highway will be conveyed as such and acquiring future access will be the responsibility of the buyer.

Of the 11 parcels of public lands that the BLM proposes to offer, 6 parcels are within Clark County's jurisdiction: one is located on the southwest corner of North Fort Apache Road and West La Madre Way; one is located west of South Rainbow Blvd. and West Silverado Blvd.; one is located off of Las Vegas Blvd. and West Roban Ave.; one is located north of Blue Diamond Road between South Grand Canyon Drive and South Hualapai Way; one is located off of Blue Diamond Road and South Torrey Pines Drive; and one is located west of South Buffalo Drive and south of West Cougar Ave. Three parcels are within the City of Las Vegas' jurisdiction: one is in the north part of the Valley, west of Oso Blanco Road and south of Moccasin Road through and near US Highway 95 and Frontage Road; one is located south of West Centennial Parkway and east of Michelli Crest Way; and one is located west of North Hualapai Way and north of Azure Drive. Two parcels are within the City of Henderson's jurisdiction: one is located west of South Magic Way and south of Burkholder Blvd.; and one is located south of Burkholder Blvd. and east of South Racetrack Road.

The subject public lands for the proposed sale are legally described as:

Mount Diablo Meridian, Nevada

NVNV105860623, 10.00 acres
T. 19 S., R. 60 E.,
sec. 31, N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ and
S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$.
NVNV105860656, 2.50 acres
T. 22 S., R. 60 E.,
sec. 23, SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$.

NVNV106273420, 2.50 acres
T. 23 S., R. 61 E.,
sec. 17, SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$.
NVNV106334782, 12.50 acres
T. 19 S., R. 59 E.,
sec. 1, lot 11, N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, and
SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$.
NVNV106334784, 6.85 acres
T. 22 S., R. 60 E.,
sec. 19, lots 69, 71, and
S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$.
NVNV106334786, 5.00 acres
T. 22 S., R. 63 E.,
sec. 16, E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$.
NVNV106334788, 5.00 acres
T. 22 S., R. 63 E.,
sec. 16, E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$.
NVNV106334789, 2.50 acres
T. 22 S., R. 60 E.,
sec. 16, NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$.
NVNV106334790, 12.50 acres
T. 22 S., R. 60 E.,
sec. 23, W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$,
NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$,
NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$,
S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, and
S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$.
NVNV106334791, 5.00 acres
T. 19 S., R. 59 E.,
sec. 25, E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$.
NVNV106334792, 25.00 acres
T. 19 S., R. 59 E.,
sec. 25, E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$,
E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$,
E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, and
SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$.

The areas described aggregate 89.35 acres, according to the official plats of the surveys of the said lands on file with the BLM.

The following National Environmental Policy Act (NEPA) documents support this proposed land sale: The Las Vegas Valley Disposal Boundary Environmental Impact Statement and Record of Decision issued on December 23, 2004, and the Las Vegas In-Valley Area Multi-Action Analysis Environmental Assessment (EA), DOI-BLM-NV-S010-2016-0054-EA (<https://eplanning.blm.gov/eplanning-ui/project/60096/510>), analyzed the sale parcels. A parcel-specific Determination of NEPA Adequacy, document number DOI-BLM-NV-S010-2024-0056-DNA, was prepared in connection with this Notice of Realty Action.

Submit comments to the address in the **ADDRESSES** section. Before including your address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment—including any personally identifiable information—may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable

information from public review, we cannot guarantee that we will be able to do so.

Any comments regarding the proposed sale will be reviewed by the BLM LVFO Assistant Field Manager, Division of Lands, who may sustain, vacate, or modify this realty action in response to such comments. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The use of the modified competitive sale method is consistent with 43 CFR 2711.3–2. Public lands may be offered for sale by modified competitive bidding procedures when the authorized officer determines it is necessary based on public policies. Consistent with Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad*, utilizing an online (internet-based) auction format would maximize the opportunity for public involvement while reducing greenhouse gas emissions that would result from bidders traveling to Las Vegas. In addition, utilizing an online auction would encourage greater participation by qualified bidders.

The regulations at 43 CFR 2711.2 require that qualified conveyees (bidders) must be:

- (1) A citizen of the United States 18 years of age or older;
- (2) A corporation subject to the laws of any State or of the United States;
- (3) A State, State instrumentality, or political subdivision authorized to hold property; or
- (4) An entity legally capable of conveying and holding lands or interests therein under the laws of the State of Nevada.

The successful bidder must submit proof of citizenship or Articles of Incorporation within thirty (30) days from receipt of the Acceptance of Bid letter. Evidence of United States citizenship is a birth certificate, passport, or naturalization papers. Citizenship documents or Articles of Incorporation (as applicable) must be provided to the BLM LVFO for each sale.

The EnergyNet auction website is viewable by the public in real-time; however, you must register as a bidder with EnergyNet in advance to submit bids for a parcel during the auction. The online auction website will be active and available for use approximately ten (10) days after the date of this notice and will remain available for viewing until the completion of the auction. The available parcels in this notice will be listed in detail on the EnergyNet website. Interested parties may visit the website at any time.

Potential bidders are encouraged to visit the EnergyNet website at least ten (10) business days prior to the start of the open bidding period to review the bidding instructions available at https://www.energynet.com/page/Government_Listings_Participation. Supporting documentation is available on the EnergyNet website to familiarize users to the bidding process and answer frequently asked questions.

Potential bidders may register for the online auction as soon as the auction website is active. To participate in the BLM bidding process, you must register with EnergyNet and obtain a bidder number. Registration for online bidding will be available prior to the sale date on the EnergyNet website at https://www.EnergyNet.com/govt_listing.pl. Click on the orange "Register for Sale" button on the blue "BLM Nevada SNPLMA 11 Parcel Land Sale Winter 2025" banner to register. Then click on the light blue "View Listings" button on the "BLM Nevada SNPLMA 11 Parcel Land Sale Winter 2025" banner to obtain maps and get information on how to submit online bids via the internet for the sale. A submitted online internet bid is a binding offer to purchase.

To participate in this sale, prospective buyers must create an EnergyNet account, complete the EnergyNet Bidding Terms Agreement, request a bid allowance, and register for the BLM Nevada SNPLMA 11 Parcel Land Sale Winter 2025. EnergyNet may require approximately five (5) business days to determine the bidder's financial qualifications. Additional information on how to register with EnergyNet may be found at https://www.energynet.com/page/Government_Listings_Participation.

Assistance with creating an EnergyNet account and registering for the sale is available by contacting the EnergyNet Government Resources Department at 877-351-4488. Use the following link to create a Buyer's Account: https://www.EnergyNet.com/bidder_reg.pl?registration_choice=government. After the account is created, follow the link "Submit Bank Information Online" and fill in the form with the following information:

- Bank name;
- Banker's name;
- Telephone number of banker;
- Address of bank;
- Requested bid allowance amount.

EnergyNet will verify that the bank is an accredited financial institution and contact the bank to ensure the prospective buyer has the financial means to cover the requested bid allowance. The bidder must contact its

banker and grant permission for the banker to speak with EnergyNet about the bidder's bid allowance request. EnergyNet will not request the bidder's account balance nor ask any questions about assets or other lines of credit. EnergyNet will not request the bank account number, nor whether it can withdraw funds.

Payments to the BLM will not be made through EnergyNet. At the conclusion of the bidding period for the final parcel, the bidder with the highest accepted bid during the open auction period (winning bidder) for each parcel will be provided instructions via email by the online auction system on how to make the required payment to the BLM.

In addition, you will be required to pay a service fee to EnergyNet's broker of 1.5 percent of the highest qualifying bid for each parcel purchased by the successful bidder. EnergyNet will submit one invoice via email to each successful bidder for the total amount due to the BLM and a separate invoice for the amount due to EnergyNet's broker.

Bidding will begin at the established FMV of each parcel. Each parcel will have its own unique open bidding period, with start and stop times clearly identified on the auction website. The open bidding period for each parcel will run for 24 hours from start to finish, and only bids placed during this 24-hour period will be accepted. Bidding will close sequentially so that each bidder will know if it is the highest winning bid before subsequent parcels close. The website will display each current high bid, and the high bidder's number.

The online system allows participants to submit maximum bids, which is the highest amount a bidder is willing to pay for each parcel, to enable a bidder to participate in the online auction without having to be logged into the website at the time the auction period closes. The auction website provides a full explanation of placing maximum bids, as well as an explanation of how it works to place bids on your behalf to maintain your high bidder status up to the chosen maximum bid amount. The BLM strongly encourages potential bidders to review the bidding tutorial in the Frequently Asked Questions area on the auction website in advance of the sale. EnergyNet will declare the highest qualifying bid as the high bid. The successful bidder must submit a deposit of no less than 20 percent of the successful bid amount by 4:00 p.m. PT, immediately following the close of the sale, in the form of a certified check, postal money order, electronic fund transfer, bank draft, or cashier's check made payable in U.S. dollars to the

"Department of the Interior, Bureau of Land Management."

The BLM will send the successful bidder(s) an Acceptance of Bid letter with detailed information for making payment in full. In accordance with 43 CFR 2711.3-1(d), the successful bidder will forfeit the bid deposit if it fails to pay the full purchase price within 180 days of the sale. The BLM will make no exceptions. The BLM cannot accept the remainder of the bid price at any time following the 180th day after the sale.

If a bidder is the apparent successful bidder with respect to multiple parcels and that bidder fails to submit the minimum 20 percent bid deposit resulting in default on any single parcel following the sale, the BLM may cancel the sale of all parcels to that bidder. If a successful bidder cannot consummate the transaction for any reason, the BLM may consider the second highest bidder to purchase the parcel. If there are no acceptable bids, a parcel may remain available for sale on a future date without further legal notice.

The BLM LVFO must receive requests for escrow instructions a minimum of 30 business days prior to the prospective patentee's scheduled closing date. There are no exceptions.

All name changes and supporting documentation must be received at the BLM LVFO by 4:00 p.m. PT, 30 days from the date on the Acceptance of Bid letter. There are no exceptions. To submit a name change, the apparent successful bidder must submit the name change in writing on the Certificate of Eligibility form to the BLM LVFO.

The BLM must receive the remainder of the full bid price for the parcel no later than 4:00 p.m. PT, within 180 days following the day of the sale. The successful bidder must submit payment in the form of a certified check, postal money order, bank draft, cashier's check, or make available by electronic fund transfer payable in U.S. dollars to the "Department of the Interior—Bureau of Land Management" to the BLM LVFO. The BLM will not accept personal checks or other non-certified funds.

Arrangements for electronic fund transfer to the BLM for payment of the balance due must be made a minimum of two weeks prior to the payment date. The BLM will not sign any documents related to 1031 Exchange transactions. The bidder is responsible for timing for completion of such an exchange. The BLM cannot be a party to any 1031 Exchange.

In accordance with 43 CFR 2711.3-1(f), the BLM may accept or reject any or all offers to purchase or withdraw any parcel of land or interest therein

from sale within 30 days, if the BLM authorized officer determines consummation of the sale would be inconsistent with any law, or for other reasons as may be provided by applicable law or regulations. No contractual or other rights against the United States may accrue until the BLM officially accepts the offer to purchase and the full bid price is paid.

Per SNPLMA Section 4(c), lands identified within the Las Vegas Valley Disposal Boundary are withdrawn from location and entry under the mining laws and from operation under the mineral leasing and geothermal leasing laws until such time as the Secretary of the Interior (Secretary) terminates the withdrawal or the lands are patented.

Upon publication of this notice in the **Federal Register**, the described land will also be segregated from all forms of appropriation under the public land laws, including the mining laws, except for the sale provisions of FLPMA. Upon publication of this notice and until completion of this sale, the BLM will no longer accept land use applications affecting the parcels identified for sale. The parcels may be subject to land use applications received prior to publication of this notice if processing the application would have no adverse effect on the marketability of title or the FMV of the parcel. The segregative effect of this notice terminates upon issuance of a patent or other document of conveyance to such lands, or publication in the **Federal Register** of a termination of the segregation. The total segregation period may not exceed two years unless it is extended by the BLM Nevada State Director prior to the termination date in accordance with 43 CFR 2711.1–2(d).

Terms and Conditions: FLPMA Section 209, 43 U.S.C. 1719(a), states that “all conveyances of title issued by the Secretary . . . shall reserve to the United States all minerals in the lands.” Accordingly, the patents, when issued, will contain a mineral reservation to the United States for all minerals.

In response to requests to clarify this mineral reservation as it relates to mineral materials, such as sand and gravel, we refer interested parties to the regulations at 43 CFR 3601.71(b), which provides that the owner of the surface estate of lands with reserved Federal minerals may “use a minimal amount of mineral materials” for “personal use” within the boundaries of the surface estate without a sales contract or permit. The regulation provides that all other use, absent statutory or other express authority, requires a sales contract or permit. The BLM refers interested parties to the explanation of this

regulatory language in the preamble to the final rule published in the **Federal Register** in 2001, available at <https://www.federalregister.gov/d/01-29001>, which states that minimal use “would not include large-scale use of mineral materials, even within the boundaries of the surface estate” (66 FR 58894). Further explanation is contained in the BLM Instruction Memorandum No. 2014–085 (April 23, 2014), available on the BLM’s website at <https://www.blm.gov/policy/im-2014-085>.

The following numbered terms and conditions will appear on the conveyance documents for the sale parcels:

(1) All mineral deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same under applicable law and regulations to be established by the Secretary are reserved to the United States, together with all necessary access and exit rights.

(2) A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

(3) The parcels are subject to valid existing rights.

(4) The parcels are subject to reservations for roads, public utilities, and flood control purposes, both existing and proposed, in accordance with the local governing entities’ transportation plans.

(5) An appropriate indemnification clause protecting the United States from claims arising out of the patentee’s use, occupancy, or occupations on the patented lands.

To the extent required by law, the parcel is subject to the requirements of section 120(h) of CERCLA, as amended. Accordingly, notice is hereby given that the lands have been examined and no evidence was found to indicate that any hazardous substances have been stored for one year or more, nor that any hazardous substances have been disposed of or released on the subject properties.

No warranty of any kind, express or implied, is given by the United States as to the title, the boundaries, whether or to what extent the land may be developed, its physical condition, future uses, or any other circumstance or condition. The conveyance of a parcel will not be on a contingency basis.

Authority: 43 CFR 2711.3–2.

Samirra Z. Felix,

Acting Assistant Field Manager, Las Vegas Field Office.

[FR Doc. 2024–30706 Filed 12–23–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#– 39262;
PPWOCRADIO, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before December 14, 2024, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by January 10, 2025.

ADDRESSES: Comments are encouraged to be submitted electronically to National_Register_Submissions@nps.gov with the subject line “Public Comment on <property or proposed district name, (County) State>.” If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT:

Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, sherry_frear@nps.gov, 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before December 14, 2024. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers

Key: State, County, Property Name, Multiple Name(if applicable), Address/Boundary, City, Vicinity, Reference Number.

CALIFORNIA**Inyo County**

Ryan Historic District, Address Restricted,
Death Valley vicinity, SG100011330

CONNECTICUT**Fairfield County**

Waltersville School, 167 Steuben Street,
Bridgeport, SG100011334

IDAHO**Washington County**

Sunnyside School, (Public School Buildings
in Idaho MPS), 446 US-95, Weiser vicinity,
MP100011321

MARYLAND**Frederick County**

Clemson, Joanna & Dennis D. H., Farm, 14121
Pearre Road, Union Bridge vicinity,
SG100011329

Montgomery County

River Road Unitarian Church, 6301 River
Road, Bethesda, SG100011323

MICHIGAN**Berrien County**

Ferry Street Historic District, 527-801 north
side of Ferry Street; 514-814 south side of
Ferry Street; 701-815 north side of
Sycamore; 323 North 5th Street; 308-410
North Sixth Street; 307-402 North Seventh
Street; 307-410 North Eighth Street; and
310 North Ninth Street, Niles,
SG100011316

MISSISSIPPI**Hinds County**

Whitehead and Lloyd Motor Company, 430
South State Street, Jackson, SG100011332
John R. Lynch Street Civil Rights District,
North Side of Green-Gibbs Plaza, 1017
Lynch Street, and 1072 Lynch Street,
Jackson, SG100011333

NORTH CAROLINA**Madison County**

Marshall High School (Boundary Increase),
115 and 145 Blannahassett, Marshall,
BC100011319

SOUTH CAROLINA**Horry County**

Atlantic Beach Historic District, Generally
bounded by Wiley Drive, 29th Avenue S,
32nd Avenue S, and the Atlantic Ocean,
Atlantic Beach, SG100011324

An owner objection received for the
following resource(s):

TEXAS**Nueces County**

Cayo del Oso Site, Address Restricted,
Corpus Christi, SG100011317

An additional documentation has
been received for the following
resource(s):

NORTH CAROLINA**Madison County**

Marshall High School (Additional
Documentation), Blannahassett Island. W.
side Bridge St., Marshall, AD08000779

NORTH DAKOTA**Bowman County**

Schade, Emma Petznick and Otto, House
(Additional Documentation), 406 W.
Divide, Bowman, AD08000313

Authority: Section 60.13 of 36 CFR
part 60.

Sherry A. Frear,

*Chief, National Register of Historic Places/
National Historic Landmarks Program.*

[FR Doc. 2024-30775 Filed 12-23-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR**National Park Service**

**[NPS-WASO-BSAD-38836; PPWOBSADIO;
PPMPSAS1Y.Y00000; 255]**

**Notice of Availability and Request for
Comments on Draft Director's Order
#20 Concerning National Park Service
Policies and Procedures Governing
Agreements**

AGENCY: National Park Service, Interior.

ACTION: Notice of availability, request
for comments.

SUMMARY: The National Park Service
(NPS) has prepared Director's Order #20
to set forth its policies and procedures
for formalizing relationships with other
entities through six, specific agreement
types. Once adopted, the policies and
procedures in Director's Order #20 and
the accompanying Reference Manual 20
(RM-20) will supersede and replace the
policies and procedures issued in
Director's Order #20: Agreements, dated
July 23, 2003.

DATES: Written comments will be
accepted until January 27, 2025.

ADDRESSES: Draft Director's Order #20 is
available online at <https://www.nps.gov/subjects/policy/new.htm> where readers
may submit comments electronically.

FOR FURTHER INFORMATION CONTACT:
Joshua Wilks, Deputy Bureau Financial
Assistance Chief, NPS, NPS_DO20@nps.gov, 202-697-2035.

SUPPLEMENTARY INFORMATION: The NPS
is updating its current system of internal
written instructions. When these
documents contain new policy or
procedural requirements that may affect
parties outside the NPS, they are first
made available for public review and
comment before being adopted.
Director's Order #20 and a reference

manual (subsequent to the Director's
Order) will be issued. The draft
Director's Order provides direction to
NPS managers and employees with
responsibilities for preparing,
reviewing, and approving these types of
agreements with other Federal and non-
Federal entities: Federal
Intragovernmental Agreements,
Reimbursable Service Agreements with
Non-Federal Entities, Financial
Assistance Agreements, Cooperative
Management Agreements, General
Agreements, and Funding Agreements
with Self-Governance Tribes.

Public Disclosure of Comments:

Before including your address,
telephone number, email address, or
other personal identifying information in
your comment, you should be aware
that your entire comment—including
your personal identifying information—
may be made publicly available at any
time. While you may ask us in your
comment to withhold your personal
identifying information from public
review, we cannot guarantee that we
will be able to do so.

Authority: 54 U.S.C. 100101(a) *et seq.*

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2024-30667 Filed 12-23-24; 8:45 am]

BILLING CODE 4312-52-P

**INTERNATIONAL TRADE
COMMISSION**

**[Investigation Nos. 701-TA-752 and 731-
TA-1730 (Preliminary)]**

**Active Anode Material From China;
Institution of Antidumping and
Countervailing Duty Investigations and
Scheduling of Preliminary Phase
Investigations**

AGENCY: United States International
Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives
notice of the institution of investigations
and commencement of preliminary
phase antidumping and countervailing
duty investigation Nos. 701-TA-752
and 731-TA-1730 (Preliminary)
pursuant to the Tariff Act of 1930 ("the
Act") to determine whether there is a
reasonable indication that an industry
in the United States is materially
injured or threatened with material
injury, or the establishment of an
industry in the United States is
materially retarded, by reason of
imports of active anode material from
China, provided for in subheadings
2504.10.50, 3801.10.50, and 3801.90.00
of the Harmonized Tariff Schedule of

the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of China. Unless the Department of Commerce (“Commerce”) extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by February 3, 2025. The Commission’s views must be transmitted to Commerce within five business days thereafter, or by February 10, 2025.

DATES: December 18, 2024.

FOR FURTHER INFORMATION CONTACT:

Calvin Chang (202–205–3062), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for these investigations may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to a petition filed on December 18, 2024, by American Active Anode Material Producers, the members of which are Anovion Technologies, Sanborn, New York; Syrah Technologies LLC, Vidalia, Louisiana; NOVONIX Anode Materials LLC, Chattanooga, Tennessee; Epsilon Advanced Materials, Leland, North Carolina; and SKI US, Inc., Marietta, Georgia.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission’s Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission’s rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users

and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission’s rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Office of Investigations will hold a staff conference in connection with the preliminary phase of these investigations beginning at 9:30 a.m. on Wednesday, January 8, 2025. Requests to appear at the conference should be emailed to preliminaryconferences@usitc.gov (DO NOT FILE ON EDIS) on or before Monday, January 6, 2025. Please provide an email address for each conference participant in the email. Information on conference procedures, format, and participation, including guidance for requests to appear as a witness via videoconference, will be available on the Commission’s Public Calendar (Calendar (USITC) | United States International Trade Commission). A nonparty who has testimony that may aid the Commission’s deliberations may request permission to participate by submitting a short statement.

Please note the Secretary’s Office will accept only electronic filings during this time. Filings must be made through the Commission’s Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission’s rules, any person may submit to the Commission on or before 5:15 p.m. on January 13, 2025, a written brief containing information and arguments pertinent to the subject

matter of the investigations. Parties shall file written testimony and supplementary material in connection with their presentation at the conference no later than 4:00 p.m. on January 7, 2025. All written submissions must conform with the provisions of § 201.8 of the Commission’s rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission’s rules. The Commission’s *Handbook on Filing Procedures*, available on the Commission’s website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission’s procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to § 207.3 of the Commission’s rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter’s knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission’s rules.

By order of the Commission.

Issued: December 18, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–30663 Filed 12–23–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled “Certain Glass Substrates for Liquid Crystal Displays, Products Containing the Same, and Methods for Manufacturing the Same”, *DN 3795*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant’s filing pursuant to the Commission’s Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission’s Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission’s Rules of Practice and Procedure filed on behalf of Corning Incorporated on December 18, 2024. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain glass substrates for liquid crystal displays, products containing the same, and methods for manufacturing the same. The complaint names as respondents: Caihong Display Devices Co., Ltd., d/b/a Irico Display Devices Co., Ltd. of China; Hisense USA Corporation of Suwanee, GA; HKC Corporation Ltd. of China; HKC

Overseas Ltd. of China; LG Electronics U.S.A., Inc. of Englewood Cliffs, NJ; TCL China Star Optoelectronics Technology Co., Ltd. of China; TTE Technology, Inc., d/b/a TCL North America of Irvine, CA; VIZIO, Inc. of Irvine, CA; and Xianyang CaiHong Optoelectronics Technology Co., Ltd. of China. The complainant requests that the Commission issue a general exclusion order or, in the alternative, issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents’ alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, members of the public, and interested government agencies are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

- (i) explain how the articles potentially subject to the requested remedial orders are used in the United States;
- (ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;
- (iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;
- (iv) indicate whether complainant, complainant’s licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and
- (v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues

must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission’s Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (“Docket No. 3795”) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures¹). Please note the Secretary’s Office will accept only electronic filings during this time. Filings must be made through the Commission’s Electronic Document Information System (EDIS, <https://edis.usitc.gov>.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at EDIS3Help@usitc.gov.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. Government employees and contract

¹ Handbook for Electronic Filing Procedures: https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.

personnel,² solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.³

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.
Issued: December 18, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–30666 Filed 12–23–24; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Bankruptcy Rules; Hearing of the Judicial Conference

AGENCY: Judicial Conference of the United States.

ACTION: Advisory Committee on Bankruptcy Rules; notice of cancellation of open hearing.

SUMMARY: The following public hearing on proposed amendments to the Federal Rules of Bankruptcy Procedure has been canceled: Bankruptcy Rules Hearing on January 17, 2025.

DATES: January 17, 2025.

FOR FURTHER INFORMATION CONTACT: H. Thomas Byron III, Esq., Chief Counsel, Rules Committee Staff, Administrative Office of the U.S. Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, phone (202) 502–1820, RulesCommittee_Secretary@ao.uscourts.gov.

SUPPLEMENTARY INFORMATION: The announcement for this hearing was previously published in the **Federal Register** on July 31, 2024 at 89 FR 61498.

(Authority: 28 U.S.C. 2073.)

Dated: December 18, 2024.

Shelly L. Cox,

Management Analyst, Rules Committee Staff.

[FR Doc. 2024–30676 Filed 12–23–24; 8:45 am]

BILLING CODE 2210–55–P

² All contract personnel will sign appropriate nondisclosure agreements.

³ Electronic Document Information System (EDIS): <https://edis.usitc.gov>.

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; National Agricultural Workers Survey

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before January 27, 2025.

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: Michael Howell by telephone at 202–693–6782, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: National Agriculture Workers Survey (NAWS) provides an understanding of the manpower resources available to U.S. agriculture. It is the national source of information on the demographic, occupational health and employment characteristics of hired crop workers. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 10, 2024 (89 FR 40507).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally

cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: National Agricultural Workers Survey.

OMB Control Number: 1205–0453.

Affected Public: Individuals and Households, Private Sector.

Total Estimated Number of Respondents: 3,594.

Total Estimated Number of Responses: 3,594.

Total Estimated Annual Time Burden: 1,280 hours.

Total Estimated Annual Other Costs Burden: \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michael Howell,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024–30672 Filed 12–23–24; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Occupational Requirements Survey

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Bureau of Labor Statistics (BLS)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before January 27, 2025.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this

notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency’s estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT:

Nicole Bouchet by telephone at 202–693–0213, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The Occupational Requirements Survey (ORS) is a nationwide survey that the BLS is conducting at the request of the Social Security Administration (SSA). Data collection and capture for the current collection wave of ORS began in 2023 and was planned to end in 2028. BLS is seeking approval in this 30-day revision request to extend the collection and processing time used to produce public final ORS estimates from this wave which will result in collection of this wave through 2031 with publication in 2032. ORS is also eliminating collection of the data elements pertaining to job work levels. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 24, 2023 (88 FRN 17871).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

Agency: DOL–BLS.

Title of Collection: Occupational Requirements Survey.

OMB Control Number: 1220–0189.

Affected Public: Businesses or other for-profit; no-for-profit institutions; and State, Local and Tribal Governments.

Total Estimated Number of Respondents: 10,392.

Total Estimated Number of Responses: 10,392.

Total Estimated Annual Time Burden: 10,682 hours.

Total Estimated Annual Other Costs Burden: \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024–30671 Filed 12–23–24; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Information Collection Activities; Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor, 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 of 1995. This 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 Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the “International Training Application.” 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 of this notice on or before February 24, 2025.

ADDRESSES: Send comments to Morgan Scheinin, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics by email to BLS_PRA_Public@bls.gov.

FOR FURTHER INFORMATION CONTACT: Morgan Scheinin, BLS Clearance Officer, at 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The BLS is one of the largest labor statistics organizations in the world and has provided international training since 1945. Upon request, the BLS Division of International Technical Cooperation (ITC) conducts seminars at its training facilities in the Washington, DC metropolitan area for groups of three or more. ITC may also conduct seminars overseas or virtually, upon request. The seminars bring together statisticians, economists, analysts, and other data users from countries all over the world. Each seminar is designed to strengthen the participants’ ability to collect and analyze economic and labor statistics. Seminars include lectures, discussions, and workshops.

II. Current Action

Office of Management and Budget clearance is being sought for the proposed extension of the International Training Application. Continuing the existing collection will allow the BLS to continue to collect information needed to enroll participants in the international training programs of BLS. No questions have been added or deleted on the form since the last Office of Management and Budget approval.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

- Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.

- 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.

Title of Collection: International Training Application.

OMB Number: 1220–0179.

Type of Review: Extension.

Affected Public: Individuals or Households.

Annual Number of Respondents: 100.

Frequency: On occasion.

Total Annual Responses: 100.
Average Time per Response: 20 minutes.

Estimated Annual Total Burden Hours: 34 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed on December 17, 2024.

Eric Molina,

*Chief, Division of Management Systems,
Branch of Policy Analysis.*

[FR Doc. 2024–30674 Filed 12–23–24; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL CREDIT UNION ADMINISTRATION

Renewal of Agency Information Collection of a Previously Approved Collection; Request for Comments

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of submission to the Office of Management and Budget.

SUMMARY: As required by the Paperwork Reduction Act of 1995, The National Credit Union Administration (NCUA) is submitting the following extensions and revisions of currently approved collections to the Office of Management and Budget (OMB) for renewal.

DATES: Written comments should be received on or before January 27, 2025 to be assured consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Copies of the submission may be obtained by contacting Madeleine Humm at (703) 518–6547, emailing PRAComments@ncua.gov, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0121.

Title: Notice of Change of Officials and Senior Executive Officers.

Type of Review: Revision of a currently approved collection.

Abstract: In order to comply with statutory requirements, the agency must obtain sufficient information from new officials or senior executive officers of

troubled or newly chartered credit unions to determine their fitness for the position. This is established by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Public Law 101–73. The forms provide a standardize format to collect the information needed.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Number of Respondents: 610.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 610.

Estimated Hours per Response: 1.98.

Estimated Total Annual Burden

Hours: 1209.

Reason for Change: The information collection burden has changed due to adjustments in the estimate of respondents.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency’s estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By the National Credit Union Administration Board.

Melane Conyers-Ausbrooks,
Secretary of the Board.

[FR Doc. 2024–30644 Filed 12–23–24; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Grantee Reporting Requirements for Smart and Connected Communities (S&CC)

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to establish this collection. In accordance with the requirements of the

Paperwork Reduction Act of 1995, we are providing the opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency’s estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) 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.

DATES: Written comments on this notice must be received by February 24, 2025 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT:

Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite E6300, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: Grantee Reporting Requirements for Smart and Connected Communities (S&CC).

OMB Number: 3145–NEW.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to establish an information collection.

Proposed Project: The purpose of the NSF Smart and Connected Communities (S&CC) program solicitation is to accelerate the creation of novel intelligent technologies and concepts through high-risk/high-reward research that addresses major challenges and issues faced by communities across the US. A “smart and connected community” is defined as a community

that synergistically integrates intelligent technologies with the natural and built environments and with the functions of civic institutions and organizations. Proposals submitted to the program should be designed to advance one or more of the following community priorities: economic opportunity and growth; safety and security; human and environmental health and wellness; accessibility of critical services and resources; and the overall quality of life for those who live, work, learn, or travel within the community. To meet the goals of the program, researchers should work with community stakeholders to identify and define challenges the community faces, using that interaction and input to generate high-impact, use-inspired, basic research that advances science and engineering.

In addition to standard NSF annual and final report requirements, PIs for all S&CC award recipients will prepare a one-page graphic summary of their project that will be submitted no later than the due date of the first annual report and at the end of the award period. A five-minute project video is also required for all SCC-IRG and SCC-LSR recipients and will be due at the end of the award period. The video should present major project accomplishments. Award recipients must provide NSF permission to publish their video online for public access and/or to share it with interested parties. NSF anticipates the documents may be posted on the S&CC Virtual Organization or other appropriate website.

Use of the Information: NSF will use the information to understand and evaluate the outcomes of funded projects, to foster growth of new scientific communities, and to evaluate the progress of the S&CC program.

Estimate of Burden: 40 hours per award for 20–40 awards for a total of 800–1,600 hours.

Respondents: Universities and Colleges; Non-profit, non-academic organizations;

Estimated Number of Responses per Report: One from each 20–40 awardees annually.

Dated: December 19, 2024.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2024–30757 Filed 12–23–24; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Integrative Activities (1373).

Date and Time: January 28, 2025; 1 p.m.–5 p.m. (eastern).

Place: National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, Virtual. Registration for the virtual meeting can be accessed at: <https://nsf.zoomgov.com/meeting/register/vjIsc-GurD4sGuCVBvu5uDHP2j4VyC2tIvO>.

Type of Meeting: Open.

Contact Person: Dr. Ashley Pierce, Staff Associate, Office of Integrative Activities, Office of the Director, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; (Email: apierce@nsf.gov; Telephone: (703) 292–4493).

Summary of Minutes: May be obtained from the advisory committee website at: <https://new.nsf.gov/od/oia/advisory-committee>.

Purpose of Meeting: To provide advice and recommendations about public engagement with science.

Agenda

January 28, 2025

1:00 p.m.–1:10 p.m. Welcoming Remarks

1:10 p.m.–5:00 p.m. Introduction and advisory committee purpose, discussion of public engagement with science, and planning future advisory committee activities.

5:00 p.m. Adjourn

Dated: December 18, 2024.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2024–30647 Filed 12–23–24; 8:45 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2025–880 and K2025–881; MC2025–882 and K2025–883; MC2025–883 and K2025–884; MC2025–884 and K2025–885; MC2025–885 and K2025–886; MC2025–886 and K2025–887; MC2025–910 and K2025–911; MC2025–914 and K2025–915; MC2025–915 and K2025–916; MC2025–919 and K2025–920; MC2025–920 and K2025–921; MC2025–921 and K2025–922; MC2025–922 and K2025–923; MC2025–923 and K2025–924; MC2025–924 and K2025–925; MC2025–925 and K2025–926; MC2025–926 and K2025–927; MC2025–927 and K2025–928; MC2025–928 and K2025–929]

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:* December 27, 2024.

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:

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- I. Introduction
- II. Public Proceeding(s)
- III. Summary Proceeding(s)

I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

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

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such 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 and 39 CFR 3000.114 (Public Representative). Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. 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 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. See 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)–(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests.

II. Public Proceeding(s)

1. *Docket No(s)*: MC2025–880 and K2025–881; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1105 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 18, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR

3035.105, and 39 CFR 3041.310; *Public Representative*: Kenneth Moeller; *Comments Due*: December 27, 2024.

2. *Docket No(s)*: MC2025–882 and K2025–883; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1107 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 18, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Kenneth Moeller; *Comments Due*: December 27, 2024.

3. *Docket No(s)*: MC2025–883 and K2025–884; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 550 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 18, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Kenneth Moeller; *Comments Due*: December 27, 2024.

4. *Docket No(s)*: MC2025–884 and K2025–885; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 551 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 18, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Elsie Lee-Robbins; *Comments Due*: December 27, 2024.

5. *Docket No(s)*: MC2025–885 and K2025–886; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 552 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 18, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Gregory Stanton; *Comments Due*: December 27, 2024.

6. *Docket No(s)*: MC2025–886 and K2025–887; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 553 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 18, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Gregory Stanton; *Comments Due*: December 27, 2024.

7. *Docket No(s)*: MC2025–910 and K2025–911; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 556 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 18, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public*

Representative: Gregory Stanton; *Comments Due*: December 27, 2024.

8. *Docket No(s)*: MC2025–914 and K2025–915; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1105 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 18, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Elsie Lee-Robbins; *Comments Due*: December 27, 2024.

9. *Docket No(s)*: MC2025–915 and K2025–916; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1132 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 18, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Kenneth Moeller; *Comments Due*: December 27, 2024.

10. *Docket No(s)*: MC2025–919 and K2025–920; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1136 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 18, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Kenneth Moeller; *Comments Due*: December 27, 2024.

11. *Docket No(s)*: MC2025–920 and K2025–921; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1137 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 18, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Elsie Lee-Robbins; *Comments Due*: December 27, 2024.

12. *Docket No(s)*: MC2025–921 and K2025–922; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1138 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 18, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Jana Slovinska; *Comments Due*: December 27, 2024.

13. *Docket No(s)*: MC2025–922 and K2025–923; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1139 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance*

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).

Date: December 18, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Elsie Lee-Robbins; *Comments Due:* December 27, 2024.

14. *Docket No(s):* MC2025–923 and K2025–924; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1140 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 18, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Kenneth Moeller; *Comments Due:* December 27, 2024.

15. *Docket No(s):* MC2025–924 and K2025–925; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1141 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 18, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jana Slovinska; *Comments Due:* December 27, 2024.

16. *Docket No(s):* MC2025–925 and K2025–926; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 558 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 18, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Katalin Clendenin; *Comments Due:* December 27, 2024.

17. *Docket No(s):* MC2025–926 and K2025–927; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1142 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 18, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Elsie Lee-Robbins; *Comments Due:* December 27, 2024.

18. *Docket No(s):* MC2025–927 and K2025–928; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1143 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 18, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Kenneth Moeller; *Comments Due:* December 27, 2024.

19. *Docket No(s):* MC2025–928 and K2025–929; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 559 to the Competitive Product List and Notice of

Filing Materials Under Seal; *Filing Acceptance Date:* December 18, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Kenneth Moeller; *Comments Due:* December 27, 2024.

III. Summary Proceeding(s)

None. See Section II for public proceedings.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2024–30749 Filed 12–23–24; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

International Product Change—Priority Mail Express International, Priority Mail International & First-Class Package International Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a Priority Mail Express International, Priority Mail International & First-Class Package International Service contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: *Date of notice:* December 26, 2024.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 17, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 54 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–845 and K2025–846.

Colleen Hibbert-Kapler,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2024–30738 Filed 12–23–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 26, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 13, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1068 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–828, K2025–829.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–30810 Filed 12–23–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 26, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 16, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 543 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2025–862, K2025–863.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–30846 Filed 12–23–24; 8:45 am]

BILLING CODE 7710–12–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

National Nanotechnology Initiative Meetings

AGENCY: Office of Science and Technology Policy (OSTP).

ACTION: Notice of public meetings.

SUMMARY: The National Nanotechnology Coordination Office (NNCO), on behalf of the Nanoscale Science, Engineering, and Technology (NSET) Subcommittee of the Committee on Technology of the National Science and Technology Council (NSTC), will facilitate stakeholder discussions of targeted nanotechnology topics through workshops and webinars, as well as meetings on behalf of communities of research and networks, between the publication date of this Notice and December 31, 2025.

DATES: The NNCO will hold one or more meetings between the publication date of this Notice and December 31, 2025.

ADDRESSES: Information about upcoming workshops, webinars, and other events, will be posted on <https://www.nano.gov/>. For information about upcoming workshops and webinars, please visit <https://www.nano.gov/get-involved/research-community/meetings-and-events> and <https://www.nano.gov/PublicWebinars>. For more information on the networks and communities of research, please visit <https://www.nano.gov/get-involved/research-community/networks-and-communities>.

FOR FURTHER INFORMATION CONTACT: Patrice Pages at info@nnco.nano.gov or 202–517–1041.

SUPPLEMENTARY INFORMATION: These public meetings address the charge in the 21st Century Nanotechnology Research and Development Act for NNCO to provide “public input and outreach . . . by the convening of regular and ongoing public discussions.” Workshop and webinar topics may include technical subjects; environmental, health, and safety issues related to nanomaterials (nanoEHS); business case studies; or other areas of potential interest to the nanotechnology community. Areas of focus for the communities of research may include research on nanoEHS, nanotechnology education, nanomedicine,

nanomanufacturing, climate change, nanometrology, or other areas of potential interest to the nanotechnology community. The communities of research are not intended to provide any government agency with advice or recommendations; such action is outside of their purview.

Registration: Due to space limitations, pre-registration for workshops is required. Workshop registration is on a first-come, first-served basis. Registration information will be available at <https://www.nano.gov/get-involved/research-community/meetings-and-events>. Registration for the webinars will open approximately two weeks prior to each webinar and will be capped at 500 participants or as space limitations dictate. Individuals planning to attend a webinar can find registration information at <https://www.nano.gov/PublicWebinars>. Written notices of participation in workshops, webinars, networks, or communities of research should be sent by email to info@nnco.nano.gov.

Meeting Accommodations: Individuals requiring special accommodation to access any of these public events should contact info@nnco.nano.gov at least 10 business days prior to the event, so that appropriate arrangements can be made.

Dated: December 19, 2024.

Stacy Murphy,

Deputy Chief Operations Officer.

[FR Doc. 2024–30756 Filed 12–23–24; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101963; File No. SR–CboeBZX–2024–091]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No. 1 to a Proposed Rule Change To List and Trade Shares of the Franklin Crypto Index ETF, a Series of the Franklin Crypto Trust, Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

December 18, 2024.

On September 19, 2024, Cboe BZX Exchange, Inc. (“BZX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b–4 thereunder, ² a proposed rule change to list and trade shares (“Shares”) of the Franklin Crypto Index

ETF, a series of the Franklin Crypto Trust, under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on October 8, 2024.³ On November 20, 2024, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On December 17, 2024, the Exchange filed Amendment No. 1 to the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 1 amended and replaced the proposed rule change in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change to list and trade shares of the Franklin Crypto Index ETF (the “Fund”), a series of the Franklin Crypto Trust (the “Trust”),⁶ under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set

³ See Securities Exchange Act Release No. 101233 (Oct. 2, 2024), 89 FR 81600. The Commission has not received any comments on the proposed rule change.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 101663, 89 FR 93376 (Nov. 26, 2024).

⁶ The Trust was formed as a Delaware statutory trust on August 13, 2024. The Fund is operated as a partnership for U.S. federal tax purposes. The Trust and the Fund have no fixed termination date.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This Amendment No. 1 to SR–CboeBZX–2024–091 amends and replaces in its entirety the proposal as originally submitted on September 19, 2024. The Exchange submits this Amendment No. 1 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(e)(4),⁷ which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.⁸ Franklin Holdings, LLC is the sponsor of the Fund (“Sponsor”). The Shares will be registered with the Commission by means of the Trust’s registration statement on Form S–1 (the “Registration Statement”).⁹

Section 6(b)(5) and the Applicable Standards

The Commission has approved numerous series of Trust Issued Receipts,¹⁰ including Commodity-Based Trust Shares,¹¹ to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) the requirement that a

national securities exchange’s rules are designed to prevent fraudulent and manipulative acts and practices; and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest.

The Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot-based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.¹² The Commission has also consistently recognized, however, that this is not the exclusive means by which an ETP listing exchange can meet this statutory obligation.¹³ A listing exchange could, alternatively, demonstrate that “other means to prevent fraudulent and manipulative acts and practices will be sufficient” to justify dispensing with a surveillance-sharing agreement with a regulated market of significant size.

Both the Exchange and Chicago Mercantile Exchange (“CME”) are members of the Intermarket Surveillance Group (“ISG”).¹⁴ With this in mind, the CME ether futures (“CME Ether Futures”) market and the CME bitcoin futures (“CME Bitcoin Futures”) market are the proper markets to

consider in determining whether there is a related regulated market of significant size. Recently, the Commission issued orders granting approval for proposals to list bitcoin-based (“Spot Bitcoin ETPs”)¹⁵ and ether-based (“Spot Ether ETPs”)¹⁶ commodity trust and trust issued receipts (these funds are nearly identical to the Fund but hold either bitcoin or ether instead of bitcoin and ether). In the Spot Bitcoin ETP Approval Order, the Commission stated:

[B]ased on the record before the Commission and the improved quality of the correlation analysis in the record . . . the Commission is able to conclude that fraud or manipulation that impacts prices in spot bitcoin markets would likely similarly impact CME bitcoin futures prices. And because the CME’s surveillance can assist in detecting those impacts on CME bitcoin futures prices, the Exchanges’ comprehensive surveillance-sharing agreement with the CME—a U.S. regulated market whose bitcoin futures market is consistently highly correlated to spot bitcoin, albeit not of “significant size” related to spot bitcoin—can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [p]roposals.¹⁷

In the Spot Ether ETP Approval Order the Commission also concluded that:

based on the record before the Commission and the correlation analyses in the record, including the Commission’s own analysis, the Commission is able to conclude that fraud or manipulation that impacts prices in spot ether markets would likely similarly impact CME ether futures prices. And because the CME’s surveillance can assist in detecting those impacts on CME ether futures prices, the Exchanges’ comprehensive surveillance-sharing agreement with the CME—a U.S.-regulated market whose ether futures market is consistently highly correlated to spot ether, albeit not of “significant size” related to spot ether—can be reasonably expected to assist in surveilling for fraudulent and manipulative

⁷ The Commission approved BZX Rule 14.11(e)(4) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

⁸ Any of the statements or representations regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, and intraday indicative values, or the applicability of Exchange listing rules specified in this filing to list a series of Other Securities (collectively, “Continued Listing Representations”) shall constitute continued listing requirements for the Shares listed on the Exchange.

⁹ See Pre-Effective Amendment No. 1 to Form S–1 Registration Statement filed on December 11, 2024, submitted to the Commission by the Sponsor on behalf of the Trust (333–281615). The descriptions of the Trust, the Shares, the Fund, and the Index (as defined below) contained herein are based, in part, on information in the Registration Statement. The Registration Statement is not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

¹⁰ See Exchange Rule 14.11(f).

¹¹ Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

¹² See Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the “Winklevoss Order”). Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares, there has been a derivatives market that represents the regulated market of significant size, generally a Commodity Futures Trading Commission (the “CFTC”) regulated futures market. Further to this point, the Commission’s prior orders have noted that the spot commodities and currency markets for which it has previously approved spot ETPs are generally unregulated and that the Commission relied on the underlying futures market as the regulated market of significant size that formed the basis for approving the series of Currency and Commodity-Based Trust Shares, including gold, silver, platinum, palladium, copper, and other commodities and currencies. The Commission specifically noted in the Winklevoss Order that the approval order issued related to the first spot gold ETP “was based on an assumption that the currency market and the spot gold market were largely unregulated.” See Winklevoss Order at 37592. As such, the regulated market of significant size test does not require that the spot bitcoin and ether markets be regulated in order for the Commission to approve this proposal, and precedent makes clear that an underlying market for a spot commodity or currency being a regulated market would actually be an exception to the norm. These largely unregulated currency and commodity markets do not provide the same protections as the markets that are subject to the Commission’s oversight, but the Commission has consistently looked to surveillance sharing agreements with the underlying futures market in order to determine whether such products were consistent with the Act.

¹³ See Winklevoss Order, 83 FR 37580.

¹⁴ For a list of the current members and affiliate members of ISG, see www.isgportal.com.

¹⁵ See Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (the “Spot Bitcoin ETP Approval Order”).

¹⁶ See Exchange Act Release No. 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Shares of Ether-Based Exchange-Traded Products) (the “Spot Ether ETP Approval Order”).

¹⁷ See the Spot Bitcoin ETP Approval Order at 3011–3012.

acts and practices in the specific context of the Proposals.¹⁸

As such, the listing exchanges demonstrated “other means to prevent fraudulent and manipulative acts and practices will be sufficient” to justify dispensing with the “regulated market of significant size” test.

The Exchange notes that the Commission has also previously approved the listing and trading of a series of Commodity-Based Trust Shares on another exchange that, like the Fund, holds two commodities.¹⁹ Given this and the above, the Exchange believes the Shares satisfy the requirements of Exchange Rule BZX Rule 14.11(e)(4) and thereby qualify for listing and trading on the Exchange.

Franklin Crypto Index ETF

CSC Delaware Trust Company, a subsidiary of the Corporation Service Company, is the trustee (“Trustee”). Bank of New York Mellon is the custodian for the Fund’s cash and cash equivalents²⁰ (the “Cash Custodian”) and also serves as the Fund’s administrator and transfer agent (the “Administrator” or “Transfer Agent”). Coinbase Custody Trust Company, LLC (the “Custodian”) will be responsible for custody of the Fund’s bitcoin and ether. According to the Registration Statement, each Share will represent a fractional undivided beneficial interest in the Fund’s net assets. The Fund’s assets will only consist of bitcoin, ether, cash, and cash equivalents. The “Index” refers to the CF Institutional Digital Asset Index—US-Settlement Price. The Sponsor will not invest the Fund’s assets in any other crypto assets other than bitcoin and ether even if other crypto assets are included in the Index. The Exchange would file an amendment to this rule filing if any Index change would require a change to the Fund’s investment objective and/or strategy that would result in a materially different allocation of instruments than what is described in this rule filing or the introduction of new instruments.

According to the Registration Statement, the Trust is neither an investment company registered under the 1940 Act,²¹ nor a commodity pool

for purposes of the Commodity Exchange Act (“CEA”), and neither the Trust, the Fund nor the Sponsor is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.

Neither the Trust or the Fund, nor the Sponsor, nor the Custodian, nor any other person associated with the Trust or Fund will, directly or indirectly, engage in action where any portion of the Fund’s ether becomes subject to the Ethereum proof-of-stake validation or is used to earn additional ether or generate income or other earnings. The Fund will not acquire and will disclaim any incidental right (“IR”) or IR asset received, for example as a result of forks or airdrops, and such assets will not be taken into account for purposes of determining the Fund’s net asset value (“NAV”).

When the Fund sells or redeems its Shares, it will do so in cash transactions in large blocks of 50,000 Shares (a “Creation Basket”) at the Fund’s NAV. For creations, authorized participants will deliver, or facilitate the delivery of, cash to the Fund’s account with the Cash Custodian in exchange for Shares. Upon receipt of an approved creation order, the Sponsor, on behalf of the Fund, will submit to one or more previously onboarded trading partners an order to buy the amount of bitcoin and ether represented by a Creation Basket.²² Authorized participants may then offer Shares to the public at prices that depend on various factors, including the supply and demand for Shares, the value of the Fund’s assets, and market conditions at the time of a transaction. Shareholders who buy or sell Shares during the day from their broker may do so at a premium or discount relative to the NAV per Share of the Fund.

Investment Objective

According to the Registration Statement and as further described below, the investment objective of the Fund is to seek to provide investment results that closely correspond, before Fund expenses and liabilities, to the performance of the Index. The Fund will seek to achieve its investment objective by investing in bitcoin and ether in approximately the same weights as they represent in the Index. The Index is a free float-adjusted market

capitalization weighted index of liquid digital assets that are recognized as being in conformance with prevailing markets regulations of major financial jurisdictions as determined by CF Benchmarks Ltd. (the “Index Provider”).

In seeking to achieve its investment objective, the Fund will hold only bitcoin, ether, cash, and cash equivalents. The price of bitcoin and ether within the Index is based on the CME CF Bitcoin Reference Rate—New York Variant for the Bitcoin—U.S. Dollar trading pair (the “CF Bitcoin Reference Rate”) and the CME CF Ether-Dollar Reference Rate—New York Variant for the ether-U.S. Dollar trading pair (the “CF Ether Reference Rate”, and together with the CF Bitcoin Reference Rate, the “CF Reference Rates”).

If a CF Reference Rate is not available or the Sponsor determines, in its sole discretion, that a CF Reference Rate should not be used, the Fund’s holdings may be fair valued in accordance with the policy approved by the Sponsor.²³

The Index

As described in the Registration Statement, the Fund generally seeks to reflect the price of the digital assets included in the Index. Currently, the Index’s only constituent digital assets are bitcoin and ether. The Fund’s investment objective is to seek to provide investment results that closely correspond, before Fund expenses and liabilities, to the performance of the Index. The Fund will seek to achieve its investment objective by investing in bitcoin and ether in approximately the same weights as they represent in the Index.

The Index is owned, administered and calculated by the Index Provider. The Index is derived from a rules-based methodology and related ground rules (together, the “Index Rules”), which are overseen by the Index Provider. Eligible constituent digital assets are screened, including for their liquidity, asset turnover and ability to be stored in custody by third parties that have regulatory approval to provide services for the safe keeping of digital assets on behalf of investors. To be eligible for inclusion in the Index, the digital asset (1) must be listed on two or more eligible constituent trading platforms as determined by the Index Provider and (2) must be supported by one or more eligible third-party custodians as determined by the Index Provider. Digital assets that are pegged to the

¹⁸ See the Spot Ether ETP Approval Order at 45938.

¹⁹ See Securities Exchange Act No. 82448 (January 5, 2018) 83 FR 1428 (January 11, 2018) (SR-NYSEArca-2017-131) (NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Sprott Physical Gold and Silver Trust Under NYSE Arca Rule 8.201-E).

²⁰ Cash equivalents are short-term instruments with maturities of less than 3 months.

²¹ 15 U.S.C. 80a-1.

²² For redemptions, the process will occur in the reverse order. Upon receipt of an approved redemption order, the Sponsor, on behalf of the Fund, will submit an order to sell the amount of bitcoin and ether represented by a Creation Basket and the cash proceeds will be remitted to the authorized participant when the large block of Shares is received by the Transfer Agent.

²³ Any alternative method will only be employed on an ad hoc basis. Any permanent change to the calculation of the NAV would require a proposed rule change under Rule 19b-4.

value of any asset, including but not limited to stablecoins, are not eligible for inclusion in the Index. Only markets and trading pairs where a digital asset is listed as either the base asset or quote asset against the U.S. Dollar will be included in calculations for purposes of the liquidity screen. The Index Provider further reserves the right to exclude a digital asset based on one or more factors. The resultant digital assets are deemed to be the investible universe (“Investible Universe”) of digital assets that are eligible for inclusion in the Index. Digital assets within the 95th percentile of the free float-adjusted market capitalization of the Investible Universe that are determined by the Index Provider as being in conformance with prevailing capital markets regulations of major financial jurisdictions including the United States (including that the SEC has approved or permitted an exchange-traded product/fund registered under the Securities Act of 1933 holding such digital asset to list and launch) and that meet certain minimum liquidity, turnover, and full market capitalization ratios as determined by the Index Provider pursuant to the Index Rules are generally included as constituents in the Index.

The free float supply of each digital asset is determined by the Index Provider in accordance with the Index Rules, with different calculations applying depending on whether the digital asset is determined to be “coin-centric” (such as bitcoin) or “account-centric” (such as ether). The Index is rebalanced and reconstituted quarterly. The Sponsor will seek to reconstitute and rebalance the Fund’s portfolio in accordance with any reconstitution and rebalancing of the Index. Any such reconstitution and rebalancing of the Fund’s portfolio will occur without U.S. registered broker-dealer intermediation.

The price of bitcoin and ether within the Index is based on the respective CF Reference Rate (*i.e.*, the CF Bitcoin Reference Rate and CF Ether Reference Rate). See the below section titled “Net Asset Value” for information on how the CF Reference Rates are calculated.

In addition, the Sponsor notes that an oversight function is implemented by the Index Provider in seeking to ensure that the CF Reference Rates are administered through codified policies for index integrity. CF Reference Rate data and the description of the CF Reference Rates are based on information made publicly available by the Index Provider on its website at <https://www.cfbenchmarks.com>.

Net Asset Value

NAV means the total assets of the Fund (which includes bitcoin, ether, cash and cash equivalents) less total liabilities of the Fund. The Administrator will determine the NAV of the Fund on each day that the Exchange is open for regular trading, as promptly as practical after 4:00 p.m. ET. The NAV of the Fund is the aggregate value of the Fund’s assets less its estimated accrued but unpaid liabilities (which include accrued expenses). In determining the Fund’s NAV, the Administrator values the bitcoin and ether held by the Fund based on the CF Reference Rates as of 4:00 p.m. ET. The Administrator also determines the NAV per Share.

The NAV for the Fund will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time.

If one or both of the CF Reference Rates is not available or the Sponsor determines, in its sole discretion, that the CF Bitcoin Reference Rate or the CF Ether Reference Rate should not be used, the Fund’s holdings may be fair valued in accordance with the policy approved by the Sponsor.²⁴

On each business day, as soon as practicable after 4:00 p.m. ET, the Administrator evaluates the bitcoin and ether held by the Fund as reflected by the CF Reference Rates and determines the NAV of the Fund.

The CF Reference Rates serve as once-a-day benchmark rates of the U.S. dollar price of ether (USD/ETH) and bitcoin (USD/BTC), calculated as of 4:00 p.m. ET. The CF Reference Rates aggregate the trade flow of several ether and bitcoin trading platforms, during an observation window between 3:00 p.m. and 4:00 p.m. ET into the U.S. dollar price of one bitcoin and ether at 4:00 p.m. ET. Specifically, the CF Reference Rates are calculated based on the “Relevant Transactions” (as defined below) of all of its constituent bitcoin and ether trading platforms, which are currently Coinbase, Bitstamp, Kraken, itBit, LMAX Digital and Gemini (the “Constituent Platforms”), as follows:

- All Relevant Transactions are added to a joint list, recording the time of execution, trade price and size for each transaction.
- The list is partitioned by timestamp into 12 equally-sized time intervals of 5 (five) minute length.
- For each partition separately, the volume-weighted median trade price is

calculated from the trade prices and sizes of all Relevant Transactions, *i.e.*, across all Constituent Platforms. A volume-weighted median differs from a standard median in that a weighting factor, in this case trade size, is factored into the calculation.

- The CF Reference Rate is then determined by the equally-weighted average of the volume medians of all partitions.

The Constituent Platforms may change from time to time. The CF Reference Rates do not include any futures prices in their methodologies. A “Relevant Transaction” is any cryptocurrency versus U.S. dollar spot trade that occurs during the observation window between 3:00 p.m. and 4:00 p.m. ET on a Constituent Platform in the XBT/USD and ETH/USD pairs that are reported and disseminated by a Constituent Platform through its publicly available Application Programming Interface (“API”) and observed by the Index Provider.

The Sponsor believes that the use of the CF Reference Rates is reflective of a reasonable valuation of the average spot price of ether and bitcoin and that resistance to manipulation is a priority aim of its design methodology. The methodology: (i) takes an observation period and divides it into equal partitions of time; (ii) then calculates the volume-weighted median of all transactions within each partition; and (iii) the value is determined from the arithmetic mean of the volume-weighted medians, equally weighted. By employing the foregoing steps, the CF Reference Rates thereby seek to ensure that transactions in ether and bitcoin conducted at outlying prices do not have an undue effect on the value of the CF Reference Rates, large trades or clusters of trades transacted over a short period of time will not have an undue influence on the CF Reference Rates, and the effect of large trades at prices that deviate from the prevailing price are mitigated from having an undue influence on the CF Reference Rates.

Availability of Information

The website for the Fund, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day’s NAV per Share and the reported BZX Official Closing Price;²⁵ (b) the BZX Official Closing Price in relation to the NAV per Share as of the time the NAV is calculated and

²⁴ Any alternative method will only be employed on an ad hoc basis. Any permanent change to the calculation of the NAV would require a proposed rule change under Rule 19b-4.

²⁵ As defined in Rule 11.23(a)(3), the term “BZX Official Closing Price” shall mean the price disseminated to the consolidated tape as the market center closing trade.

a calculation of the premium or discount of such price against such NAV per Share; (c) data in chart form displaying the frequency distribution of discounts and premiums of the BZX Official Closing Price against the NAV per Share, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Fund, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The aforementioned information will be published as of the close of business available on the Fund's website at <https://www.franklintempleton.com/investments/options/exchange-traded-funds>, or any successor thereto. The Fund will also disseminate its holdings on a daily basis on its website.

The Intraday Indicative Value ("IIV") will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours²⁶ to reflect changes in the value of the Fund's bitcoin and ether holdings during the trading day, which are based on CME CF Ether-Dollar Real Time Index and CME CF Bitcoin Real Time Index. The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through online information services, such as Bloomberg and Reuters.

The price of bitcoin and ether will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

As noted above, each CF Reference Rate is calculated daily and aggregates the notional value of trading activity across major spot trading platforms. CF Reference Rate data, the CF Reference Rate value, and the description of the CF Reference Rate are based on information made publicly available by the Index Provider on its website at <https://www.cfbenchmarks.com>.

Quotation and last sale information for bitcoin and ether is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and

volume information, in bitcoin and ether are available from major market data vendors and from the trading platforms on which ether and bitcoin are traded. Depth of book information is also available from ether and bitcoin trading platforms. The normal trading hours for ether and bitcoin trading platforms are 24 hours per day, 365 days per year.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's BZX Official Closing Price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA.

The Custodian

The Custodian carefully considers the design of the physical, operational and cryptographic systems for secure storage of the Fund's private keys in an effort to lower the risk of loss or theft. The Custodian utilizes a variety of security measures to ensure that private keys necessary to transfer digital assets remain uncompromised and that the Fund maintains exclusive ownership of its assets. The Custodian will keep the private keys associated with the Fund's bitcoin and ether in "cold storage"²⁷ (the "Cold Vault Balance"). The hardware, software, systems, and procedures of the Custodian may not be available or cost-effective for many investors to access directly. Only specific individuals are authorized to participate in the custody process, and no individual acting alone will be able to access or use any of the private keys. In addition, no combination of the executive officers of the Sponsor, acting alone or together, will be able to access or use any of the private keys that hold the Fund's ether and bitcoin.

Creation and Redemption of Shares

When the Fund sells or redeems its Shares, it will do so in cash transactions in Creation Baskets that are based on the

quantity of bitcoin and ether attributable to each Share of the Fund at the NAV. According to the Registration Statement, on any business day, an authorized participant may place an order to create one or more Creation Baskets. Purchase orders for cash transaction Creation Baskets must be placed by 2:00 p.m. Eastern Time, or the close of regular trading on the Exchange, whichever is earlier. The day on which an order is properly received is considered the purchase order date. The total deposit of cash required is based on the combined NAV of the number of Shares included in the Creation Baskets being created determined as of 4:00 p.m. ET on the purchase order date. The Administrator determines the quantity of bitcoin and ether associated with a Creation Basket for a given day by dividing the number of bitcoin and ether held by the Fund as of the opening of business on that business day, adjusted for the amount of bitcoin and ether constituting estimated accrued but unpaid fees and expenses of the Fund as of the opening of business on that business day, by the quotient of the number of Shares outstanding at the opening of business divided by the number of Shares in a Creation Basket. The procedures by which an authorized participant can redeem one or more Creation Baskets mirror the procedures for the creation of Creation Baskets.

The authorized participants will deliver only cash to create Shares and will receive only cash when redeeming Shares. Further, authorized participants will not directly or indirectly purchase, hold, deliver, or receive bitcoin or ether as part of the creation or redemption process or otherwise direct the Fund or a third-party with respect to purchasing, holding, delivering, or receiving bitcoin or ether as part of the creation or redemption process.

The Fund will create Shares by receiving ether or bitcoin from a third-party that is not the authorized participant and the Fund—not the authorized participant—is responsible for selecting the third-party to deliver the ether and bitcoin. Further, the third-party will not be acting as an agent of the authorized participant with respect to the delivery of the ether and bitcoin to the Fund. The Fund will redeem Shares by delivering bitcoin and ether to a third-party that is not the authorized participant and the Fund—not the authorized participant—is responsible for selecting the third-party to receive the ether and bitcoin. Further, the third-party will not be acting as an agent of the authorized participant with respect

²⁶ Regular Trading Hours is the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

²⁷ The term "cold storage" refers to a safeguarding method by which the private keys corresponding to bitcoin and/or ether stored on a digital wallet are removed from any computers actively connected to the internet. Cold storage of private keys may involve keeping such wallet on a non-networked computer or electronic device or storing the public key and private keys relating to the digital wallet on a storage device (for example, a USB thumb drive) or printed medium (for example, papyrus or paper) and deleting the digital wallet from all computers.

to the receipt of the ether and bitcoin from the Fund or acting at the direction of the authorized participant with respect to the receipt of the ether and bitcoin from the Fund.

The Sponsor (including its delegates) will maintain ownership and control of the Fund's ether and bitcoin in a manner consistent with good delivery requirements for spot commodity transactions.

Rule 14.11(e)(4)—Commodity-Based Trust Shares

The Shares will be subject to BZX Rule 14.11(e)(4), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange represents that, for initial and continued listing, the Fund must be in compliance with Rule 10A-3 under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of listing on the Exchange. The Exchange will obtain a representation that the NAV will be calculated daily and that the NAV and information about the assets of the Fund will be made available to all market participants at the same time. The Exchange notes that the Shares will meet the definition of Rule 14.11(e)(4)(C)(i) except that the Fund will hold two commodities (*i.e.*, bitcoin and ether) rather than a single commodity in addition to cash and cash equivalents. Specifically, the Shares will be: (a) issued by a trust that holds (1) two specified commodities²⁸ deposited with the trust, or (2) two specified commodities and, in addition to such specified commodities, cash; (b) issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodities and/or cash; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodities and/or cash. The Exchange notes that the Commission has previously approved the listing and trading of series of Commodity-Based Trust Shares that hold more than one commodity.²⁹

Upon termination of the Fund, the Shares will be removed from listing.

The Trustee is a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Rule 14.11(e)(4)(E)(iv)(a) and no change will be made to the trustee without prior notice to and approval of the Exchange. The Exchange also notes that, pursuant to Rule 14.11(e)(4)(F), neither the Exchange nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions or delays in calculating or disseminating any underlying commodity value, the current value of the underlying commodity required to be deposited to the Fund in connection with issuance of Commodity-Based Trust Shares; resulting from any negligent act or omission by the Exchange, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange, its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying commodity. Finally, as required in Rule 14.11(e)(4)(G), the Exchange notes that any registered market maker ("Market Maker") in the Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records (see, *e.g.*, Rule 4.2), the registered Market Maker in Commodity-Based Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity

futures or options on commodity futures, or any other related commodity derivatives, as may be requested by the Exchange.

The Exchange is able to obtain information regarding trading in the Shares and the underlying ether and bitcoin, CME Ether Futures and CME Bitcoin Futures, options on CME Ether Futures and CME Bitcoin Futures, or any other bitcoin or ether derivative through members acting as registered Market Makers, in connection with their proprietary or customer trades.

As a general matter, the Exchange has regulatory jurisdiction over its Members and their associated persons, which include any person or entity controlling a Member. To the extent the Exchange may be found to lack jurisdiction over a subsidiary or affiliate of a Member that does business only in commodities or futures contracts, the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the bitcoin or ether underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(e)(4)(E)(ii), which sets forth circumstances under which trading in the Shares may be halted.

If the IIV or the value of the Index is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the value of the Index occurs. If the interruption to the dissemination of the IIV or the value of the Index persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as

²⁸ For purposes of Rule 14.11(e)(4), the term commodity takes on the definition of the term as provided in the Commodity Exchange Act.

²⁹ See Securities Exchange Act No. 82448 (January 5, 2018) 83 FR 1428 (January 11, 2018) (SR-NYSEArca-2017-131) (NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Sprott Physical Gold and Silver Trust Under NYSE Arca Rule 8.201-E).

the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BZX will allow trading in the Shares during all trading sessions on the Exchange. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a) the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01 where the price is greater than \$1.00 per share or \$0.0001 where the price is less than \$1.00 per share. The Shares of the Fund will conform to the initial and continued listing criteria set forth in BZX Rule 14.11(e)(4).

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, CME Ether Futures and CME Bitcoin Futures, or any other bitcoin or ether derivative with other markets and other entities that are members of the ISG, and the Exchange, or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, CME Ether Futures and CME Bitcoin Futures, or any other ether or bitcoin derivative from such markets and other entities.³⁰ The Exchange may obtain information regarding trading in the Shares, CME Ether Futures and CME Bitcoin Futures, or any other ether or bitcoin derivative via ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange

has entered into a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The Sponsor has represented to the Exchange that it will advise the Exchange of any failure by the Fund or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (i) the procedures for the creation and redemption of Creation Baskets (and that the Shares are not individually redeemable); (ii) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (iii) how information regarding the IIV and the Fund's NAV are disseminated; (iv) the risks involved in trading the Shares outside of Regular Trading Hours when an updated IIV will not be calculated or publicly disseminated; (v) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (vi) trading information. The Information Circular will also reference the fact that there is no regulated source of last sale information regarding ether or bitcoin, that the Commission has no jurisdiction over the trading of ether or bitcoin as a commodity, and that the CFTC has regulatory jurisdiction over the trading of CME Ether Futures contracts and CME Bitcoin Futures contracts and options on CME Ether Futures contracts and CME Bitcoin Futures contracts.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Shares. Members purchasing the Shares for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-

action and interpretive relief granted by the Commission from any rules under the Act.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act³¹ in general and Section 6(b)(5) of the Act³² in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission has approved numerous series of Trust Issued Receipts,³³ including Commodity-Based Trust Shares,³⁴ to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act.

The Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot-based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.³⁵ The Commission has also consistently recognized, however, that this is not the exclusive means by which an ETP listing exchange can meet this statutory obligation.³⁶ A listing exchange could, alternatively, demonstrate that "other means to prevent fraudulent and manipulative acts and practices will be sufficient" to

³¹ 15 U.S.C. 78f.

³² 15 U.S.C. 78f(b)(5).

³³ See Exchange Rule 14.11(f).

³⁴ Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

³⁵ See *supra* note 12.

³⁶ See Winklevoss Order, 83 FR at 37580.

³⁰ For a list of the current members and affiliate members of ISG, see www.isgportal.com.

justify dispensing with a surveillance-sharing agreement with a regulated market of significant size.

Both the Exchange and CME are members of the ISG.³⁷ With this in mind, the CME Ether Futures market and the CME Bitcoin Futures market are the proper markets to consider in determining whether there is a related regulated market of significant size. Recently, the Commission issued orders granting approval for Spot Bitcoin ETPs and Spot Ether ETPs commodity trust and trust issued receipts (these funds are nearly identical to the Fund but hold either bitcoin *or* ether instead of bitcoin *and* ether). In the Spot Bitcoin ETP Approval Order, the Commission stated:

[B]ased on the record before the Commission and the improved quality of the correlation analysis in the record . . . the Commission is able to conclude that fraud or manipulation that impacts prices in spot bitcoin markets would likely similarly impact CME bitcoin futures prices. And because the CME's surveillance can assist in detecting those impacts on CME bitcoin futures prices, the Exchanges' comprehensive surveillance-sharing agreement with the CME—a U.S. regulated market whose bitcoin futures market is consistently highly correlated to spot bitcoin, albeit not of "significant size" related to spot bitcoin—can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [p]roposals.³⁸

In the Spot Ether ETP Approval Order the Commission also concluded that:

based on the record before the Commission and the correlation analyses in the record, including the Commission's own analysis, the Commission is able to conclude that fraud or manipulation that impacts prices in spot ether markets would likely similarly impact CME ether futures prices. And because the CME's surveillance can assist in detecting those impacts on CME ether futures prices, the Exchanges' comprehensive surveillance-sharing agreement with the CME—a U.S.-regulated market whose ether futures market is consistently highly correlated to spot ether, albeit not of "significant size" related to spot ether—can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the Proposals.³⁹

As such, the listing exchanges demonstrated "other means to prevent fraudulent and manipulative acts and practices will be sufficient" to justify dispensing with the "regulated market of significant size" test.

The Exchange notes that the Commission has also previously approved the listing and trading of a series of Commodity-Based Trust Shares on another exchange that, like the Fund, holds two commodities.⁴⁰ Given this and the above, the Exchange believes the Shares satisfy the requirements of Exchange Rule BZX Rule 14.11(e)(4) and thereby qualify for listing and trading on the Exchange.

Commodity-Based Trust Shares

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule 14.11(e)(4). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The Sponsor has represented to the Exchange that it will advise the Exchange of any failure by the Fund or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and listed ether or bitcoin derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

Availability of Information

In addition to the price transparency of the Index, the Fund will provide information regarding the Fund's bitcoin and ether holdings as well as additional data regarding the Fund.

The website for the Fund, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV per Share and the reported BZX Official Closing Price;⁴¹ (b) the BZX Official Closing Price in relation to the NAV per Share as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV per Share; (c) data in chart form displaying the frequency distribution of discounts and premiums of the BZX Official Closing Price against the NAV per Share, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Fund, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The aforementioned information will be published as of the close of business available on the Fund's website at <https://www.franklintempleton.com/investments/options/exchange-traded-funds>, or any successor thereto. The Fund will also disseminate its holdings on a daily basis on its website.

The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Fund's bitcoin and ether holdings during the trading day, which are based on CME CF Ether-Dollar Real Time Index and CME CF Bitcoin Real Time Index. The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services such as Bloomberg and Reuters.

The price of bitcoin and ether will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

As noted above, each CF Reference Rate is calculated daily and aggregates the notional value of trading activity across major spot trading platforms. CF Reference Rate data, the CF Reference Rate value, and the description of the

³⁷ For a list of the current members and affiliate members of ISG, see www.isgportal.com.

³⁸ See the Spot Bitcoin ETP Approval Order at 3011–3012.

³⁹ See the Spot Ether ETP Approval Order at 45938.

⁴⁰ See Securities Exchange Act No. 82448 (January 5, 2018) 83 FR 1428 (January 11, 2018) (SR–NYSEArca–2017–131) (NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Sprott Physical Gold and Silver Trust Under NYSE Arca Rule 8.201–E).

⁴¹ As defined in Rule 11.23(a)(3), the term "BZX Official Closing Price" shall mean the price disseminated to the consolidated tape as the market center closing trade.

CF Reference Rate are based on information made publicly available by the Index Provider on its website at <https://www.cfbenchmarkmarks.com>.

Quotation and last sale information for ether and bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, in bitcoin and ether are available from major market data vendors and from the trading platforms on which ether and bitcoin are traded. Depth of book information is also available from ether and bitcoin trading platforms. The normal trading hours for ether and bitcoin trading platforms are 24 hours per day, 365 days per year.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's BZX Official Closing Price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA.

The proposed rule change is designed to perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a surveillance sharing agreement. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, CME Ether Futures and CME Bitcoin Futures, or any other bitcoin or ether derivative with other markets and other entities that are members of the ISG, and the Exchange, or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, CME Ether Futures and CME Bitcoin Futures, or any other ether or bitcoin derivative from such markets and other entities.⁴² The Exchange may obtain information regarding trading in

the Shares, CME Ether Futures and CME Bitcoin Futures, or any other ether or bitcoin derivative via ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing and trading of an additional exchange-traded product that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2024-091 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-CboeBZX-2024-091. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 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-CboeBZX-2024-091 and should be submitted on or before January 16, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴³

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-30683 Filed 12-23-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35424; File No. 812-15540]

Thirdline Real Estate Income Fund, et al.

December 18, 2024.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice.

Notice of application for an 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 and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

⁴² For a list of the current members and affiliate members of ISG, see www.isgportal.com.

⁴³ 17 CFR 200.30-3(a)(12).

Applicants: Thirdline Real Estate Income Fund, Thirdline Capital Management, LLC, and TLMC Investors, LLC.

Filing Dates: The application was filed on January 25, 2024, and amended on April 25, 2024, August 2, 2024, October 9, 2024, and December 13, 2024.

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 Secretaries-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 January 13, 2025, 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 at Secretaries-Office@sec.gov.

ADDRESSES: The Commission: Secretaries-Office@sec.gov. Applicants: John F. Ramirez, Practus, LLP, John.Ramirez@Practus.com.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, or Thomas Ahmadifar, 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' fourth amended and restated application, dated December 13, 2024, 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 <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.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–30656 Filed 12–23–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101960; File No. SR–CboeBZX–2024–112]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Permit the Generic Listing and Trading of Multi-Class ETF Shares

December 18, 2024.

On November 8, 2024, Cboe BZX Exchange, Inc. (“BZX”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b–4 thereunder, ² a proposed rule change to amend BZX Rule 14.11(l) to permit the generic listing and trading of Multi-Class ETF Shares. The proposed rule change was published for comment in the **Federal Register** on November 25, 2024. ³

Section 19(b)(2) of the Act ⁴ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is January 9, 2025. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act, ⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 101655 (November 19, 2024), 89 FR 92989.

⁴ 15 U.S.C. 78s(b)(2).

⁵ 15 U.S.C. 78s(b)(2).

designates February 23, 2025, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CboeBZX–2024–112).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority. ⁶

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–30681 Filed 12–23–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101975; File No. SR–MEMX–2024–46]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 19.3, Criteria for Underlying Securities, To List and Trade Options on the Fidelity Wise Origin Bitcoin Fund and the ARK 21Shares Bitcoin ETF

December 19, 2024.

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 December 12, 2024, MEMX LLC (“MEMX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 with the Commission a proposed rule change to amend Rule 19.3, Criteria for Underlying Securities. The text of the proposed rule change is provided in Exhibit 5.

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

⁶ 17 CFR 200.30–3(a)(31).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

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 Exchange Rule 19.3 (Criteria for Underlying Securities) to allow the Exchange to list and trade options on the Fidelity Wise Origin Bitcoin Fund ("the Fidelity Fund") and the ARK 21Shares Bitcoin ETF (the "ARK 21 Funds" and, with the Fidelity Fund, the "Bitcoin Funds"), designating the Bitcoin Funds as appropriate for options trading on the Exchange.³ This is a competitive filing that is based on a similar proposal submitted by Cboe Exchange, Inc. ("Cboe") and approved by the Securities and Exchange Commission ("Commission").⁴

Current Exchange Rule 19.3(i) provides that, subject to certain other criteria set forth in that Rule, securities deemed appropriate for options trading include shares or other securities ("Fund Shares") that represent certain types of interests,⁵ including interests in

certain specific trusts that hold financial instruments, money market instruments, or precious metals (which are deemed commodities).

The Bitcoin Funds are Bitcoin-backed commodity exchange-traded funds ("ETFs") structured as trusts. Similar to any Fund Share currently deemed appropriate for options trading under Rule 19.3(i), the investment objective of each Bitcoin Fund is for its shares to reflect the performance of Bitcoin (less the expenses of the trust's operations), offering investors an opportunity to gain exposure to Bitcoin without the complexities of Bitcoin delivery. As is the case for Fund Shares currently deemed appropriate for options trading, a Bitcoin Fund's shares represent units of fractional undivided beneficial interest in the trust, the assets of which consist principally of Bitcoin and are designed to track Bitcoin or the performance of the price of Bitcoin and offer access to the Bitcoin market.⁶ The Bitcoin Funds provide investors with cost-efficient alternatives that allow a level of participation in the Bitcoin market through the securities market. The primary substantive difference between Bitcoin Funds and Fund Shares currently deemed appropriate for options trading⁷ is that Fund Shares may hold securities, certain financial instruments, and specified precious metals (which are deemed commodities), while Bitcoin Funds hold

Bitcoin (which is also deemed a commodity).

The Exchange believes each Bitcoin Fund satisfies the Exchange's initial listing standards for Fund Shares on which the Exchange may list options. Specifically, each Bitcoin Fund satisfies the initial listing standards set forth in Rule 19.3(i), as is the case for other Fund Shares on which the Exchange lists options (including trusts that hold commodities). Rule 19.3(i)(1) requires that Fund Shares either (1) meet the criteria and standards set forth in Rule 19.3(a) and (b), or (2) are available for creation or redemption each business day in cash or in kind from the investment company, commodity pool or other entity at a price related to net asset value, and the investment company, commodity pool or other entity is obligated to provide that Fund Shares may be created even if some or all of the securities and/or cash required to be deposited have not been received by the Fund, the unit investment trust or the management investment company, provided the authorized creation participant has undertaken to deliver the securities and/or cash as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the Fund, all as described in the Fund's or unit trust's prospectus. Each Bitcoin Fund satisfies Rule 19.3(i)(1)(B) as each is subject to this creation and redemption process.

While not required by Exchange Rules for purposes of options listings, the Exchange believes each Bitcoin Fund satisfies the criteria and guidelines set forth in Rule 19.3(a) and (b). Pursuant to Rule 19.3(a), a security (which includes a Fund Share) on which options may be listed and traded on the Exchange must be registered with the Commission and be an NMS stock (as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934, as amended (the "Act")), and be characterized by a substantial number of outstanding shares that are widely held and actively traded.⁸ Each Bitcoin Fund is an NMS Stock as defined in Rule 600 of Regulation NMS under the Act.⁹ The

³ On January 10, 2024, the Commission approved proposals by NYSE Arca, Inc., The Nasdaq Stock Market LLC, and Cboe BZX Exchange, Inc. to list and trade the shares of 11 bitcoin-based commodity-based trust shares and trust units, including the iShares Bitcoin Trust. See Securities Exchange Act Release No. 99306 (Jan. 10, 2024), 89 FR 3008 (Jan. 17, 2024) (order approving File Nos. SR-NYSEARCA-2021-90; SR-NYSEARCA-2023-44; SR-NYSEARCA-2023-58; SR-NASDAQ-2023-016; SR-NASDAQ-2023-019; SR-CboeBZX-2023-028; SR-CboeBZX-2023-038; SR-CboeBZX-2023-040; SR-CboeBZX-2023-042; SR-CboeBZX-2023-044; SR-CboeBZX-2023-072) ("Bitcoin ETP Approval Order").

⁴ See Securities Exchange Act Release No. 101387 (October 18, 2024), 89 FR 84948 (October 24, 2024) (SR-CBOE-2024-35) (Notice of Filing of Amendment Nos. 2 and 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 2 and 3, to Permit the Listing and Trading of Options on Bitcoin Exchange Traded Funds).

⁵ See Rule 19.3(i) which permits options trading on Fund Shares that (1) represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities, and that hold portfolios of securities comprising or otherwise based on or representing investments in indexes or portfolios of securities (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities) ("Funds") and/or financial instruments including, but not limited to, stock index futures contracts, options on futures, options on securities and indexes, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase

agreements (the "Financial Instruments"), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the "Money Market Instruments") constituting or otherwise based on or representing an investment in an index or portfolio of securities and/or Financial Instruments and Money Market Instruments, or (2) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency ("Commodity Pool ETFs") or (3) represent interests in a trust or similar entity that holds a specified non-U.S. currency or currencies deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency or currencies and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency or currencies, if any, declared and paid by the trust ("Currency Trust Shares"), or (4) represent interests in the SPDR Gold Trust or are issued by the iShares COMEX Gold Trust, the iShares Silver Trust, or the iShares Bitcoin Trust.

⁶ Each trust may include minimal cash.

⁷ The Exchange notes that the Bitcoin Funds are similar to the iShares Bitcoin Trust, which is already eligible for options trading on the Exchange. See Rule 19.3(i) and Securities Exchange Act Release No. 34-101778 (November 27, 2024), 89 FR 95871 (December 3, 2024) (SR-MEMX-2024-45).

⁸ The criteria and guidelines for a security to be considered widely held and actively traded are set forth in Rule 19.3(b), subject to exceptions.

⁹ An "NMS stock" means any NMS security other than an option, and an "NMS security" means any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan (or an effective national market system plan for reporting transaction in listed options). See 17 CFR 242.600(b)(64) (definition of "NMS security") and (65) (definition of "NMS stock").

Exchange believes each Bitcoin Fund is characterized by a substantial number of outstanding shares that are widely held and actively traded. As of August 7, 2024, the Bitcoin Funds had the following number of shares outstanding:

Bitcoin Fund	Shares outstanding
Fidelity Fund	201,100,100
ARK 21 Fund	45,495,000

Each Bitcoin Fund had significantly more than 7,000,000 shares outstanding (approximately 29 and 6.5 times that amount, respectively), which is the minimum number of shares of a corporate stock that the Exchange

generally requires to list options on that stock pursuant to Rule 19.3(b). The Exchange believes this demonstrates that each Bitcoin Fund is characterized by a substantial number of outstanding shares.

Further, the below table contains information regarding the number of beneficial holders of the Bitcoin Funds as of the specified dates:

Bitcoin Fund	Beneficial holders	Date
Fidelity Fund	279,656	6/27/2024
ARK 21 Fund	69,425	6/26/2024

As this table shows, each Bitcoin Fund has significantly more than 2,000 beneficial holders (approximately 140

and 35 times more, respectively), which is the minimum number of holders the Exchange generally requires for corporate stock in order to list options on that stock pursuant to Rule 19.3(b). Therefore, the Exchange believes the shares of each Bitcoin Fund are widely held.

The Exchange also believes the shares of each Bitcoin Fund are actively traded. As of August 7, 2024, the total trading volume (by shares) for each fund for the six-month period of February 8 through August 7, 2024 and the approximate average daily volume (“ADV”) (in shares and notional) over the 30-day period of July 9 through August 7, 2024 for each Bitcoin Fund was as follows:

Bitcoin Fund	6-Month trading volume (shares)	30-Day ADV (shares)	30-Day ADV (notional \$)
Fidelity Fund	1,112,861,581	6,014,335	250,354,755
ARK 21 Fund	297,360,739	1,893,335	90,484,307

As demonstrated above, despite the fact that the Bitcoin Funds had been trading for approximately seven months¹⁰ only as of August 7, 2024, the six-month trading volume for each as of that date was substantially higher than 2,400,000 shares (approximately 464 and 124 times that amount, respectively), which is the minimum 12-month volume the Exchange generally requires for a corporate stock in order to list options on that security as set forth in Rule 19.3(b). Additionally, as of August 7, 2024, the trading volume for each Bitcoin Fund was in the top 5% of all ETFs that are currently trading. The Exchange believes this data demonstrates each Bitcoin Fund is characterized as having shares that are actively traded.

Options on the Bitcoin Funds will be subject to the Exchange’s continued listing standards set forth in Rule 19.4(g) for Fund Shares deemed appropriate for options trading pursuant to Rule 19.3(i). Specifically, 19.4(g) provides that Fund Shares that were initially approved for options trading pursuant to Rule 19.3 will not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such Fund Shares if the security ceases to be an NMS stock (see Rule 19.4(b)(4)). Additionally, the Exchange will not open for trading any additional series of

option contracts of the class covering Fund Shares in any of the following circumstances: (1) in the case of options covering Fund Shares approved for trading under Rule 19.3(i)(4)(A), in accordance with the terms of Rule 19.4(b)(1), (2) and (3); (2) in the case of options covering Fund Shares approved pursuant to Rule 19.3(i)(4)(B), following the initial 12-month period beginning upon the commencement of trading in the Fund Shares on a national securities exchange and are defined as NMS stock under Rule 600 of Regulation NMS, there were fewer than 50 record and/or beneficial holders of such Fund Shares for 30 consecutive days; (3) the value of the index, non-U.S. currency, portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or Financial Instruments or Money Market Instruments, or portfolio of securities on which the Fund Shares are based is no longer calculated or available; or (4) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable.

Options on each Bitcoin Fund will be physically settled contracts with American-style exercise.¹¹ Consistent

with current Rule 19.5, which governs the opening of options series on a specific underlying security (including Fund Shares), the Exchange will open at least one expiration month for options on each Bitcoin Fund¹² at the commencement of trading on the Exchange and may also list series of options on each Bitcoin Fund for trading on a weekly,¹³ monthly,¹⁴ or quarterly¹⁵ basis.

Pursuant to Rule 19.5, Interpretation and Policy .01, which governs strike

payment obligations arising out of the exercise of physically settled stock option contracts).

¹² See Rule 19.5(b). The monthly expirations are subject to certain listing criteria for underlying securities described within Rule 19.3. Monthly listings expire the third Friday of the month. The term “expiration date” (unless separately defined elsewhere in the OCC By-Laws), when used in respect of an option contract (subject to certain exceptions), means the third Friday of the expiration month of such option contract, or if such Friday is a day on which the exchange on which such option is listed is not open for business, the preceding day on which such exchange is open for business. See OCC By-Laws Article I, Section 1. Pursuant to Rule 19.5(c), additional series of options of the same class may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying stock moves more than five strike prices from the initial exercise price or prices. New series of options on an individual stock may be added until the beginning of the month in which the options contract will expire. Due to unusual market conditions, the Exchange, in its discretion, may add a new series of options on an individual stock until the close of trading on the business day prior to expiration.

¹³ See Rule 19.5, Interpretation and Policy .05.

¹⁴ See Rule 19.5, Interpretation and Policy .08.

¹⁵ See Rule 19.5, Interpretation and Policy .04.

¹⁰ The Bitcoin Funds began trading on January 11, 2024.

¹¹ See Rule 19.2, which provides that the rights and obligations of holders and writers are set forth in the Rules of the Options Clearing Corporation (“OCC”); see also OCC Rules, Chapters VIII (which governs exercise and assignment) and Chapter IX (which governs the discharge of delivery and

prices of series of options on Fund Shares, the interval of strikes prices for series of options on Bitcoin Funds will be \$1 or greater when the strike price is \$200 or less and \$5 or greater where the strike price is over \$200.¹⁶ Additionally, the Exchange may list series of options pursuant to the \$1 Strike Price Interval Program,¹⁷ the \$0.50 Strike Program,¹⁸ the \$2.50 Strike Price Program,¹⁹ and the \$5 Strike Program.²⁰ Pursuant to Rule 21.5, where the price of a series of a Bitcoin Fund option is less than \$3.00, the minimum increment will be \$0.05, and where the price is \$3.00 or higher, the minimum increment will be \$0.10.²¹ Any and all new series of Bitcoin Fund options that the Exchange lists will be consistent and comply with the expirations, strike prices, and minimum

increments set forth in Rules 19.5 and 21.5, as applicable.

Bitcoin Fund options will trade in the same manner as any other Fund Share options on the Exchange. The Exchange Rules that currently apply to the listing and trading of all Fund Share options on the Exchange, including, for example, Rules that govern listing criteria, expirations, exercise prices, minimum increments, margin requirements, customer accounts, and trading halt procedures will apply to the listing and trading of Bitcoin Funds options on the Exchange in the same manner as they apply to other options on all other Fund Shares that are listed and traded on the Exchange, including the precious-metal backed commodity Fund Shares already deemed appropriate for options trading

on the Exchange pursuant to current Rule 19.3(i).

Pursuant to Rules 18.7²² and 18.9, the position and exercise limits, respectively, for each Bitcoin Fund option will be 25,000 same side option contracts. The Exchange believes these proposed position and exercise limits considering, among other things, the approximate six-month average daily volume (“ADV”) and outstanding shares of each underlying Bitcoin Fund (which as discussed above demonstrate that each Bitcoin Fund is widely held and actively traded and thus justify these conservatively proposed position limits), as set forth below, along with market capitalization (as of August 7, 2024):

Underlying Bitcoin Fund	Six-month ADV (shares)	Outstanding shares	Market capitalization (\$)
Fidelity Fund	8,902,893	201,100,100	14,217,013,188
ARK 21 Fund	2,378,886	45,495,000	2,487,666,600

The Exchange then compared the number of outstanding shares of the Bitcoin Funds to those of other ETFs. The following table provides the

approximate average position (and exercise limit) of ETF options with similar outstanding shares (as of August 27, 2024), compared to the proposed

position and exercise limit for the Bitcoin Fund options:²³

Underlying Bitcoin Fund	Average limit of other ETF options (contracts)	Proposed limit (contracts)
Fidelity Fund	188,110	25,000
ARK 21 Fund	108,696	25,000

The Exchange considered current position and exercise limits of options on ETFs with outstanding shares comparable to those of each Bitcoin Fund, with the proposed limit significantly lower (between two and ten times lower) than the average limits of the options on the other ETFs. As discussed above, the Bitcoin Funds are actively held and widely traded: (1) each Bitcoin Fund (as of August 7, 2024) had significantly more than 7,000,000 shares outstanding, which is the

minimum number of shares of a corporate stock that the Exchange generally requires to list options on that stock pursuant to Rule 19.3(b)(1); (2) each Bitcoin Fund (as of the dates listed above) had significantly more than 2,000 beneficial holders, which is the minimum number of holders the Exchange generally requires for corporate stock in order to list options on that stock pursuant to Rule 19.3(b)(2); and (3) each Bitcoin Fund had a six-month trading volume

substantially higher than 2,400,000 shares, which is the minimum 12-month volume the Exchange generally requires for a security in order to list options on that security as set forth in Rule 19.3(b)(4).

With respect to outstanding shares, if a market participant held the maximum number of positions possible pursuant to the proposed position and exercise limits, the equivalent shares represented by the proposed position/exercise limit would represent the following

¹⁶ The Exchange notes that for options listed pursuant to the Short Term Option Series Program, the Monthly Options Series Program, and the Quarterly Options Series Program, Rule 19.5, Interpretations and Policies .05, .08, and .04 specifically sets forth intervals between strike prices on Quarterly Options Series, Short Term Option Series, and Monthly Options Series, respectively.

¹⁷ See Rule 19.5, Interpretation and Policy .02.

¹⁸ See Rule 19.5, Interpretation and Policy .06.

¹⁹ See Rule 19.5, Interpretation and Policy .03.

²⁰ See Rule 19.5(d)(5).

²¹ If options on a Bitcoin Fund are eligible to participate in the Penny Interval Program, the

minimum increment will be \$0.01 for series with a price below \$3.00 and \$0.05 for series with a price at or above \$3.00. See Rule 21.5(d) (which describes the requirements for the Penny Interval Program).

²² See Regulatory Notice 23-12, available at: <https://info.memxtrading.com/wp-content/uploads/2023/09/RegNotice-23-12-Options-Position-Limits.pdf>, which informed Exchange members of the specific position limits applicable to options trading on MEMX Options, pursuant to Rule 18.7, as those position limits calculated and disseminated by the OCC, published daily and which can be found at: <https://www.theocc.com/market-data/market-data-reports/series-and-trading-data/position-limits>

²³ With respect to the Fidelity Fund, over 80% of the ETFs used for comparison have a limit of at least 200,000, and more than half have a limit of 250,000. Additionally, the three-month ADV of the majority of the ETFs used for comparison to the Fidelity Fund was lower than the Fidelity Fund three-month ADV of 5,665,027 shares. With respect to the ARK 21 Fund, nearly 80% of the ETFs used for comparison have a limit of at least 75,000 (and up to 250,000). Additionally, the three-month ADV of the majority of ETFs used for comparison was lower (many more than four times lower) than the ARK 21 Fund three-month ADV of 1,737,327 shares.

approximate percentage of current outstanding shares:

Underlying Bitcoin Fund	Proposed position/exercise limit (in equivalent shares)	Outstanding shares	Percentage of outstanding shares
Fidelity Fund	2,500,000	201,100,100	1.2
ARK 21 Fund	2,500,000	45,495,000	5.5

As this table demonstrates, if a market participant held the maximum permissible options positions in one of the Bitcoin Fund options and exercised all of them at the same time, that market participant would control a small percentage of the outstanding shares of the underlying Bitcoin Fund.

There are two methods of qualifying for a position limit tier above 25,000 option contracts. The first method is based on six-month trading volume in

the underlying security, and the second method is based on slightly lower six-month trading volume and number of shares outstanding in the underlying security. An underlying stock or ETF that qualifies for method two based on trading volume and number of shares outstanding would be required to have the minimum number of outstanding shares as shown in middle column of the table below.

The table, which provides the equivalent shares of the position limits applicable to equity options, including ETFs, further represents the percentages of the minimum number of outstanding shares that an underlying stock or ETF must have to qualify for that position limit (under the second method described above), all of which are higher than the percentages for the Bitcoin Funds.²⁴

Position/exercise limit (in equivalent shares)	Minimum outstanding shares	Percentage of outstanding shares
2,500,000	6,300,000	40.0
5,000,000	40,000,000	12.5
7,500,000	120,000,000	6.3
20,000,000	240,000,000	8.3
25,000,000	300,000,000	8.3

The equivalent shares represented by the proposed position and exercise limits for each Bitcoin Fund as a percentage of outstanding shares of the underlying Bitcoin Fund is significantly lower than the percentage for the lowest possible position limit for equity options of 25,000 (under 6% compared to 40%) and is lower than that percentage for each current position limit bucket.²⁵

Further, the proposed position and exercise limits for each Bitcoin Fund option are significantly below the limits that would otherwise apply pursuant to current Rules 18.7 and 18.9. These position and exercise limits are the lowest position and exercise limits available in the options industry, are extremely conservative and more than appropriate given the market capitalization, average daily volume, and high number of outstanding shares of the Bitcoin Funds.

All of the above information demonstrates that the proposed position and exercise limits for the Bitcoin Fund options are more than reasonable and appropriate. The trading volume, ADV, and outstanding shares of each Bitcoin Fund demonstrate that these funds are actively traded and widely held, and proposed position and exercise limits are well below those of other ETFs with similar market characteristics. The proposed position and exercise limits are the lowest position and exercise limits available for equity options in the industry, are extremely conservative, and are more than appropriate given each Bitcoin Fund's market capitalization, ADV, and high number of outstanding shares.

Today, the Exchange has an adequate surveillance program in place for options. MEMX intends to apply those same program procedures to options on the Bitcoin Funds that it applies to the Exchange's other options products.²⁶

The Exchange's market surveillance staff would have access to the surveillances conducted by the Exchange and its affiliate exchange, MEMX Equities, with respect to the Bitcoin Funds, trading in the shares of the underlying Bitcoin Funds, and would review activity in the underlying Bitcoin Funds when conducting surveillances for market abuse or manipulation in the options on the Bitcoin Funds. Additionally, the Exchange is a member of the Intermarket Surveillance Group ("ISG") under the Intermarket Surveillance Group Agreement. ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets. In addition to obtaining surveillance data information from MEMX Equities, the Exchange would be able to obtain information regarding trading in shares of the underlying Bitcoin Funds from their primary listing market, Cboe BZX,

²⁴ 6,300,000 is the minimum number of outstanding shares an underlying security must have for the Exchange to continue to list options on that security, so this would be the smallest number of outstanding shares permissible for any corporate option that would have a position limit of 25,000 contract. See Rule 19.4(b)(1). This rule applies to corporate stock options but not ETF options, which currently have no requirement regarding

outstanding shares of the underlying ETF for the Exchange to continue listing options on that ETF. Therefore, there may be ETF options trading for which the 25,000 contract position limits represents an even larger percentage of outstanding shares of the underlying ETF than set forth above.

²⁵ As these percentages are based on the minimum number of outstanding shares an

underlying security must have to qualify for the applicable position limit, these are the highest possible percentages that would apply to any option subject to that position and exercise limit.

²⁶ The surveillance program includes patterns for price and volume movements and post-trade surveillance patterns (e.g., spoofing, marking the close, ping).

and from other markets that trades shares of the Bitcoin Funds through ISG. In addition, the Exchange has a Regulatory Services Agreement with the Financial Industry Regulatory Authority (“FINRA”) for certain market surveillance, investigation and examinations functions. Pursuant to a multi-party 17d–2 joint plan, all options exchanges allocate amongst themselves and FINRA responsibilities to conduct certain options-related market surveillance that are common to rules of all options exchanges.²⁷

The underlying shares of spot bitcoin exchange-traded products (“ETPs”), including the Bitcoin Funds, are also subject to safeguards related to addressing market abuse and manipulation. As the Commission stated in its order approving proposals of several exchanges to list and trade shares of spot bitcoin-based ETPs, “[e]ach Exchange has a comprehensive surveillance-sharing agreement with the CME via their common membership in the Intermarket Surveillance Group. This facilitates the sharing of information that is available to the CME through its surveillance of its markets, including its surveillance of the CME bitcoin futures market.”²⁸ The Exchange states that, given the consistently high correlation between the CME Bitcoin futures market and the spot bitcoin market, as confirmed by the Commission through robust correlation analysis, the Commission was able to conclude that such surveillance sharing agreements could reasonably be “expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [Bitcoin ETPs].”²⁹ In light of surveillance measures related to both options and futures as well as the underlying Bitcoin Funds,³⁰ the

Exchange believes that existing surveillance procedures are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading the proposed options on the Bitcoin Funds. Further, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on Bitcoin ETPs.

The Exchange has also analyzed its capacity and represents that it believes the Exchange and OPRA have the necessary systems capacity to handle the additional traffic associated with the listing of new series that may result from the introduction of options on Bitcoin Funds up to the number of expirations currently permissible under the Rules. Because the proposal is limited to two classes, the Exchange believes any additional traffic that may be generated from the introduction of Bitcoin Fund options will be manageable.

The Exchange believes that offering options on Bitcoin Funds will benefit investors by providing them with an additional, relatively lower cost investing tool to gain exposure to the price of Bitcoin and hedging vehicle to meet their investment needs in connection with Bitcoin-related products and positions. The Exchange expects investors will transact in options on Bitcoin Funds in the unregulated over-the-counter (“OTC”) options market,³¹ but may prefer to trade such options in a listed environment to receive the benefits of trading listing options, including (1) enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of all listed options. The Exchange believes that listing Bitcoin Fund options may cause investors to bring this liquidity to the Exchange, would increase market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow. The Fund Shares

that hold financial instruments, money market instruments, or precious metal commodities on which the Exchange may already list and trade options are trusts structured in substantially the same manner as Bitcoin Funds and essentially offer the same objectives and benefits to investors, just with respect to different assets. The Exchange notes that it has not identified any issues with the continued listing and trading of any Fund Share options, including Fund Shares that hold commodities (*i.e.*, precious metals) that it currently lists and trades on the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.³² Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)³³ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)³⁴ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange the Exchange [*sic*] believes that the proposal to list and trade options on the Bitcoin Funds will remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors because offering options on the Bitcoin Funds will provide investors with an opportunity to realize the benefits of utilizing options on a Bitcoin Fund, including cost efficiencies and increased hedging strategies. The Exchange believes that offering Bitcoin Fund options will benefit investors by providing them with a relatively lower-cost risk management tool, which will allow them to manage their positions and associated risk in their portfolios more easily in connection with exposure to the price of Bitcoin and

²⁷ Section 19(g)(1) of the Act, among other things, requires every self-regulatory organization (“SRO”) registered as a national securities exchange or national securities association to comply with the Act, the rules and regulations thereunder, and the SRO’s own rules, and, absent reasonable justification or excuse, enforce compliance by its members and persons associated with its members. See 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d–2. Section 17(d)(1) of the Act allows the Commission to relieve an SRO of certain responsibilities with respect to members of the SRO who are also members of another SRO (“common members”). Specifically, Section 17(d)(1) allows the Commission to relieve an SRO of its responsibilities to: (i) receive regulatory reports from such members; (ii) examine such members for compliance with the Act and the rules and regulations thereunder, and the rules of the SRO; or (iii) carry out other specified regulatory responsibilities with respect to such members.

²⁸ See Bitcoin ETP Approval Order.

²⁹ See Bitcoin ETP Approval Order, 89 FR at 3010–11.

³⁰ See Securities Exchange Act Release Nos. 99290 (January 8, 2024), 89 FR 2338, 2343, 2347–

2348 (January 12, 2024) (SR–CboeBZX–2023–044) (Notice of Filing of Amendment No. 3 to a Proposed Rule Change to List and Trade Shares of the Fidelity Wise Origin Bitcoin Fund Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares); and 99288 (January 8, 2024), 89 FR 2387, 2392, 2399–2400 (January 12, 2024) (SR–CboeBZX–2023–028) (Notice of Filing of Amendment No. 5 to a Proposed Rule Change To List and Trade Shares of the ARK 21Shares Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares). See also Bitcoin ETP Approval Order.

³¹ The Exchange understands from customers that investors have historically transacted in options on Fund Shares in the OTC options market if such options were not available for trading in a listed environment.

³² 15 U.S.C. 78f(b).

³³ 15 U.S.C. 78f(b)(5).

³⁴ *Id.*

with Bitcoin-related products and positions. Additionally, the Exchange’s offering of Bitcoin Fund options will provide investors with the ability to transact in such options in a listed market environment as opposed to in the unregulated OTC options market, which would increase market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow to the benefit of all investors. The Exchange also notes that it already lists options on other commodity-based Fund Shares,³⁵ which, as described above, are trusts structured in substantially the same manner as Bitcoin Funds and essentially offer the same objectives and benefits to investors, just with respect to a different commodity (*i.e.*, Bitcoin rather than precious metals) and for which the Exchange has not identified any issues with the continued listing and trading of commodity-backed Fund Share options it currently lists for trading.

The Exchange also believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, because it is consistent with current Exchange Rules previously filed with the Commission. Options on the Bitcoin Funds satisfy the initial listing standards and continued listing standards currently in the Exchange Rules applicable to options on all Fund Shares, including Fund Shares that hold

other commodities already deemed appropriate for options trading on the Exchange. Additionally, as demonstrated above, each Bitcoin Fund is characterized by a substantial number of shares that are widely held and actively traded. Bitcoin Fund options will trade in the same manner as any other Fund Share options—the same Exchange Rules that currently govern the listing and trading of all Fund Share options, including permissible expirations, strike prices and minimum increments, and applicable margin requirements, will govern the listing and trading of options on Bitcoin Funds in the same manner.

The Exchange believes the proposed position and exercise limits are designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade, as they are designed to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. The proposed position and exercise limits are 25,000 contracts, which is the lowest limit applicable to any equity options (including ETF and options on other Bitcoin ETFs). The Exchange believes the proposed position and exercise limits are extremely conservative for each Bitcoin Fund option given the trading volume and outstanding shares for each. The information above demonstrates that the average position and exercise limits of

options on ETFs with comparable outstanding shares and trading volume to those of the Bitcoin Funds are significantly higher than the proposed position and exercise limits for Bitcoin Fund options. Therefore, the proposed position and exercise limits for the Bitcoin Fund options are conservative relative to options on ETFs with comparable market characteristics.

Further, given that the issuer of each Bitcoin Fund may create and redeem shares that represent an interest in Bitcoin, the Exchange believes it is relevant to compare the size of a position limit to the market capitalization of the Bitcoin market. As of August 27, 2024, the global supply of Bitcoin was 19,745,940, and the price of one Bitcoin was approximately \$59,466.82,³⁶ which equates to a market capitalization of approximately \$1.165 trillion. Consider the proposed position and exercise limit of 25,000 option contracts for each Bitcoin Fund option. A position and exercise limit of 25,000 same side contracts effectively restricts a market participant from holding positions that could result in the receipt of no more than 2,500,000 of Fidelity Fund shares or ARK 21 Fund shares, as applicable (if that market participant exercised all its options). The following table shows the share price of each Bitcoin Fund on August 27, 2024, the value of 2,500,000 shares of the Bitcoin Fund at that price, and the approximate percentage of that value of the size of the Bitcoin market:

Bitcoin Fund	August 27, 2024 share price (\$)	Value of 2,500,000 shares of Bitcoin Fund (\$)	Percentage of Bitcoin market
Fidelity Fund	54.33	135,825,000	0.01
ARK 21 Fund	62.08	155,200,000	0.01

Therefore, if a market participant with the maximum 25,000 same side contracts in either Fidelity Fund options or ARK 21 Fund options exercised all positions at one time, such an event would have no practical impact on the Bitcoin market.

The Exchange also believes the proposed limits are appropriate given position limits for Bitcoin futures. For example, the Chicago Mercantile Exchange (“CME”) imposes a position limit of 2,000 futures (for the initial spot month) on its Bitcoin futures contract.³⁷ On August 28, 2024, CME Aug 24

Bitcoin Futures settled at \$58,950. A position of 2,000 CME Bitcoin futures, therefore, would have a notional value of \$589,500,000. The following table shows the share price of each Bitcoin Fund on August 28, 2024 and the approximate number of option contracts that equates to that notional value:

Bitcoin Fund	August 28, 2024 share price (\$)	Number of option contracts
Fidelity Fund	51.47	114,532

³⁵ See Rule 19.3(i)(4).

³⁶ See Blockchain.com | Charts—Total Circulating Bitcoin.

³⁷ See CME Rulebook Chapter 350 (description of CME Bitcoin Futures) and Chapter 5, Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices. Each CME Bitcoin futures contract is valued at five Bitcoins as defined by the CME CF Bitcoin Reference Rate (“BRR”). See CME Rule 35001.

Bitcoin Fund	August 28, 2024 share price (\$)	Number of option contracts
ARK 21 Fund	58.83	100,203

The approximate number of option contracts for each Bitcoin Fund that equate to the notional value of CME Bitcoin futures is significantly higher than the proposed limit of 25,000 options contract for each Bitcoin Fund option. The fact that many options ultimately expire out-of-the-money and thus are not exercised for shares of the underlying, while the delta of a Bitcoin Future is 1, further demonstrates how conservative the proposed limits of 25,000 options contracts are for the Bitcoin Fund options.

The Exchange notes, unlike options contracts, CME position limits are calculated on a net futures-equivalent basis by contract and include contracts that aggregate into one or more base contracts according to an aggregation ratio(s).³⁸ Therefore, if a portfolio includes positions in options on futures, CME would aggregate those positions into the underlying futures contracts in accordance with a table published by

CME on a delta equivalent value for the relevant spot month, subsequent spot month, single month and all month position limits.³⁹ If a position exceeds position limits because of an option assignment, CME permits market participants to liquidate the excess position within one business day without being considered in violation of its rules. Additionally, if at the close of trading, a position that includes options exceeds position limits for futures contracts, when evaluated using the delta factors as of that day's close of trading but does not exceed the limits when evaluated using the previous day's delta factors, then the position shall not constitute a position limit violation. Considering CME's position limits on futures for Bitcoin, the Exchange believes that that the proposed same side position limits are more than appropriate for the Bitcoin Fund options.

The Exchange believes the proposed position and exercise limits will have no material impact to the supply of Bitcoin. For example, consider again the proposed position limit of 25,000 option contracts for each Bitcoin Fund option. As noted above, a position limit of 25,000 same side contracts effectively restricts a market participant from holding positions that could result in the receipt of no more than 2,500,000 shares of the applicable Bitcoin Fund (if that market participant exercised all its options). As of August 7, 2024, the Bitcoin Funds had the number of shares outstanding set forth in the table below. The table below also sets forth the approximate number of market participants that could hold the maximum of 25,000 same side positions in each Bitcoin Fund that would equate to the number of shares outstanding of that Bitcoin Fund:

Bitcoin Fund	Shares outstanding	Number of market participants with 25,000 same side positions
Fidelity Fund	201,100,100	80
ARK 21 fund	45,495,000	18

This means if 80 market participants had 25,000 same side positions in Fidelity Fund options, each of them would have to simultaneously exercise all of those options to create a scenario that may put the underlying security under stress. Similarly, this means if 18 market participants had 25,000 same side positions in ARK 21 Fund options, each of them would have to simultaneously exercise all of those options to create a scenario that may put the underlying security under stress. The Exchange believes it is highly unlikely for either such event to occur; however, even if either such event did occur, the Exchange would not expect either Bitcoin Fund to be under stress because such an event would merely induce the creation of more shares

through the trust's creation and redemption process.

As of August 7, 2024, the global supply of Bitcoin was approximately 19,736,528.⁴⁰ Based on the \$47.88 price of a Fidelity Fund share on August 7, 2024, a market participant could have redeemed one Bitcoin for approximately 1,149 Fidelity Fund shares. Another 22,677,270,672 Fidelity Fund shares could be created before the supply of Bitcoin was exhausted. As a result, 9,070 market participants would have to simultaneously exercise 25,000 same side positions in Fidelity Fund options to receive shares of the Fidelity Fund holding the entire global supply of Bitcoin. Similarly, based on the \$54.68 price of an ARK 21 Fund share on August 7, 2024, a market participant could have redeemed one Bitcoin for

approximately 1,006 ARK 21 Fund Shares. Another 19,855 ARK 21 Fund shares could be created before the supply of Bitcoin were exhausted. As a result, 7,941 market participants would have to simultaneously exercise 25,000 same side positions in ARK 21 Fund options to receive shares of the ARK 21 Fund holding the entire global supply of Bitcoin. Unlike the Bitcoin Funds, the number of shares that corporations may issue is limited. However, like corporations, which authorize additional shares, repurchase shares, or split their shares, the Bitcoin Funds may create, redeem, or split shares in response to demand. While the supply of Bitcoin is limited to 21,000,000, it is believed that it will take more than 100 years to fully mine the remaining

³⁸ See CME Rulebook Chapter 5, Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices.

³⁹ *Id.*

⁴⁰ See Blockchain.com | Charts—Total Circulating Bitcoin (which also shows the price of one Bitcoin equal to \$55,033.47).

Bitcoin.⁴¹ The supply of Bitcoin is larger than the available supply of most securities.⁴² Given the significant unlikelihood of any of these events ever occurring, the Exchange does not believe options on the Bitcoin Funds should be subject to position and exercise limits even lower than those proposed (which are already equal to the lowest available limit for equity options in the industry) to protect the supply of Bitcoin.⁴³

The Exchange believes the available supply of Bitcoin is not relevant to the determination of position and exercise limits for options overlying the Bitcoin Funds.⁴⁴ Position and exercise limits are not a tool that should be used to address a potential limited supply of the underlying of an underlying. Position and exercise limits do not limit the total number of options that may be held, but rather they limit the number of positions a single customer may hold or exercise at one time.⁴⁵ “Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate

number of options contracts that a member or customer could hold or exercise.”⁴⁶ Position and exercise limit rules are intended “to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition, such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.”⁴⁷

The Exchange notes that a Registration Statement on Form S-1 was filed with the Commission for each Bitcoin Fund, each of which described the supply of Bitcoin as being limited to 21,000,000 (of which approximately 90% had already been mined), and that the limit would be reached around the year 2140.⁴⁸ Each Registration Statement permits an unlimited number of shares of the applicable Bitcoin ETF to be created. Further, the Commission approved proposed rule changes that permitted the listing and trading of shares of each Bitcoin Fund, which approval did not comment on the sufficient supply of Bitcoin or address whether there was a risk that permitting an unlimited number of shares for a Bitcoin Fund would impact the supply of Bitcoin.⁴⁹ Therefore, the Exchange believes the Commission had ample time and opportunity to consider whether the supply of Bitcoin was sufficient to permit the creation of unlimited Bitcoin Fund shares, and does not believe considering this supply with respect to the establishment of position and exercise limits is appropriate given its lack of relevance to the purpose of position and exercise limits. However, given the significant size of the Bitcoin supply, the proposed positions limits are more than sufficient to protect investors and the market.

Based on the above information demonstrating, among other things, that each Bitcoin Fund is characterized by a substantial number of outstanding shares that are actively traded and widely held, the Exchange believes the proposed position and exercise limits

are extremely conservative compared to those of ETF options with similar market characteristics. The proposed position and exercise limits reasonably and appropriately balance the liquidity provisioning in the market against the prevention of manipulation. The Exchange believes these proposed limits are effectively designed to prevent an individual customer or entity from establishing options positions that could be used to manipulate the market of the underlying as well as the Bitcoin market.⁵⁰

The Exchange represents that it has the necessary systems capacity to support the new Bitcoin Fund options. As discussed above, the Exchange believes that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might arise from listing and trading Fund Share options, including Bitcoin Fund options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by Cboe.⁵¹ The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of

the purposes of the Act as the Bitcoin Fund options will be equally available to all market participants who wish to trade such options and will trade generally in the same manner as other options. The Exchange Rules that currently apply to the listing and trading of all Fund Share options on the Exchange, including, for example, Rules that govern listing criteria, expirations, exercise prices, minimum increments, margin requirements, customer accounts, and trading halt procedures will apply to the listing and trading of Bitcoin Funds options on the Exchange in the same manner as they apply to other options on all other Fund Shares that are listed and traded on the Exchange. Also, and as stated above, the Exchange already lists options on other commodity-based Fund Shares.⁵² Further, the Bitcoin Funds would need

⁴¹ See Pre-Effective Amendment No. 5 to Form S-1 Registration Statement No. 333-254652, Fidelity Fund, filed January 9, 2024, at 53-54; and Amendment No. 8 to Form S-1 Registration Statement No. 333-257474, ARK 21 Fund, filed January 9, 2024, at 15.

⁴² The market capitalization of Bitcoin would rank in the top 10 among securities. See <https://companiesmarketcap.com/usa/largest-companies-in-the-usa-by-market-cap/>.

⁴³ This would be even more unlikely with respect to the Bitcoin Funds for which the Exchange proposes lower position limits.

⁴⁴ Prior to Bitcoin ETFs, the Exchange is unaware of any proposed rule change related to position and exercise limits for any equity option (including commodity ETF options) for which the Commission required consideration of whether the available supply of an underlying (whether it be a corporate stock or an ETF) or the contents of an ETF (commodity or otherwise) should be considered when an exchange proposed to establish those limits. See, e.g., Securities Exchange Act Release No. 57894 (May 30, 2008), 73 FR 32061 (June 5, 2008) (SR-CBOE-2005-11) (approval order in which the Commission stated that the “listing and trading of Gold Trust Options will be subject to the exchanges’ rules pertaining to position and exercise limits and margin”). The Exchange notes when the Commission approved this filing, the position limits in Rule 8.30 were the same as they are today. For reference, the current position and exercise limits for options on SPDR Gold Shares ETF (“GLD”) and options on iShares Silver Trust (“SLV”) are 250,000 contracts, or 10 times that proposed position and exercise limit for the Bitcoin Fund options.

⁴⁵ For example, suppose an option has a position limit of 25,000 option contracts and there are a total of 10 investors trading that option. If all 10 investors max out their positions, that would result in 250,000 option contracts outstanding at that time. However, suppose 10 more investors decide to begin trading that option and also max out their positions. This would result in 500,000 option contracts outstanding at that time. An increase in the number of investors could cause an increase in outstanding options even if position limits remain unchanged.

⁴⁶ See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-1997-11).

⁴⁷ See *id.*

⁴⁸ See Pre-Effective Amendment No. 5 to Form S-1 Registration Statement No. 333-254652, Fidelity Fund, filed January 9, 2024, at 53-54; and Amendment No. 8 to Form S-1 Registration Statement No. 333-257474, ARK 21 Fund, filed January 9, 2024, at 15.

⁴⁹ See Bitcoin ETP Approval Order.

⁵⁰ See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-1997-11).

⁵¹ See *supra* note 4.

⁵² See Rule 19.3(i)(4).

to satisfy the maintenance listing standards set forth in the Exchange Rules in the same manner as any other Fund Share for the Exchange to continue listing options on them.

The Exchange does not believe that the proposal to list and trade options on Bitcoin Funds will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the extent that the advent of Bitcoin Fund options trading on the Exchange may make the Exchange a more attractive marketplace to market participants at other exchanges, such market participants are free to elect to become market participants on the Exchange. Additionally, other options exchanges are free to amend their listing rules, as applicable, to permit them to list and trade options on the Bitcoin Funds. The Exchange notes that listing and trading Bitcoin Fund options on the Exchange will subject such options to transparent exchange-based rules as well as price discovery and liquidity, as opposed to alternatively trading such options in the OTC market.

The Exchange believes that the proposed rule change may relieve any burden on, or otherwise promote, competition, as it is designed to increase competition for order flow on the Exchange in a manner that is beneficial to investors by providing them with a lower-cost option to hedge their investment portfolios. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues that offer similar products. Ultimately, the Exchange believes that offering Bitcoin Fund options for trading on the Exchange will promote competition by providing investors with an additional, relatively low-cost means to hedge their portfolios and meet their investment needs in connection with Bitcoin prices and Bitcoin-related products and positions on a listed options exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become

operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁵³ and Rule 19b-4(f)(6) thereunder.⁵⁴

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)⁵⁵ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission previously approved the listing of options on the Bitcoin Funds.⁵⁶ The Exchange has provided information regarding the underlying Bitcoin Funds, including, among other things, information regarding trading volume, the number of beneficial holders, and the market capitalization of the Bitcoin Funds. The proposal also establishes position and exercise limits for options on the Bitcoin Funds and provides information regarding the surveillance procedures that will apply to options on the Bitcoin Funds. The Commission believes that waiver of the operative delay could benefit investors by providing an additional venue for trading options on the Bitcoin Funds. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.⁵⁷

At any time within 60 days of the filing of such 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.

⁵³ 15 U.S.C. 78s(b)(3)(A).

⁵⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

⁵⁵ 17 CFR 240.19b-4(f)(6)(iii).

⁵⁶ See *supra* note 4.

⁵⁷ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MEMX-2024-46 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-MEMX-2024-46. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 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-MEMX-2024-46 and should be submitted on or before January 16, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁸

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024-30780 Filed 12-23-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101957; File No. SR-FINRA-2024-021]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend the Codes of Arbitration Procedure To Adopt FINRA Rules 12808 and 13808 (Accelerated Processing) To Accelerate the Processing of Arbitration Proceedings for Parties Who Qualify Based on Their Age or Health Condition

December 18, 2024.

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 December 11, 2024, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to amend the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and the Code of Arbitration Procedure for Industry Disputes (“Industry Code”) (together, “Codes”) to add new FINRA Rules 12808 and 13808 (Accelerated Processing) to accelerate the processing of arbitration proceedings for parties who qualify based on their age or health condition.

The text of the proposed rule change is available on FINRA’s website at <https://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA 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

I. Background

FINRA currently offers a program to expedite arbitration proceedings in the forum administered by FINRA Dispute Resolution Services (“DRS”) for parties who have a serious health condition or are at least 65 years old (“current program”).³ When an eligible party makes a request to expedite the proceedings under the current program, DRS staff will expedite the case-related tasks that they can control, such as completing the arbitrator selection process, scheduling the initial prehearing conference, and serving the final award.⁴ In addition, the current program “encourage[s]” arbitrators to be sensitive to the needs of parties who are seniors or seriously ill when making scheduling decisions and setting deadlines.⁵ Critically, however, the current program does not provide for shortened, rule-based deadlines for parties or provide arbitrators with direction on how quickly the arbitration should be completed.

Although the intent of the current program is to shorten case processing times for parties that qualify based on their age or health condition, cases that qualify for the current program close only marginally more quickly than cases that are not in the current program. While the median time for customer arbitrations that are not in the current program to close is approximately 15.7 months, the median time for customer arbitrations that are in the current program to close is approximately 13.7

months, a difference of just two months.⁶

FINRA believes that it would protect investors and the public interest to materially shorten case processing times for those parties who may be unable to meaningfully participate in a lengthy arbitration because of their age or health condition. As is discussed more fully below, when a party is unable to meaningfully participate in an arbitration—for example, if they become ill and are unable to testify—the outcome of the proceeding may be affected. This potentially harms not only the immediate parties to the arbitration but also the broader investing public because the resolution of the arbitration may not accurately reflect the underlying merits of the case.

Accordingly, FINRA is proposing to add a new rule to the Codes that would help to accelerate the arbitration process for those parties who qualify based on their age or health condition. Unlike the current program, the proposed rule change would establish shortened case-processing deadlines for the parties, including the time to respond to discovery deadlines, and provide direction to arbitrators regarding how quickly the proceeding should be completed. By codifying these shortened deadlines and providing additional direction to arbitrators, FINRA believes that the length of the proceedings subject to the proposed rule change would shorten by approximately six months, which would make a meaningful difference for older parties or those suffering from a serious health condition.⁷ The proposed rule change would be more likely than the current program, which does not provide for shortened, rule-based deadlines for parties or provide arbitrators with direction on how quickly the arbitration should be completed, to accelerate the proceedings for those parties who may not be able to meaningfully participate throughout the course of a lengthy arbitration. If the Commission approves the proposed rule change, the requirements of the new rule would apply to those who qualify and request accelerated processing, thereby replacing the current program. In addition, for those parties who may benefit from shortened proceedings but do not meet the eligibility requirements of the proposed rule change, the proposed rule change would allow the parties to request that the panel consider other factors, including their

³ See FINRA, Expedited Proceedings for Senior or Seriously Ill Parties, <https://www.finra.org/arbitration-mediation/rules-case-resources/special-procedures/expedited-proceedings-seniors-seriously-ill>.

⁴ See *supra* note 3.

⁵ See *supra* note 3.

⁶ See *infra* Item II.B.2 (discussing *Economic Baseline*).

⁷ See *infra* Item II.B.3 (discussing *Economic Impacts*).

⁵⁸ 17 CFR 200.30-3(a)(12), (59).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

age and health, when scheduling hearings and discovery, briefing, and motion deadlines. Thus, although these proceedings would not be subject to the shortened, rule-based deadlines of the proposed rule change, the panel may determine at a party's request, to expedite the proceedings based on the party's particular circumstances, including developing a serious health condition during the arbitration proceeding.

II. Proposed Rule Change

A. Requesting Accelerated Case Processing

Under the proposed rule change, parties would be able to request accelerated processing if they meet one of two eligibility requirements, based on their age or their health condition.⁸ FINRA addresses each of these eligibility requirements in turn below.

1. Eligibility Based on Age

The first way for a party to qualify for accelerated processing under the proposed rule change would be based on their age. Under proposed Rules 12808(a)(1)(A) and 13808(a)(1)(A), a party may request accelerated processing of a case when initiating an arbitration or filing an answer provided that the party making the request is at least 70 years of age at the time of the request.⁹

FINRA believes it is appropriate for parties who are 70 years of age and older to qualify for accelerated processing because these parties are more likely than younger individuals to become seriously ill or experience an adverse health condition during the course of an arbitration.¹⁰ Because of their age, it is also more likely that parties who are at least 70 years of age may not live to see the outcome of the arbitration proceedings.¹¹ For these reasons, these parties may not be able to meaningfully participate throughout the course of a lengthy arbitration proceeding. For example, as forum users have noted, elderly parties may be unable to consult with their counsel or otherwise assist in the preparation of the case.¹² These parties also may be

unable to testify.¹³ This, in turn, could affect the outcome of the proceedings. For example, if a party is unavailable to testify because they are deceased or suffering from an adverse health condition, the arbitrators would have no opportunity to observe the party's demeanor and, thus, may be unable to assess their credibility. By shortening the length of the arbitration for individuals who are at least 70 years of age, the proposed rule change would make it more likely that these parties are able to meaningfully participate for the duration of the arbitration proceedings. This, in turn, would help ensure that the outcomes of the cases accurately reflect the underlying merits.

Further, as is discussed in more detail below, a party younger than 70, but who has an eligible health condition, still would be able to request accelerated processing under proposed Rules 12808(a)(1)(B) and 13808(a)(1)(B) provided that the party making the request certifies, in the manner and form required by the Director, that (i) the party has received a medical diagnosis and prognosis and (ii) based on that medical diagnosis and prognosis, the party has a reasonable belief that accelerated processing of the case is necessary to prevent prejudicing the party's interest in the arbitration.

FINRA understands that, under the proposed rule change, some younger parties would not be eligible to request accelerated processing based on either their age or their health condition. Although some of these parties might benefit if their arbitrations were completed more quickly, as discussed in more detail below,¹⁴ FINRA does not believe that a lower age cutoff, such as an age cut off of 65 (consistent with the current program), would be appropriate.

First, under proposed Rules 12808(a)(3) and 13808(a)(3), parties who would not qualify for accelerated processing based on either their age or health condition still would be able to request, once the panel is appointed, that the panel consider other factors, including their age or a change in their health condition during the arbitration proceeding, when scheduling hearings and discovery, briefing, and motion deadlines. Thus, although these proceedings would not be subject to the shortened, rule-based deadlines of the proposed rule change, the panel may determine at a party's request, to

expedite the proceedings based on the party's particular circumstances.

Second, due to the increase in the number of customer claimants who would qualify for accelerated processing,¹⁵ a lower age cutoff might make it difficult for arbitrators—many of whom might have to serve concurrently on more than one arbitration¹⁶—to comply with their obligations under proposed Rules 12808(b)(2)(B), 12808(b)(2)(C), 13808(b)(2)(B), and 13808(b)(2)(C) to endeavor to hold hearings and render an award within 10 months or less in accelerated proceedings.¹⁷

Third, a lower age cut off may have a negative impact on non-accelerated customer arbitrations. Arbitrators and industry parties and their counsel are often involved in more than one arbitration at the same time and may seek to extend the case processing times of their concurrent, non-accelerated arbitrations in order to meet the shortened deadlines that would apply to their accelerated arbitrations.¹⁸

Based on these considerations, FINRA believes that an age cutoff of 70 would help ensure that the proposed rule change is effective at helping those parties who would benefit most from accelerated processing. That said, if the Commission approves the proposed rule change, FINRA would monitor the program to determine if adjustments to the age cutoff for qualifying for accelerated processing are warranted.

2. Eligibility Based on Health

In addition to allowing parties to qualify for accelerated processing based on their age, the proposed rule change separately would allow parties to qualify based on their health condition.

¹⁵ Lowering the proposed age cutoff from 70 to 65—the same age cutoff for the current program—would increase the total number of customer claimants who would qualify for accelerated processing from 20 percent to 26 percent. In 2023, with a proposed age cutoff of 65, customer claimants in 492 arbitrations (26 percent of 1,891 arbitrations where customers appeared as claimant) would qualify for accelerated processing. See *infra* Item II.B.4 (discussing *Alternatives Considered*). Although the proposed rule change would permit any party who is a natural person to request accelerated processing, FINRA anticipates, based on its experience with the current program, that most requests would come from customer claimants. See *infra* note 45 and accompanying text.

¹⁶ See *infra* Item II.B.3 (discussing *Economic Impacts*).

¹⁷ Although shortening the length of the proceedings for parties who qualify for accelerated processing is an important goal, FINRA understands that speed cannot come at the cost of procedural fairness. However, FINRA believes that 10 months should provide a reasonable and fair opportunity for discovery, motions, briefing, and hearings to be completed.

¹⁸ See *infra* Item II.B.3 (discussing *Economic Impacts*).

⁸ See proposed Rules 12808(a)(1) and 13808(a)(1).

⁹ See proposed Rules 12808(a)(1)(A) and 13808(a)(1)(A).

¹⁰ See *infra* Item II.B.3 (discussing *Economic Impacts*).

¹¹ See *infra* Item II.B.3 (discussing *Economic Impacts*).

¹² In *Regulatory Notice 22–09* (March 2022) (“Notice”), FINRA sought comment on a proposed rule change to accelerate arbitration proceedings for those parties who may not be able to meaningfully participate in lengthy proceedings. See *infra* Item II.C. (discussing the *Notice* and summarizing the comments).

¹³ See *infra* Item II.C.1 (discussing comments to the *Notice* addressing the need for the proposed rule change).

¹⁴ See *infra* Item II.B.4 (discussing *Alternatives Considered*).

Specifically, under proposed Rules 12808(a)(1)(B) and 13808(a)(1)(B), a party may request accelerated processing of a case when initiating an arbitration or filing an answer provided that the party making the request certifies, in the manner and form required by the Director, that (i) the party has received a medical diagnosis and prognosis, and (ii) based on that medical diagnosis and prognosis, the party has a reasonable belief that accelerated processing of the case is necessary to prevent prejudicing the party's interest in the arbitration ("eligible health condition").

FINRA believes it is appropriate to allow parties, regardless of age, to qualify for accelerated processing based on an eligible health condition. Parties who are suffering from an eligible health condition may be unable to meaningfully participate in a lengthy arbitration proceeding, which, in turn, could affect the outcome of the proceeding.

Unlike the proposed rule change, the current program does not require a certification to qualify for expedited proceedings based on a party's health condition. Under the current program, the Director determines whether the party qualifies for the program on the face of the information contained in the party's request at the outset of the case through the online claim filing form, statement of claim, or optional cover letter.¹⁹ If it is not clear from the request whether the party qualifies for the current program, the Director may request additional information from the party.

FINRA believes that the proposed certification requirement is the most appropriate way to minimize unnecessary intrusions into a party's private health information while, at the same time, allowing FINRA to identify those individuals who could benefit most from accelerated processing because they are suffering from an eligible health condition.

FINRA understands the concerns of some forum users that, unless proof of their medical condition is required, parties may submit a false certification in order to qualify for accelerated processing.²⁰ However, FINRA has no evidence that parties have falsely claimed to be suffering from a serious health condition under the current program nor any reason to believe that

this kind of misconduct is more likely under the proposed rule change. Moreover, FINRA believes that the threat of potential sanctions under existing FINRA Rules 12212 and 13212 should be sufficient to deter parties from falsely certifying that they have been diagnosed with an eligible health condition in order to qualify for accelerated processing.²¹

Finally, some forum users have expressed the concern that parties who request accelerated processing on the basis of an eligible health condition could be subject to discovery requests for the production of medical records or other private information about their health condition.²² FINRA agrees with these forum users that in addition to raising privacy concerns, such discovery requests—or a requirement for additional proof of a party's health condition—could deter parties from making valid requests for accelerated processing and also unnecessarily delay the proceedings.²³ To address these concerns, the proposed rule change would make clear that a party does not open the door to discovery into their health condition merely by requesting accelerated processing.²⁴ Specifically, under proposed Rules 12808(a)(2) and 13808(a)(2), a party's certification of an eligible health condition shall not alone be sufficient grounds to compel the production of information concerning, or to allow questioning at any hearing about, the party's medical condition. The proposed rule change would not address a party's ability to request medical information for other appropriate reasons that are unrelated to the certification. For example, state law may allow a claimant's medical records to be discovered when a claimant places their medical condition at issue in their claim.²⁵

²¹ Under existing FINRA Rules 12212 and 13212, potential sanctions include, but are not limited to, monetary penalties, an adverse inference, or a preclusion order.

²² See *infra* note 81 and accompanying text.

²³ See *infra* note 82 and accompanying text.

²⁴ See proposed Rules 12808(a)(2) and 13808(a)(2).

²⁵ See, e.g., *Hansen v. Combined Transp., Inc.*, Case No. 1:13-cv-01993, 2014 U.S. Dist. LEXIS 63490, at *6–9 (D. Or. May 8, 2014) (because plaintiff alleged emotional distress damages, court found that, under Oregon and Washington law, he had placed his psychological condition at issue and granted the defendants' motion to compel the production of any records of the plaintiff's treatment by a medical professional for emotional or psychological matters); *Kirk v. Schaeffler Group USA, Inc.*, No. 3:13-cv-05032, 2014 U.S. Dist. LEXIS 83963, at *2–9 (W.D. Mo. June 20, 2014) (plaintiff was required, under Missouri law, to produce medical records related to her autoimmune disorder because those records were relevant to her claim that her autoimmune disorder was caused by exposure to chemicals released from the

Based on these considerations, FINRA believes that the proposed certification requirement and the threat of potential sanctions would be sufficient to protect against abuse of the process while, at the same time, minimizing unnecessary intrusions into a party's private medical information.

3. Requests by Other Parties for Accelerated Processing

Finally, as noted above, for those parties who may benefit from shortened proceedings but do not meet the eligibility requirements of the proposed rule change, proposed Rules 12808(a)(3) and 13808(a)(3) would allow those parties to request that the panel consider other factors, including their age or a change in their health condition during the arbitration proceeding, when scheduling hearings and discovery, briefing, and motions deadlines. Thus, although these proceedings would not be subject to the shortened, rule-based deadlines of the proposed rule change, the panel may determine at a party's request, to expedite the proceedings based on the party's particular circumstances.

B. Determination of Eligibility

Under proposed Rules 12808(b)(1) and 13808(b)(1), the Director would be responsible for determining whether a requesting party qualifies for accelerated processing.²⁶ When assessing eligibility for accelerated processing, the Director would make an objective determination as to whether the requesting party is at least 70 years of age or has submitted the required certification regarding an eligible health condition. This determination would not require any assessment by the Director regarding the reasonableness of the requesting party's belief that accelerated processing is necessary.

C. Accelerating the Proceedings

Once the Director determines that an arbitration qualifies for accelerated processing, the proposed rule change would accelerate the proceedings in three ways. First, the proposed rule change would accelerate the arbitrator selection process by shortening the deadlines for the Director to send the list of potential arbitrators to the

defendants' manufacturing plant); *Desrosiers v. Hartford*, No. C 12–80104, 2012 U.S. Dist. LEXIS 64554, at *1–4 (N.D. Cal. May 8, 2012) (applying California law, the court compelled compliance with subpoenas that sought the production of the plaintiff's medical records where she alleged that her employer's actions caused her to suffer emotional and psychological injuries).

²⁶ See *supra* note 19.

¹⁹ Under the Codes, the term "Director" means the Director of DRS. Unless the Codes provide that the Director may not delegate a specific function, the term includes FINRA staff to whom the Director has delegated authority. See FINRA Rules 12100(m), 12103, 13100(m), and 13103.

²⁰ See *infra* note 80 and accompanying text.

parties.²⁷ Second, the proposed rule change would provide arbitrators with direction on how quickly the arbitration should be completed.²⁸ Third, the proposed rule change would shorten certain deadlines that apply to the parties.²⁹

1. Accelerating the Arbitrator Selection Process

The first way that the proposed rule change would shorten the proceedings is by requiring that the Director send out the lists of potential arbitrators to the parties more quickly.³⁰ Currently, DRS is required to send a list of potential arbitrators to all parties at the same time, “within approximately 30 days after the last answer is due,” regardless of the parties’ agreement to extend any answer due date.³¹ By contrast, proposed Rules 12808(b)(2)(A) and 13808(b)(2)(A) would require the Director to send the arbitrator lists generated by the list selection algorithm to all parties “as soon as practicable after the last answer is due.” In practice, the Director generally sends the arbitrator lists to parties in fewer than 30 days after the last answer due date. By requiring that the Director send the arbitrator lists “as soon as practicable” after the last answer is due, it would signal that the lists shall be sent shortly after the last answer due date, but would retain some flexibility for the Director in sending the lists.

2. Guidance to Arbitrators Regarding Completion of the Arbitration

The second way that the proposed rule change would shorten the length of the proceedings is to provide arbitrators with direction as to how quickly the case should be completed. Specifically, under proposed Rules 12808(b)(2)(B) and 13808(b)(2)(B), the panel shall endeavor to render an award within 10 months of the date the Director determines that a case is subject to accelerated processing. In addition, under proposed Rules 12808(b)(2)(C) and 13808(b)(2)(C), the panel shall hold a prehearing conference at which it shall set discovery, briefing, and

motions deadlines, and schedule hearing sessions, that are consistent with rendering an award within 10 months or less.

By providing arbitrators with specific guidance regarding how quickly they should endeavor to complete an arbitration, FINRA believes that the proposed rule change would be more likely than the current program—which does not provide arbitrators with any similar guidance—to significantly reduce the overall length of the proceedings in cases that qualify for accelerated processing.

FINRA also believes that 10 months is the appropriate timeframe within which arbitrators should endeavor to render awards in accelerated arbitrations. Currently, the median time for customer arbitrations to close by award after a hearing when they are not part of the current program is almost 16 months, as is discussed more fully below.³² Shortening the length of the proceedings by approximately six months would make a meaningful difference for a party who is at least 70 years old or suffering from an eligible health condition.³³

As noted above, although shortening the length of the proceedings for parties who qualify for accelerated processing is an important goal, FINRA understands that speed cannot come at the cost of fairness. However, FINRA believes that 10 months should provide a reasonable and fair opportunity for discovery, motions, briefing, and hearings to be completed.³⁴

At the same time, FINRA recognizes that there are some cases that may qualify for accelerated processing but that cannot reasonably be completed within 10 months because, for example, they are too complex. As to these matters, FINRA believes that the proposed rule change—which would establish a benchmark but would not mandate that all cases be completed within 10 months—would provide the arbitrators with sufficient flexibility to accommodate the particular circumstances of each case.³⁵

³² See *infra* Item II.B.2 (discussing *Economic Baseline*).

³³ See *infra* Item II.B.3 (discussing *Economic Impacts*).

³⁴ See *supra* note 17.

³⁵ Further, as is discussed more fully, *infra* note 42 and accompanying text, even after the proposed rule change is adopted, arbitrators would continue to have flexibility under existing FINRA rules to modify the deadlines that apply to the parties when appropriate. See FINRA Rules 12508(b) and 13508(b) (allowing arbitrators to excuse untimely objections to discovery requests where “the party had substantial justification for failing to make the objection within the required time”); FINRA Rules 12207(b) and 13207(b) (authorizing arbitrators to extend or modify any deadline “either on its own initiative or upon motion of a party”).

3. Shortening Party Deadlines

Finally, the third way that the proposed rule change would shorten the length of the proceedings is to shorten several of the default deadlines that apply to parties under the Codes, as follows:

- *Serving an Answer.* Under the Codes, a respondent must serve an answer within 45 days of receipt of the statement of claim.³⁶ Under proposed Rules 12808(b)(2)(D)(i) and 13808(b)(2)(D)(i), a respondent would be required to serve an answer within 30 days of receipt of the statement of claim.

- *Responding to a Third Party Claim.* Under the Codes, a party responding to a third party claim must serve a response within 45 days of receipt of the third party claim.³⁷ Under proposed Rules 12808(b)(2)(D)(ii) and 13808(b)(2)(D)(ii), a party responding to a third party claim would be required to serve a response within 30 days of receipt of the third party claim.

- *Completing Arbitrator Lists.* Under the Codes, parties must return the ranked arbitrator lists to the Director no more than 20 days after the lists were sent to the parties.³⁸ Under proposed Rules 12808(b)(2)(D)(iii) and 13808(b)(2)(D)(iii), parties would be required to return the ranked arbitrator lists to the Director no more than 10 days after the lists are sent to the parties.

- *Discovery in Customer Cases.* Under the Customer Code, parties in customer cases are required to produce to all other parties documents that are described in the Document Production Lists on FINRA’s website; explain why specific documents cannot be produced; or object and file an objection with the Director within 60 days of the date that the answer to the statement of claim or third party claim is due, unless the parties agree otherwise.³⁹ Under proposed Rule 12808(b)(2)(D)(iv), parties in customer cases would be required to respond to the Document Production Lists within 35 days of the date the answer to the statement of claim or third party claim is due, unless the parties agree otherwise.

- *Other Discovery Requests.* Under the Codes, parties must respond within 60 days of receipt to requests for other documents or information, unless the parties agree otherwise.⁴⁰ Under proposed Rules 12808(b)(2)(D)(v) and 13808(b)(2)(D)(v), parties would be required to respond to requests for other

³⁶ See FINRA Rules 12303 and 13303.

³⁷ See FINRA Rules 12306 and 13306.

³⁸ See FINRA Rules 12403 and 13404.

³⁹ See FINRA Rule 12506.

⁴⁰ See FINRA Rules 12507 and 13507.

²⁷ See proposed Rules 12808(b)(2)(A) and 13808(b)(2)(A).

²⁸ See proposed Rules 12808(b)(2)(B), 12808(b)(2)(C), 13808(b)(2)(B), and 13808(b)(2)(C).

²⁹ See proposed Rules 12808(b)(2)(D) and 13808(b)(2)(D).

³⁰ FINRA uses a list selection algorithm that generates, on a random basis, lists of arbitrators from FINRA’s rosters of arbitrators for the selected hearing location for each proceeding. The parties select their panel through a process of striking and ranking the arbitrators on the lists generated by the list selection algorithm. See FINRA Rules 12400(a) and 13400(a).

³¹ See FINRA Rules 12402(c)(1), 12403(b)(1) and 13403(c)(1).

documents and information within 30 days of receipt, unless the parties agree otherwise.

Based on FINRA's experience, FINRA believes these proposed shortened deadlines are reasonable and would not compromise the fairness of the arbitration proceedings because they would be manageable in most cases. In addition, arbitrators and parties could extend the proposed deadlines if warranted. Specifically, there may be some cases in which the complexity of the case, the volume of discovery, or other factors may justify extending these proposed deadlines.⁴¹ Under such circumstances, the existing provisions of the Codes would provide the parties and arbitrators with the flexibility to address the unique facts and circumstances of each case. Specifically, under existing FINRA Rules 12207(a) and 13207(a), the parties may agree to extend or modify any deadline for serving an answer, returning the ranked arbitrator or chairperson lists, responding to motions, or exchanging documents or witness lists.⁴² Under existing FINRA Rules 12207(b) and 13207(b), the panel may extend or modify any deadline for serving an answer, responding to motions, exchanging documents or witness lists, or any other deadline set by the panel, either on its own initiative or upon motion of a party. Further, under existing FINRA Rules 12508(b) and 13508(b), the panel may extend the time for a party to object to discovery requests if the party has "substantial justification for failing to make the objection within the required time."

While these provisions in the Codes provide the panel and the parties with flexibility to modify the shortened deadlines in the proposed rule change, FINRA expects the extensions to be the exception and not the rule. Accordingly, if the Commission approves the proposed rule change, FINRA would provide training and guidance to arbitrators on accelerated processing, which would include training on evaluating requests to extend the proposed shortened deadlines.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice*.⁴³

⁴¹ See *infra* Item I.I.C.4 (discussing comments to the *Notice* addressing the proposed shortened deadlines for parties and guidance to arbitrators).

⁴² Proposed Rules 12808(b)(2)(D)(iv), 12808(b)(2)(D)(v), and 13808(b)(2)(D)(iv) similarly would permit the parties to mutually agree to extend discovery deadlines.

⁴³ FINRA notes that the proposed rule change would impact all members, including members that

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁴⁴ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA believes that the proposed rule change will protect investors and the public interest by shortening case processing times for those parties—most of whom are likely to be customers—who may not be able to meaningfully participate for the duration of a lengthy arbitration because of their age or health condition. When parties are unable to meaningfully participate in an arbitration, it can affect the outcome of the proceedings. By shortening the length of the arbitration for these parties, the proposed rule change will make it more likely that they are able to meaningfully participate for the duration of the proceedings. This, in turn, will protect investors and the public interest by helping to ensure that arbitration cases are resolved based on the underlying merits.

In addition, those parties who do not meet the eligibility requirements of the proposed rule change still will be able to request, once the panel has been appointed, that the panel consider other factors, including their age or a change in their health condition during the arbitration proceeding, when scheduling hearings and discovery, briefing, and motion deadlines. Thus, although these proceedings would not be subject to the shortened, rule-based deadlines of the proposed rule change, the panel may determine at a party's request, to expedite the proceedings based on the party's particular circumstances.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rulemaking, its potential economic impacts, including anticipated benefits and costs, and the alternatives FINRA considered in

are funding portals or have elected to be treated as capital acquisition brokers ("CABs"), given that the funding portal and CAB rule sets incorporate the impacted FINRA rules by reference.

⁴⁴ 15 U.S.C. 78o-3(b)(6).

assessing how to best meet its regulatory objectives.

Economic Impact Assessment

1. Regulatory Need

The proposed rule change would address concerns that FINRA has received that certain parties who are seriously ill or 70 years or older may be unable to meaningfully participate in a lengthy arbitration. An inability to meaningfully participate harms these parties if, as a result, the resolution of the arbitration does not accurately reflect the underlying merits of the case. For the parties who qualify, the proposed rule change would shorten case deadlines and provide arbitrators with instruction on how quickly the arbitration should be completed.

2. Economic Baseline

The economic baseline is the current provisions under the Codes that address the administration of arbitration proceedings and the current program to shorten case processing times. The proposed rule change is expected to affect the parties to cases in the DRS forum, their counsel, and FINRA arbitrators.

Under the current program, parties who have a serious health condition or are at least 65 years of age may request that the processing of their arbitration be expedited. Since the current program is voluntary, requesting parties presumably anticipate that the benefits from the shortened case processing times more than offset any additional costs, such as paying for expedited legal services. Expedited processing may also impose additional costs on the other parties and arbitrators associated with arbitrations.

From 2019 through 2023, customers requested expedited processing in approximately 29 percent of customer arbitrations. During this time period, 10,961 customer arbitrations (where customers appeared as claimants) closed where DRS had served the statement of claim on respondents. Parties requested expedited processing in 3,174 of these arbitrations. Ninety-nine percent, or 3,132 of the 3,174 requests, were granted. Parties did not request expedited processing in the remaining 7,787 arbitrations.⁴⁵

Arbitrations in the current program closed only slightly faster than arbitrations not in the current program. The median time for the 3,132 customer

⁴⁵ Parties requested expedited processing in few arbitrations where customers appeared only as respondent or that were intra-industry arbitrations. For this reason, FINRA focuses the empirical discussion on customer arbitrations where customers appeared as claimant.

arbitrations in the current program to close was approximately 13.7 months. This is two months shorter than the median time for the 7,829 customer arbitrations not in the current program to close, which was 15.7 months.⁴⁶

3. Economic Impacts

The proposed rule change would impact the number of parties who are eligible for accelerated processing.⁴⁷ For example, from a sample of 499 requests for expedited processing that were granted in 2023, 77 percent of the requests (385 requests) were granted on the basis of serious illness or age 70 or over. These parties represent 20 percent of customer claimants (385 of 1,891 arbitrations where customers appeared as claimant). The remaining 23 percent of requests (114 requests), or six percent of customer claimants, were granted solely on the basis of age to parties between the ages of 65 and 69. Under the proposed rule change, these parties would no longer qualify for accelerated processing.⁴⁸

FINRA anticipates that the proposed rule change would shorten the length of arbitrations for parties who request and are granted accelerated processing. In these arbitrations, arbitrators would be required to endeavor to render an award within 10 months. From a sample of arbitrations in the current program in 2020 that have since closed, 384 were granted on the basis of serious illness or age 70 or over. Seventy percent (269 of 384 arbitrations in the current program)

took longer than 10 months to close. Among the arbitrations in the current program that took longer than 10 months to close, approximately 50 percent took longer than 15.3 months to close.⁴⁹ As discussed below, the magnitude of the benefits and costs resulting from the proposed rule change would increase as the arbitrations that proceed under accelerated processing shorten.

Relative to the baseline, the proposed rule change would benefit parties who are seriously ill or at least 70 years old by shortening case deadlines for their arbitrations and providing arbitrators with instruction on how quickly the arbitration should be completed. This would help reduce the length of the arbitration and increase the chance that qualifying parties can fully participate. The ability of these parties to meaningfully participate would help facilitate outcomes that are more consistent with the merits of the case.⁵⁰ Those parties who, as a result of the shorter processing times settle or are awarded damages earlier than under the current program, may also have a greater ability to meet their short-term financial needs.

The proposed rule change, however, may also impose additional costs on parties and arbitrators to meet the shorter, rule-based deadlines. The parties who are eligible and request accelerated processing would incur these costs at their own discretion. The types of costs the other parties to the proceeding may incur would depend on how they manage their resources to meet the shortened deadlines. For example, these parties may reallocate resources from other activities, possibly increasing the time required to meet other business objectives; or they may incur additional costs from adding staff or using outside counsel; or do a combination of the two. How these parties would adjust to meet the shortened deadlines may differ depending on their business models and available resources. The additional costs parties incur, however, may be partly

offset by the gains to efficiency from the shorter deadlines and a more focused effort on the associated tasks.

Participants to non-accelerated arbitrations may also incur costs associated with longer processing times. It could be difficult for arbitrators, industry parties and their counsel—many of whom participate concurrently in more than one arbitration—to maintain their current timelines for non-accelerated arbitrations. As a result, case processing times of non-accelerated arbitrations may lengthen.

Reducing the length of the arbitration may help more parties with serious health issues than are helped under the current program, though the reduction may not be sufficient to help all parties with more serious health issues and shorter life expectancies. Also, under the proposed rule change, parties between the ages of 65 and 69 who are seriously ill would no longer be able to rely on their age to qualify for accelerated processing. These parties may incur additional costs to certify that they have received a medical diagnosis and prognosis in order to take advantage of accelerated processing.

Finally, it is not expected that the proposed rule change would impose costs on those parties who would no longer qualify for accelerated processing on the basis of either their age or health condition. These parties would still be able to ask that the panel consider their age and health in making scheduling decisions and setting deadlines.

4. Alternatives Considered

FINRA considered different age eligibility cutoffs when developing the proposed rule change.⁵¹ FINRA is concerned that age cutoffs greater than 70 would deny accelerated processing to many parties who are at higher risk of becoming seriously ill, experiencing an adverse health condition, or not living to see the outcome of an arbitration. In 2023, relative to the proposed age cutoff of 70, an age cutoff of 75 would decrease the total number of customer claimants who would qualify for accelerated processing from 20 percent to 16 percent.⁵² Alternatively, as noted above, lowering the proposed age cutoff from 70 to 65—the same age cutoff for the current program—would increase the total number of customer claimants who would qualify for accelerated processing from 20 percent to 26 percent.⁵³ FINRA

⁴⁶ FINRA finds similar evidence comparing the length of customer arbitrations that went through the full arbitration process and closed by award after a hearing from 2019 to 2023.

⁴⁷ As noted above, the proposed rule change would be more likely than the current program, which does not provide for shortened, rule-based deadlines for parties or provide arbitrators with direction on how quickly the arbitration should be completed, to accelerate the proceedings for those parties who may not be able to meaningfully participate throughout the course of a lengthy arbitration. In addition, for those parties who may benefit from shortened proceedings but do not meet the eligibility requirements of the proposed rule change, the proposed rule change would allow the parties to request that the panel consider other factors, including their age and health, when scheduling hearings and discovery, briefing, and motion deadlines. Thus, although these proceedings would not be subject to the shortened, rule-based deadlines of the proposed rule change, the panel may determine at a party's request, to expedite the proceedings based on the party's particular circumstances, including developing a serious health condition during the arbitration proceeding.

⁴⁸ FINRA also identified 31 requests for expedited processing made by customer claimants where the request was based on age but information describing the age was not available. Depending on the age of the customer, these requests may or may not be eligible under the proposed rule change. The sample reflects all arbitrations filed in 2023 where customer claimants requested expedited processing. The sample, therefore, should be representative of the customer claimants who make these requests.

⁴⁹ As a comparison, from a sample of 109 arbitrations in the current program in 2020 involving customer claimants who were under the age of 70 and not seriously ill, 72 percent (78 of 109 arbitrations in the current program) took longer than 10 months to close. Among the arbitrations in the current program that took longer than 10 months to close, approximately 50 percent took longer than 14.6 months to close. As of the date of this filing, two arbitrations in the current program in 2020 remained open.

⁵⁰ Such outcomes can include awards and settlements insofar as settlements reflect the merits of the case. Among the 10,961 customer arbitrations that closed from 2019 through 2023, 8,423 arbitrations (77 percent) resulted in settlements reached by the parties.

⁵¹ See *infra* Item I.I.C.2.

⁵² In 2023, with a proposed age cutoff of 75, customer claimants in 295 arbitrations (16 percent of 1,891 arbitrations where customers appeared as claimant) would qualify for accelerated processing.

⁵³ See *supra* note 15.

notes that these are estimates of eligibility, and that we do not know the fraction of those eligible who would request accelerated processing if the proposed rule change were adopted.

Even though the data suggests that lowering the proposed age cutoff from 70 to 65 would only affect approximately six percent of customer claimants, FINRA is concerned that this change may reduce the likelihood that the proposed rule change would materially shorten the length of the proceedings for those parties who may be less likely to be able to participate for the duration of a lengthy arbitration. FINRA is also concerned that participation by arbitrators, industry parties and their counsel in more than one arbitration, including an arbitration that is accelerated under the proposed rule change may affect parties in other arbitrations in the DRS forum in the form of longer processing times.

FINRA understands that the average likelihood of becoming unable to meaningfully participate in an arbitration may differ among populations and that these differences can persist after the age of 65.⁵⁴ This suggests that lowering the proposed age cutoff cannot fully equalize the ability of individuals in all populations to participate in the forum. However, populations with higher likelihoods of serious illness or adverse health conditions may experience additional benefits from the eligibility requirements based on health. As noted above, a party younger than 70 would still be able to request accelerated processing if they are suffering from a serious health condition.

Finally, FINRA also considered establishing different deadlines for parties (e.g., requiring the parties to complete the ranked arbitrator lists in 20 days and not the proposed 10 days; and requiring parties to respond to Document Production Lists in 20 days and not the proposed 35 days). When establishing the proposed deadlines, FINRA considered the potential burden on arbitrators and parties relative to their importance on the length of arbitration proceedings to close. FINRA believes that the deadlines as proposed would be manageable and only impose a burden on arbitrators and parties to the extent that the deadlines would help result in meaningfully shortened processing times.

⁵⁴ See Elizabeth Arias, Jiaquan Xu & Kenneth Kochanek, United States Life Tables, 2021, National Vital Statistics Reports, Vol. 72, No. 12, <https://www.cdc.gov/nchs/data/nvsr/nvsr72/nvsr72-12.pdf>.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FINRA published the proposed rule change for comment in *Regulatory Notice* 22–09.⁵⁵ FINRA received 15 comment letters from 14 commenters in response to the *Notice*.⁵⁶ A copy of the *Notice* is available on FINRA's website at <http://www.finra.org>. A list of comment letters received in response to the *Notice* is available on FINRA's website. Copies of the comment letters received in response to the *Notice* are available on FINRA's website.

Eleven commenters supported FINRA's efforts to accelerate arbitration proceedings for those parties who may not be able to meaningfully participate in lengthy proceedings but suggested modifications.⁵⁷ A summary of the comments and FINRA's responses are discussed below.

1. Comments Addressing the Need for the Proposed Rule Change

In its response to the *Notice*, SIFMA supported the intent behind the proposed rule change—"to ensure that parties to a FINRA arbitration are able to participate meaningfully in their proceedings and obtain a fair outcome"—but questioned whether the proposed rule change is necessary given the existence of the current program. FINRA disagrees that the proposed rule change is unnecessary. The current program has reduced the median time that it takes for customer arbitrations to close by just two months.⁵⁸

FINRA understands that any shortening in the length of an arbitration can be helpful to a party who is elderly or suffering from a serious health condition. However, FINRA believes that the proposed rule change has the potential to shorten the time that it takes for arbitrations to close to approximately 10 months, thereby shortening the median closing time by approximately an additional three months. As a number of commenters

⁵⁵ See *supra* note 12.

⁵⁶ One of the 14 commenters, Slater, submitted two comment letters. See SR-FINRA-2024-021 (Form 19b-4, Exhibit 2b) for a list of abbreviations assigned to commenters (available on FINRA's website at <http://www.finra.org>).

⁵⁷ See Cambridge, Cardozo, Caruso, Cornell, FSI, Iannarone, Miami, NASAA, Pace, PIABA, and St. John's. SIFMA stated that the proposed rule change is unnecessary because FINRA's current program for expediting arbitrations sufficiently addresses the issue. The two remaining commenters, Kolber and Slater, did not address the proposed rule change specifically but, rather, expressed concerns about misconduct by attorneys in FINRA arbitrations.

⁵⁸ See *supra* Item II.B.2 (discussing *Economic Baseline*).

noted, the additional time savings contemplated by the proposed rule change could be critical for parties who are elderly or suffering from a serious health condition and who, therefore, may be unable to meaningfully participate in a lengthy arbitration.⁵⁹ As Miami stated, "[t]he critical months saved under the proposal could mean the difference in" whether an elderly or sick party is able to meaningfully participate in the proceedings, "whether by testifying, consulting with their attorneys, or making decisions about settlement offers." Cardozo noted the "grave" consequences that some elderly or seriously ill parties face without accelerated processing. Some of these parties die before the arbitration is completed, and others, who are diagnosed with a memory-impairing disease like Alzheimer's, may initially be able to assist in the preparation of their case but then "enter into a steep decline to a point where they can no longer testify on their own behalf."⁶⁰ According to Cardozo, "[m]oving quickly in such a case is critical." FINRA believes that, by establishing rule-based deadlines for the parties and codifying the expectation that arbitrators endeavor to render an award within 10 months, the proposed rule change would be more likely than the current program to ensure that cases occur on an accelerated schedule.⁶¹

SIFMA suggests that, even without the proposed rule change, FINRA could encourage arbitrators to endeavor to render awards in accelerated proceedings within a period of 10 months. FINRA agrees that arbitrator training is important, and, as noted above, if the Commission approves the proposed rule change, FINRA would provide training and guidance to arbitrators on accelerated processing, which would include training on evaluating requests to extend the proposed shortened deadlines.

2. Comments Addressing Which Parties Should Be Eligible for Accelerated Processing

As discussed below, those commenters who addressed the issue of which parties should be eligible for accelerated processing almost uniformly supported allowing parties to qualify based on either their age or their health condition.⁶² The principal area of disagreement among the commenters

⁵⁹ See Miami, Cardozo.

⁶⁰ See Cardozo.

⁶¹ See PIABA (stating that "[c]odifying the mandates of an accelerated process" may make it more likely that parties and arbitrators comply with an accelerated schedule).

⁶² See *infra* Item II.C.2(A) and (B).

was the appropriate age at which a party should become eligible for accelerated processing.⁶³ Further, some commenters suggested that FINRA should take into consideration other factors in addition to age and health condition when deciding whether a party should qualify for accelerated processing.⁶⁴

(A) Comments Addressing Eligibility Based on Age

All but one of the commenters who addressed the issue supported allowing parties to qualify for accelerated processing based solely on age.⁶⁵ The only exception is Cambridge. Specifically, Cambridge questioned the need for parties who are otherwise healthy to qualify for accelerated processing based solely on age. Cambridge stated that accelerated processing should be available only when a party is suffering from an eligible health condition.

FINRA disagrees with Cambridge. Even if they are otherwise healthy at the outset of the arbitration, elderly parties may be more likely because of their age to become seriously ill or die during the arbitration, in which case they would be unable to meaningfully participate for the duration of the proceedings. For this reason, FINRA believes it is appropriate that the proposed rule change would allow parties to qualify for accelerated processing based solely on age.

The remaining commenters, other than Cambridge, focused principally on the question of what the appropriate age cutoff should be for a party to qualify for accelerated processing. In the *Notice*, FINRA proposed an age cutoff of 75 years and requested comment on whether 75 was the appropriate age at which parties should be able to request that the proceedings be accelerated.⁶⁶ In response, three commenters supported the proposed age cutoff of 75.⁶⁷ St. John's recommended lowering the age cutoff to 70. Six commenters urged FINRA to lower the age cutoff to 65.⁶⁸ As noted above, those commenters who

suggested lowering the age cutoff from 75 to either 70 or 65 relied on some or all of the following three justifications for their recommendation: (1) 65 is the age that is commonly used in other statutes and rules relating to the protection of seniors;⁶⁹ (2) lowering the age cutoff to below 75 would account for different life expectancies across different groups;⁷⁰ and (3) customer claimants who are 65 years of age and older are more likely to be facing economic hardship because they may not have ongoing income from employment.⁷¹

After considering the comments, FINRA has determined to propose an age cutoff to qualify for accelerated processing of 70. As discussed in detail above, an age cutoff of 70 would make accelerated processing available to more parties who are at a higher risk of becoming seriously ill or experiencing an eligible health condition during the course of an arbitration, or potentially not living to see the outcome of the arbitration proceeding.⁷² However, as noted above, if the Commission approves the proposed rule change, FINRA would monitor the new program to determine if adjustments to the age cutoff for qualification for accelerated processing are warranted.⁷³

(B) Comments Addressing Eligibility Based on Health Condition

Those commenters who addressed the issue of which parties should be eligible for accelerated processing unanimously supported allowing parties to qualify based on their health condition.⁷⁴ However, FSI requested further guidance regarding the kinds of health conditions that would support a request for accelerated processing. Cornell requested that FINRA reconsider the requirement in proposed Rules 12808(a)(1)(B) and 13808(a)(1)(B) that, in order to qualify for accelerated processing based on their health condition, a party must certify that they have a "reasonable belief" that

accelerated processing is necessary. In explaining its objection to that standard, Cornell expressed the concern that parties could be subject to sanctions if they and the Director—who, according to Cornell, will have "the authority of determining whether the applicants' beliefs are reasonable"—disagree as to "what conditions warrant an accelerated hearing."

Given the breadth of potential diagnoses and prognoses that could result in parties reasonably believing that they would be prejudiced without accelerated processing, FINRA does not believe it would be helpful to provide examples of eligible health conditions. In addition, FINRA is concerned that doing so could discourage parties with medical diagnoses and prognoses that fall outside of the examples from making a legitimate request for accelerated processing.

FINRA also believes that the "reasonable belief" standard is appropriate. As discussed above, when assessing eligibility for accelerated processing under proposed Rules 12808(b)(1) and 13808(b)(1), the Director would make an objective determination as to whether the requesting party has submitted the required certification regarding an eligible health condition. This determination would not require any assessment by the Director regarding the reasonableness of the requesting party's belief that accelerated processing is necessary. FINRA believes that these concerns are unfounded.

(C) Comments Proposing Additional Categories of Eligible Parties

Although they supported making accelerated processing available to parties based on their age or health condition, two commenters suggested that FINRA should allow parties to request accelerated treatment based on other factors.⁷⁵ Specifically, St. John's recommended that parties should be able to qualify for accelerated processing based on "need." Under the approach proposed by St. John's, a party's eligibility for accelerated processing would be determined based on a consideration of their "full circumstances," including their medical status, socioeconomic status, and other needs, such as caregiver responsibilities. In addition, both St. John's and Iannarone suggested that parties should qualify for accelerated processing if they are healthy but have a spouse or immediate family member who is

⁶³ See *infra* Item I.I.C.2(A).

⁶⁴ See *infra* Item I.I.C.2(C).

⁶⁵ Compare Cardozo, Caruso, Cornell, FSI, Iannarone, Miami, NASAA, Pace, PIABA, SIFMA, and St. John's (all supporting allowing parties to qualify for accelerated processing based solely on age) with Cambridge (recommending that FINRA eliminate eligibility based solely on age). SIFMA generally supported allowing parties to request accelerated processing based on age but suggested that FINRA should require parties to produce proof of their age. FINRA discusses all of the comments addressing the question of what kind of proof should be required to qualify for accelerated processing below. See *infra* Item I.I.C.3(A).

⁶⁶ See *supra* note 12.

⁶⁷ See FSI, Miami, SIFMA.

⁶⁸ See Cardozo, Caruso, Cornell, Iannarone, Pace, PIABA.

⁶⁹ See Caruso, Iannarone, Pace, PIABA.

⁷⁰ See Cardozo, Cornell, Iannarone, Pace, PIABA.

⁷¹ See Cardozo.

⁷² See *supra* Item I.I.A.1(II)(A)(1) (discussing *Eligibility Based on Age*) and Item I.I.B.4 (discussing *Alternatives Considered*).

⁷³ See *supra* Item I.I.A.1(II)(A)(1).

⁷⁴ See Cambridge, Cardozo, Caruso, Cornell, FSI, Iannarone, Miami, NASAA, Pace, PIABA, SIFMA, and St. John's. Although they generally supported allowing parties to qualify for accelerated processing based on their health condition, some of these commenters suggested that the proposed rule change should require parties to produce additional proof of their health condition. See Cambridge, SIFMA. FINRA discusses these comments on the issue of what proof should be required to establish eligibility based on health condition below. See *infra* Item I.I.C.

⁷⁵ See Iannarone, St. John's.

suffering from a qualifying health condition.

FINRA understands that there are some parties who would benefit if their arbitration were accelerated but who would not qualify for accelerated processing under the proposed rule change. However, FINRA is concerned that the needs-based approach suggested by St. John's is too vague and subjective to be workable. Although FINRA understands that parties with ill spouses or immediate family members might benefit if—according to St. John's, they were able to “spend less time and money on the arbitration process,”—there is no evidence that these parties would be unable to meaningfully participate in arbitration proceedings absent accelerated processing. Finally, FINRA believes it is unnecessary to expand the categories of eligible parties as suggested by the commenters because the proposed rule change provides those parties who do not meet the eligibility requirements of the proposed rule change with an alternative route to seek to accelerate the proceedings. Specifically, as discussed above, proposed Rules 12808(a)(3) and 13808(a)(3) would allow parties who do not meet the eligibility requirements of the proposed rule change to request, once the panel has been appointed, that the panel consider other factors, including their age or a change in their health condition during the arbitration proceeding, when scheduling hearings and discovery, briefing, and motion deadlines. Thus, although the shortened deadlines in proposed Rules 12808(b) and 13808(b) would not apply to these parties, they would be able to ask the arbitration panel to accelerate their proceedings based on a consideration of their particular circumstances, including developing a serious health condition after the panel is appointed.

3. Comments Addressing the Proof Required To Qualify for Accelerated Processing

As noted above, although almost all of the commenters supported allowing parties to qualify for accelerated processing based on their age or their health conditions, two of those commenters suggested that, in order to minimize the potential for abuse of the process, FINRA should require parties to produce proof of their age or health condition.⁷⁶ To further deter parties from falsely claiming they are eligible for accelerated processing, two commenters suggested that existing sanctions provisions in the Codes

should be expanded.⁷⁷ FINRA disagrees with these commenters, as discussed below.

(A) Comments Addressing Proof of Age

SIFMA suggested that parties requesting accelerated processing on the basis of age should be required to prove they are at least 70 years old by producing “a driver's license, passport, birth certificate, or other similar official record.” However, FINRA believes that requiring proof of age is unnecessary. Just as there is no evidence that parties have falsely claimed to be suffering from a serious health condition, FINRA has no evidence that parties have falsified their age to qualify for the current program. Nor is there any reason to believe that parties are more likely to falsify their age under the proposed rule change, particularly when such conduct could result in potential sanctions under existing FINRA Rules 12212 and 13212. FINRA is also concerned that requiring proof of age under the proposed rule change could discourage some parties from making legitimate requests for accelerated processing as they may view this as an unnecessary intrusion into their personal information.⁷⁸ Further, in the unlikely event that a genuine dispute arises as to whether a party qualifies for accelerated processing on the basis of age, the arbitration panel could require that the party provide proof of age to determine the applicability of the proposed rule change.⁷⁹

(B) Comments Addressing Proof of a Party's Health Condition

To minimize the risk that parties will falsely certify that they are suffering from an eligible health condition, two commenters suggested that parties should be required to provide additional proof of their health condition, for example, by providing a certification

from a physician.⁸⁰ As discussed above, FINRA believes that the proposed certification requirement and the threat of potential sanctions would be sufficient to protect against abuse of the process while, at the same time, minimizing unnecessary intrusions into private medical information.

Some commenters also expressed the concern that parties who request accelerated processing on the basis of an eligible health condition could be subject to discovery requests for the production of medical records or other private information about their health condition.⁸¹ These commenters stated that in addition to raising privacy concerns, such discovery requests could deter parties from making valid requests for accelerated processing and also unnecessarily delay the proceedings.⁸² FINRA agrees with these concerns. As a result, the proposed rule change would make clear that a party does not open the door to discovery into their health condition merely by requesting accelerated processing.⁸³

To further protect a party's privacy, Cardozo requested that the proposed rule change require that the certification be submitted only to FINRA staff and not shared with other parties or the arbitrators. However, FINRA believes that such a requirement is unnecessary because the certification required under the proposed rule change would not contain any details regarding the party's medical condition or other private health information.

(C) Comments Addressing Sanctions

To provide further protection against abuse of the process, two commenters suggested that the existing sanctions provisions in the Codes should be expanded.⁸⁴ More specifically, FSI proposed that arbitrators should be able to remove a matter from the accelerated processing track, and SIFMA proposed that matters should be subject to dismissal as a sanction if a party falsely claims to be eligible for accelerated treatment. However, existing FINRA Rules 12212(a) and 13212(a) already authorize arbitrators to impose a wide range of sanctions, including, assessing monetary penalties payable to one or more parties; precluding a party from presenting evidence; making an adverse inference against a party; assessing postponement or forum fees; and assessing attorneys' fees, costs and

⁷⁷ See FSI, SIFMA.

⁷⁸ In addition, FINRA notes there are increasing concerns with customers' identities being used for fraudulent purposes in the securities industry. See, e.g., *Regulatory Notice* 20–13 (May 2020) (reminding firms to be aware of fraud during the pandemic); *Regulatory Notice* 20–32 (September 2020) (reminding firms to be aware of fraudulent options trading in connection with potential account takeovers and new account fraud); *Regulatory Notice* 21–14 (March 2021) (alerting firms to recent increase in automated clearing house “Instant Funds” abuse); *Regulatory Notice* 21–18 (May 2021) (sharing practices firms use to protect customers from online account takeover attempts); and *Regulatory Notice* 22–21 (October 2022) (alerting firms to recent trend in fraudulent transfers of accounts through the Automated Customer Account Transfer Service).

⁷⁹ See FINRA Rules 12409 and 13413. The panel has the authority to interpret and determine the applicability of all provisions under the Codes.

⁸⁰ See Cambridge, SIFMA.

⁸¹ See Miami, PIABA.

⁸² See Miami, PIABA.

⁸³ See proposed Rules 12808(a)(2) and 13808(a)(2).

⁸⁴ See FSI, SIFMA.

⁷⁶ See Cambridge, SIFMA.

expenses. FINRA believes these rules are broad enough and provide arbitrators with sufficient flexibility to address any abuse of accelerated processing.

4. Comments Addressing the Proposed Shortened Deadlines for Parties and Guidance to Arbitrators

(A) Comments Addressing the Proposed 10-Month Timeframe for Arbitrators To Endeavor To Render an Award

Two commenters addressed the proposed 10-month timeframe within which arbitrators should endeavor to render awards in accelerated arbitrations.⁸⁵ Miami supported the proposed rule change and, based on its experience representing parties in FINRA arbitrations, stated that “arbitrators appear equipped to meet FINRA’s proposed guidance to render an award within 10 months or less.”⁸⁶ SIFMA did not object to the proposed 10-month timeframe per se but, rather, noted that it may not be possible or appropriate to close all accelerated cases within 10 months. For example, SIFMA noted that large, complex cases may involve voluminous discovery.

For the reasons discussed above, FINRA believes that 10 months is the appropriate timeframe within which arbitrators should endeavor to render awards in accelerated arbitrations.⁸⁷ In addition, however, FINRA agrees that there are some cases that may qualify for accelerated processing but which cannot reasonably be completed within 10 months because these cases are complex or involve voluminous discovery. As to these matters, FINRA believes that the proposed rule change would provide the arbitrators with sufficient flexibility to accommodate the particular circumstances of each case. As discussed above, the proposed rule change would establish a benchmark but does not mandate that all cases be completed within 10 months.⁸⁸

(B) Comments Addressing the Shortened Deadlines for Parties

As discussed above, in addition to establishing a 10-month timeframe within which arbitrators should endeavor to render an award in accelerated cases, proposed Rules 12808(b)(2)(D) and 13808(b)(2)(D) would accelerate the proceedings by establishing shortened deadlines for the

parties. Three commenters expressed concerns regarding some or all of these proposed shortened deadlines.⁸⁹ Cambridge recommended against including any deadlines in the proposed rule change “to allow for flexibility in each situation.” It also objected to all of the proposed shortened deadlines for filing answers, returning the ranked arbitrator lists, and producing discovery as allegedly too short and unfair to respondents.⁹⁰ SIFMA generally supported the proposed deadline for filing answers “provided that the parties are free to grant extensions upon request,” but it stated that the proposed deadlines for returning the ranked arbitrator lists and discovery might be difficult or impossible to meet in some cases. FSI took issue only with the proposed shortened discovery deadlines, which FSI claimed were unrealistic and would result in requests for extensions of time “as a matter of course.”

FINRA disagrees with Cambridge’s suggestion to eliminate all shortened deadlines from the proposed rule change. To meaningfully reduce case processing times for those parties who may be unable to fully participate in lengthy arbitration proceedings—a goal that the current program has been unable to achieve—FINRA believes it is necessary and appropriate to establish rule-based shortened deadlines. As to the other concerns raised by commenters regarding specific deadlines, FINRA understands that the proposed shortened deadlines may not be reasonable in some cases, for example, if the case is complex or involves voluminous discovery. However, as discussed above, FINRA believes that the existing provisions of the Codes provide the parties and arbitrators with sufficient flexibility to modify the proposed shortened deadlines when necessary.⁹¹ Further, as noted above, if the Commission

approves the proposed rule change, FINRA would provide training and guidance to arbitrators on accelerated processing, which would include training on evaluating requests to extend the proposed shortened deadlines.

5. Other Comments

In response to the *Notice*, NASAA criticized FINRA member firms for often requiring customers to enter into agreements to arbitrate disputes regarding services provided to such customers. Kolber suggested that the Codes should be amended to provide for sanctioning attorneys for engaging in delay tactics in arbitration. St. John’s recommended raising the threshold for simplified arbitration from \$50,000 to \$100,000. Iannarone suggested that FINRA help ensure that all customer claimants have access to counsel.

All of these comments are beyond the scope of the proposed rule change. However, with respect to NASAA’s comment, FINRA notes that its rules do not require customers to enter into agreements to arbitrate disputes with member firms, nor do FINRA rules preclude customers from pursuing relief in state or federal courts. The Supreme Court has held that predispute arbitration agreements are enforceable as to claims brought under the Act.⁹²

With respect to Kolber’s comment, FINRA notes that it does not have direct authority to investigate or discipline representative misconduct in the DRS forum.⁹³ Currently, if an attorney is allegedly engaging in misconduct in the DRS forum, FINRA may make a referral to the attorney’s disciplinary agency,

⁹² Until the Supreme Court’s decision in *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220 (1987), the courts would not enforce predispute arbitration agreements relating to federal securities law claims. In addition, until its rescission in 1987, Rule 15c2-2(a) under the Act provided that: “It shall be a fraudulent, manipulative or deceptive act or practice for a broker or dealer to enter into an agreement with any public customer which purports to bind the customer to the arbitration of future disputes between them arising under the federal securities laws, or to have in effect such an agreement, pursuant to which it effects transactions with or for a customer.” As a result of *McMahon* and the rescission of Rule 15c2-2(a), firms can compel arbitration of customer claims through inclusion of predispute arbitration provisions in their agreements with customers. When member firms use mandatory arbitration clauses, FINRA rules establish minimum disclosure requirements regarding their use to help ensure customers understand these clauses, and to protect customers’ rights under FINRA rules. See FINRA Rule 2268. See also *Regulatory Notice* 21-16 (April 2021) (reminding firms about requirements when using predispute arbitration agreements for customer accounts).

⁹³ Cf. FINRA Rule 8310 (allowing FINRA to impose sanctions on member firms and persons associated with member firms).

⁸⁵ See Miami, SIFMA.

⁸⁶ In addition, Miami stated that “existing provisions of the Code provide sufficient flexibility if the shortened deadlines could not be met in a particular case.”

⁸⁷ See *supra* Item II.B.3 (discussing *Economic Impacts*).

⁸⁸ See *supra* Item II.A.1(II)(C)(2).

⁸⁹ See Cambridge, FSI, SIFMA.

⁹⁰ Cambridge also suggested that, instead of shortening the deadlines that apply to the parties, FINRA should consider establishing concurrent deadlines. For example, Cambridge proposed that the parties could be working on ranking potential arbitrators at the same time that the respondent is preparing the answer to the statement of claim. However, FINRA does not believe it would be appropriate to require the claimant to rank arbitrators before they are provided with an opportunity to review the respondent’s answer and any counterclaims and crossclaims.

⁹¹ See *supra* Item II.A.1(II)(C)(3). For this same reason, FINRA also does not believe it is necessary, as suggested by Cardozo, that the proposed rule change provide parties with the option to “change their minds” and have their cases returned to a regular schedule. If, as Cardozo suggests, the shortened deadlines become too “challenging” for a party, existing FINRA rules would permit them to request that the deadlines be modified.

which has processes to respond to misconduct of attorneys subject to its jurisdiction.

With respect to St. John's comment, FINRA notes that any increase to the \$50,000 threshold for simplified arbitrations would require a separate proposed rule change as the focus of this proposed rule change is on accelerating the processing of arbitration proceedings for parties who qualify based on their age or health condition rather than claim size.

Finally, with respect to Iannarone's comment, FINRA notes that its website offers several resources to help parties find an attorney.⁹⁴

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 (i) as the Commission may designate up to 90 days of such date 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-FINRA-2024-021 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-FINRA-2024-021. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2024-021 and should be submitted on or before January 16, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹⁵

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-30680 Filed 12-23-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101964; File No. SR-DTC-2024-015]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to DTC's New Issue Information Dissemination Service To Unwind a Prior Rule Filing and Provide a More Accurate Description of the Service

December 18, 2024.

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 December 12, 2024, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule

change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(4) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will (i) correct DTC's rule filing record by unwinding a prior rule filing ("2014 Filing")⁵ regarding DTC's New Issue Information Dissemination Service ("NIIDS") and (ii) update the description of NIIDS in the DTC Operational Arrangements (Necessary for Securities to Become and Remain Eligible for DTC Service) ("OA")⁶ to more clearly describe NIIDS, as described in greater detail below.⁷

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change will (i) correct DTC's rule filing record by unwinding the 2014 Filing regarding DTC's NIIDS and (ii) update the description of NIIDS in the OA to more clearly describe NIIDS.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(4).

⁵ Securities Exchange Act Release No. 72763 (Aug. 5, 2014), 79 FR 46886 (Aug. 11, 2014) (SR-DTC-2014-08).

⁶ Available at www.dtcc.com/~media/Files/Downloads/legal/issue-eligibility/operational-arrangements.pdf.

⁷ Each capitalized term not otherwise defined herein has its respective meaning as set forth the Rules, By-Laws and Organization Certificate of DTC (the "Rules") available at www.dtcc.com/legal/rules-and-procedures.

⁹⁴ See Find An Attorney, <https://www.finra.org/arbitration-mediation/about/find-attorney>.

⁹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Background

NIIDS was established by DTC in 2008.⁸ It was built to improve the process by which brokers comply with Municipal Securities Rule Making Board (“MSRB”) standards for making available certain data information (“NIIDS Data Elements”) pertaining to the reporting, comparison, confirmation, and settlement of trades in newly issued municipal securities (“New Muni Issues”).⁹ Through NIIDS, underwriters or other authorized representatives (“Dissemination Agents”) are able to distribute NIIDS Data Elements to data vendors or other users of such information, as required by the MSRB.¹⁰

DTC collects NIIDS Data Elements about New Muni Issues from Dissemination Agents in electronic format through DTC’s underwriting system as part of DTC’s New Muni Issue underwriting process. Those NIIDS Data Elements are then disseminated to market participants that subscribed to such information (“NIIDS Subscribers”).

2014 Filing

Prior to 2014, DTC was responsible for disseminating NIIDS Data Elements to NIIDS Subscribers upon approval to do so by the Dissemination Agent. The 2014 Filing was a rule change by DTC to transfer the dissemination process from DTC to a non-clearing agency affiliate (*i.e.*, the “NIIDS Disseminator”).¹¹ The impetus for moving the dissemination process was in anticipation of further business opportunities for the NIIDS Disseminator. However, such opportunities did not materialize, and the dissemination process was never transferred from DTC to the NIIDS Disseminator. Because the transfer never occurred, the OA was never updated to reflect the proposed changes from the 2014 Filing.

Since the OA was never updated and because DTC will remain the disseminator of NIIDS Data Elements, DTC is now proposing to correct the record and unwind the 2014 Filing with this rule filing.

Updated NIIDS Description

In addition to unwinding the 2014 Filing, this proposed rule change will delete the current NIIDS description in

the OA and replace that language with a more concise, clear, and accurate description of the NIIDS dissemination process. The proposed language would not change the way NIIDS works; rather, the new description would simply provide a more thorough and precise explanation of NIIDS. Specifically, the proposed rule language would (1) provide an improved introduction and explanation of the purpose of NIIDS, how NIIDS is integrated into DTC’s underwriting system (*i.e.*, UW SOURCE), and give a clearer overview of NIIDS’s role and its regulatory context; (2) explain the specific process that the Dissemination Agent must follow to successfully disseminate NIIDS Data Elements, outline the steps involved, and emphasize, for clarity, that failure to enter the required data or select the dissemination function would prevent the information from being disseminated; (3) clarify the role and importance of NIIDS Data Elements by defining them and distinguishing them from the DTC eligibility process; (4) correct grammatical and technical errors (*e.g.*, the term “New Issue Identification Dissemination System” would be replaced by the correct term “New Issue Information Dissemination Service”); and (5) provide an updated legal disclaimer, which specifies that DTC functions solely as a conduit for NIIDS, disclaims responsibility for validating the accuracy or completeness of NIIDS Data Elements and limits liability for any faults, errors or damages arising from the use of NIIDS. In order to provide a disclaimer that is more precise, accurate and more aligned to DTC’s current disclaimer language, the updated disclaimer is broader, more detailed, and explicitly addresses data faults, warranties and limits liability for various damages, including the adequacy, quality, accuracy, completeness, or timeliness of information made available through NIIDS.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires that the rules of the clearing agency be designed, *inter alia*, to promote the prompt and accurate clearance and settlement of securities transactions.¹² DTC believes that the proposed rule change is consistent with the Section 17A(b)(3)(F) of the Act.

As described above, the proposed rule change will (i) correct DTC’s filing record by unwinding the 2014 Filing, and (ii) remove the current description of NIIDS in the OA and replace it with an update description that more clearly

and accurately describes the service, including an updated and clearer liability disclaimer. By unwinding the 2014 Filing and updating and correcting the description of NIIDS in the OA, the proposed rule change clarifies for Participants, NIIDS Subscribers, and other interested parties in NIIDS how the service works, which, in turn, better enables the timely and accurate reporting of NIIDS Data Elements and their use in associated transactions. Therefore, DTC believes that the proposed rule change would help promote the prompt and accurate clearance and settlement of securities transactions, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F) of the Act, cited above.

(B) Clearing Agency’s Statement on Burden on Competition

DTC does not believe that the proposed rule change would have any impact or impose any burden on competition because, as described above, the proposed rule change simply corrects DTC’s filing record with respect to the dissemination of NIIDS Data Elements, and more clearly describes NIIDS, without making any actual changes to the service.

(C) Clearing Agency’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting written comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4, the Securities and Exchange Commission (“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 www.sec.gov/regulatory-actions/how-to-submit-comments. 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.

⁸ Securities Exchange Act Release No. 57768 (May 2, 2008), 73 FR 26181 (May 8, 2008) (SR-DTC-2007-10).

⁹ NIIDS Data Elements are needed for trade reporting, trade matching and to set up trade confirmation for certain municipal securities.

¹⁰ MSRB Rule G-34(a)(ii)(C).

¹¹ Securities Exchange Act Release No. 72763 (Aug. 5, 2014), 79 FR 46886 (Aug. 11, 2014) (SR-DTC-2014-08).

¹² 15 U.S.C. 78q-1(b)(3)(F).

DTC reserves the right to not respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)¹³ of the Act and paragraph (f)¹⁴ of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-DTC-2024-015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.
- All submissions should refer to file number SR-DTC-2024-015. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE,

Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (www.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-DTC-2024-015 and should be submitted on or before January 16, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-30684 Filed 12-23-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101962; File No. SR-NYSEARCA-2024-114]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule

December 18, 2024.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on December 17, 2024, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Arca Options Fee Schedule ("Fee Schedule") regarding certain transaction fees. The Exchange proposes to implement the fee change effective December 17, 2024. The proposed rule change is available on the Exchange's

website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Fee Schedule to modify certain transaction fees. Specifically, the Exchange proposes to adopt pricing incentives to encourage trading in options on Exchange Traded Funds that hold digital assets ("digital asset ETFs") that are listed on NYSE Arca Equities. The Exchange proposes to implement the fee change effective December 17, 2024.⁴

On November 22, 2024, the Exchange began trading options on the following digital asset ETFs, each of which is listed on NYSE Arca Equities: Grayscale Bitcoin Trust ETF (GBTC); Grayscale Bitcoin Mini Trust ETF (BTC); and Bitwise Bitcoin ETF Trust (BITB).⁵ To incentivize trading in these newly available options on digital asset ETFs (as well as in other options series in digital asset ETFs that may be listed on NYSE Arca Equities in the future), the Exchange proposes to offer a per contract discount or credit, which may be combined with other discounts or credits unless otherwise specified.

Specifically, the Exchange proposes that executions in options on NYSE Arca Equities-listed digital asset ETFs (excluding QCC transactions) will

⁴ On December 2, 2024, the Exchange filed to amend the Fee Schedule (NYSEARCA-2024-107) and withdrew such filing on December 3, 2024 (SR-NYSEARCA-2024-109), which latter filing the Exchange withdrew on December 17, 2024.

⁵ See Trader Update, November 21, 2024 (announcing that on November 22, 2024, the Exchange would begin listing and trading options on GBTC, BTC, and BITB), available here, <https://www.nyse.com/trader-update/history#110000945911>.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

receive an additional discount of \$0.05 per contract on electronic take liquidity, manual, and electronic complex-to-complex executions or an additional credit of \$0.05 per contract on electronic post liquidity executions.⁶ The Exchange proposes to exclude QCC transactions from this proposal because QCC transactions are subject to separate fees and credits.⁷ Similarly, the Exchange proposes that the already-discounted executions in options on NYSE Arca Equities-listed digital asset ETFs will not be included in the daily fee cap on strategy executions (*i.e.*, the Limit of Fee [sic] on Options Strategy Executions) nor will they be included in calculations for or rebates available through the Manual Billable Rebate Program.⁸

Although the Exchange cannot predict with certainty whether any OTP Holders would seek to trade digital asset ETF options, the Exchange believes that the proposed change would incentivize OTP Holders to submit these types of orders to the Exchange, which brings increased liquidity and order flow for the benefit of all market participants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁰ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly

discriminate between customers, issuers, brokers or dealers.

The proposed change to the Fee Schedule are reasonable, equitable, and not unfairly discriminatory. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The Commission has repeatedly expressed its 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.”¹¹

There are currently 18 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.¹² Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in October of 2024, the Exchange had 12.55% market share of executed volume of multiply-listed equity & ETF options trades.¹³ In such a low-concentrated and highly competitive market, no single options exchange possesses significant pricing power in the execution of option order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.

The Exchange believes that the proposed discount/credit of five cents per contract is reasonable because it is designed to encourage liquidity in options classes on digital asset ETFs

newly listed and traded on the Exchange, thereby promoting market depth, price discovery and improvement, and enhanced order execution opportunities to the benefit of all market participants. Moreover, the proposal is designed to encourage OTP Holders to utilize the Exchange as a primary trading venue for options on digital asset ETFs.

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits and is not unfairly discriminatory as it available equally to all similarly-situated market participants on an equal and non-discriminatory basis.

To the extent the proposed change continues to attract greater volume and liquidity, the Exchange believes the proposed change would improve the Exchange’s overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The Exchange’s fees are constrained by intermarket competition, as OTP Holders may direct their order flow to any of the competing options exchanges that list and trade options on digital asset ETFs.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange’s statement regarding the burden on competition.

B. Self-Regulatory Organization’s Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission’s goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes “more efficient pricing

⁶ See proposed Fee Schedule, Endnote 12, currently held as “Reserved.” The Exchange proposes to add reference to new Endnote 12 to reflect the transaction fee change in the applicable sections of the Fee Schedule Fee. See, e.g., proposed Fee Schedule, ELECTRONIC COMPLEX ORDER EXECUTIONS, TRANSACTION FEE—PER CONTRACT.

⁷ See Fee Schedule, QUALIFIED CONTINGENT CROSS (“QCC”) TRANSACTION FEES AND CREDITS.

⁸ See proposed Endnote 12. The Exchange also proposes to specify these exclusions in the applicable sections of the Fee Schedule. See proposed Fee Schedule, LIMIT OF FEES ON OPTIONS STRATEGY EXECUTIONS AND FLOOR BROKER FIXED COST PREPAYMENT INCENTIVE PROGRAM (the “FB Prepay Program”). Consistent with the Fee Schedule, manual executions of options on digital asset ETFs would be subject to the Firm and Broker Dealer Monthly Fee Cap, including the assessment of the incremental service fee of \$0.01 per contract once that Cap has been reached. See FIRM AND BROKER DEALER MONTHLY FEE CAP (providing that, “[o]nce a Firm or Broker Dealer has reached the Firm and Broker Dealer Monthly Fee Cap, an incremental service fee of \$0.01 per contract for Firm or Broker Dealer Manual transactions will apply . . .”).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

¹¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (“Reg NMS Adopting Release”).

¹² The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics>.

¹³ Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, see *id.*, the Exchanges market share in equity-based options increased slightly from 12.19% for the month of October 2023 to 12.55% for the month of October 2024.

of individual stocks for all types of orders, large and small.”¹⁴

Intramarket Competition. The proposed change is designed to encourage market participants to execute options on digital asset ETFs (and, in particular, those listed on NYSE Arca Equities) and to direct such executions to the Exchange. The proposed pricing incentive will be available equally to all similarly-situated market participants. As such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 17 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.¹⁵ Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in October 2024, the Exchange had 12.55% market share of executed volume of multiply-listed equity and ETF options trades.¹⁶

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to encourage market participants to direct trading interest (particularly for options on digital assets ETFs) to the Exchange. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

The Exchange believes that the proposed change could promote competition between the Exchange and

other execution venues, including those that list and trade options on digital asset ETFs, by encouraging additional orders to be sent to the Exchange for execution.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹⁷ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁸ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)¹⁹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2024-114 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-NYSEARCA-2024-114.

This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 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-NYSEARCA-2024-114 and should be submitted on or before January 16, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-30682 Filed 12-23-24; 8:45 am]

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¹⁴ See Reg NMS Adopting Release, *supra* note 11, at 37499.

¹⁵ The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics>.

¹⁶ Based on OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.*, the Exchanges market share in equity-based options increased slightly from 12.19% for the month of October 2023 to 12.55% for the month of October 2024.

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(2).

¹⁹ 15 U.S.C. 78s(b)(2)(B).

²⁰ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION**[Release No. 34–101968; File No. SR–NYSE–2024–35]****Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Section 302.00 of the NYSE Listed Company Manual To Exempt Closed-End Funds Registered Under the Investment Company Act of 1940 From the Requirement To Hold Annual Shareholder Meetings**

December 18, 2024.

On June 21, 2024, New York Stock Exchange LLC (“NYSE”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b–4 thereunder,² a proposed rule change to amend Section 302.00 of the NYSE Listed Company Manual to exempt closed-end funds registered under the Investment Company Act of 1940 from the requirement to hold annual shareholder meetings. The proposed rule change was published for comment in the **Federal Register** on July 9, 2024.³

On August 21, 2024, pursuant to Section 19(b)(2) of the Exchange Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On October 4, 2024, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.⁷

Section 19(b)(2) of the Act⁸ provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after

the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on July 9, 2024.⁹ The 180th day after publication of the proposed rule change is January 5, 2025. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, the issues raised therein, and the comments received. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,¹⁰ designates March 6, 2025, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–NYSE–2024–35).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024–30688 Filed 12–23–24; 8:45 am]

BILLING CODE 8011–01–P**SECURITIES AND EXCHANGE COMMISSION****[Release No. 34–101973; File No. SR–MEMX–2024–47]****Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 19.3, Criteria for Underlying Securities, To List and Trade Options on the Grayscale Bitcoin Trust, the Grayscale Bitcoin Mini Trust, and the Bitwise Bitcoin ETF**

December 19, 2024.

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 December 12, 2024, MEMX LLC (“MEMX” or “Exchange”) filed with the Securities

and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 with the Commission a proposed rule change to amend Rule 19.3, Criteria for Underlying Securities. The text of the proposed rule change is provided in Exhibit 5.

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 Rule 19.3 regarding the criteria for underlying securities. Specifically, the Exchange proposes to amend Rule 19.3(i) to allow the Exchange to list and trade options on shares or other securities (“Fund Shares”) that are principally traded on a national securities exchange and are defined as an “NMS stock” under Rule 600 of Regulation NMS and that represent interests in the Grayscale Bitcoin Trust (the “Grayscale Fund”), the Grayscale Bitcoin Mini Trust (the “Grayscale Mini Fund”), or the Bitwise Bitcoin ETF (the “Bitwise Fund” and, together with the Grayscale Fund, and the Grayscale Mini Fund, the “Bitcoin Funds”).³ This is a

¹ 15 U.S.C. 78s(b)(1).² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 100460 (July 3, 2024), 89 FR 56447. Comments on the proposed rule change are available at: <https://www.sec.gov/comments/sr-nyse-2024-35/srnyse202435.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 100790, 89 FR 68676 (Aug. 27, 2024). The Commission designated October 7, 2024, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 101257, 89 FR 82277 (Oct. 10, 2024).

⁸ 15 U.S.C. 78s(b)(2).⁹ See *supra* note 3 and accompanying text.¹⁰ 15 U.S.C. 78s(b)(2).¹¹ 17 CFR 200.30–3(a)(57).¹ 15 U.S.C. 78s(b)(1).² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008, (January 17, 2024) (SR–NYSEArca–2021–90; SR–NYSEArca–2023–44; SR–NYSEArca–2023–58; SR–NASDAQ–2023–016; SR–NASDAQ–2023–019; SR–CboeBZX–2023–028; SR–CboeBZX–2023–038; SR–CboeBZX–2023–040; SR–CboeBZX–2023–042; SR–CboeBZX–2023–044; and SR–CboeBZX–2023–072) (Order Granting Accelerated Approval of Proposed Rule Changes, as

competitive filing based on a similar proposal submitted by NYSE American, LLC (“NYSE American”) which was recently approved by the Securities and Exchange Commission (the “Commission”).⁴ Current Rule 19.3(i) provides that, subject to certain other criteria set forth in that Rule, securities deemed appropriate for options trading include Fund Shares that represent certain types of interests,⁵ including interests in certain specific trusts that hold financial instruments, money market instruments, precious metals (which are deemed commodities), or Bitcoin (which is deemed a commodity). In addition, Rule 19.3(i)(1) requires that Fund Shares meet the criteria and standards set forth in Rule 19.3(a) and (b)⁶ or (2) be available for creation or redemption each business day from or through the issuer in cash or in kind at

Modified by Amendments Thereto, to List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (“Bitcoin ETP Approval Order”).

⁴ See Securities Exchange Act Release No. 101386 (October 18, 2024), 89 FR 84960 (October 24, 2024) (SR–NYSEAMER–2024–49) (“NYSE American Approval”).

⁵ See Rule 19.3(i) which permits options trading on Fund Shares that (1) represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities, and that hold portfolios of securities comprising or otherwise based on or representing investments in indexes or portfolios of securities (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities) (“Funds”) and/or financial instruments including, but not limited to, stock index futures contracts, options on futures, options on securities and indexes, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the “Financial Instruments”), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the “Money Market Instruments”) constituting or otherwise based on or representing an investment in an index or portfolio of securities and/or Financial Instruments and Money Market Instruments, or (2) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward 477 [sic] contracts and/or options on physical commodities and/or non-U.S. currency (“Commodity Pool ETFs”) or (3) represent interests in a trust or similar entity that holds a specified non-U.S. currency or currencies deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency or currencies and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency or currencies, if any, declared and paid by the trust (“Currency Trust Shares”), or (4) represent interests in the SPDR Gold Trust or are issued by the iShares COMEX Gold Trust, the iShares Silver Trust, or the iShares Bitcoin Trust.

⁶ Rule 19.3(a) and (b) sets forth the criteria that underlying securities must satisfy for option contracts on those underlying securities to be eligible for listing and trading on the Exchange.

a price related to net asset value, and the issuer must be obligated to issue Fund Shares in a specified aggregate number even if some or all of the investment assets required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investments has undertaken to deliver the investment assets as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer, as provided in the respective prospectus.

The Bitcoin Funds are Bitcoin-backed commodity exchange-traded funds (“ETFs”) structured as trusts. Similar to any Fund Share currently deemed appropriate for options trading under Rule 19.3(i), the investment objective of each Bitcoin Fund is for its shares to reflect the performance of Bitcoin (less the expenses of the trust’s operations), offering investors an opportunity to gain exposure to Bitcoin without the complexities of Bitcoin delivery. As is the case for Fund Shares currently deemed appropriate for options trading, a Bitcoin Fund’s shares represent units of fractional undivided beneficial interest in the trust, the assets of which consist principally of Bitcoin and are designed to track Bitcoin or the performance of the price of Bitcoin and offer access to the Bitcoin market.⁷ The Bitcoin Funds provide investors with cost-efficient alternatives that allow a level of participation in the Bitcoin market through the securities market. The primary substantive difference between Bitcoin Funds and Fund Shares currently deemed appropriate for options trading is that Fund Shares may hold securities, certain financial instruments, and specified precious metals (which are deemed commodities), while Bitcoin Funds hold Bitcoin (which is also deemed a commodity). The Bitcoin Funds are similar to the iShares Bitcoin Trust, which is already eligible for options trading on the Exchange.⁸

The Exchange’s initial listing standards for Fund Shares on which options may be listed and traded on the Exchange will apply to the Bitcoin Funds. Pursuant to Rule 19.3(a), a security (which includes a Fund Share) on which options may be listed and traded on the Exchange must be registered with the Commission and be an “NMS stock” as defined in Rule 600 of Regulation NMS under the Act; and the security shall be characterized by a

substantial number of outstanding shares that are widely held and actively traded. Rule 19.3(i)(1) requires that Fund Shares either (1) meet the criteria and standards set forth in Rule 19.3(a) and (b),⁹ or (2) are available for creation or redemption each business day in cash or in kind from the investment company, commodity pool or other entity at a price related to net asset value, and the investment company, commodity pool or other entity is obligated to provide that Fund Shares may be created even if some or all of the securities and/or cash required to be deposited have not been received by the Fund, the unit investment trust or the management investment company, provided the authorized creation participant has undertaken to deliver the securities and/or cash as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the Fund, all as described in the Fund’s or unit trust’s prospectus. Each Bitcoin Fund satisfies Rule 19.3(i)(1)(B) as each is subject to this creation and redemption process.

Options on the Bitcoin Funds will be subject to the Exchange’s continued listing standards set forth in Rule 19.4(g) for Fund Shares deemed appropriate for options trading pursuant to Rule 19.3(i). Specifically, 19.4(g) provides that Fund Shares that were initially approved for options trading pursuant to Rule 19.3 will not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such Fund Shares if the security ceases to be an NMS stock (see Rule 19.4(b)(4)). Additionally, the Exchange will not open for trading any additional series of option contracts of the class covering Fund Shares in any of the following circumstances: (1) in the case of options covering Fund Shares approved for trading under Rule 19.3(i)(4)(A), in accordance with the terms of Rule 19.4(b)(1), (2) and (3); (2) in the case of options covering Fund Shares approved pursuant to Rule 19.3(i)(4)(B), following the initial 12-month period beginning upon the commencement of trading in the Fund Shares on a national securities exchange and are defined as NMS stock under Rule 600 of Regulation NMS, there were fewer than 50 record and/or beneficial holders of such Fund Shares for 30 consecutive days; (3) the value of the index, non-U.S. currency, portfolio

⁹ Rule 19.3(a) and (b) sets forth the criteria an underlying security must meet for the Exchange to be able to list options on the underlying.

⁷ The trust may include minimal cash.

⁸ See Rule 19.3(i).

of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or Financial Instruments or Money Market Instruments, or portfolio of securities on which the Fund Shares are based is no longer calculated or available; or (4) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable.

Options on each Bitcoin Fund will be physically settled contracts with American-style exercise.¹⁰ Consistent with current Rule 19.5, which governs the opening of options series on a specific underlying security (including Fund Shares), the Exchange will open at least one expiration month for options on each Bitcoin Fund¹¹ at the commencement of trading on the Exchange and may also list series of options on each Bitcoin Fund for

¹⁰ See Rule 19.2, which provides that the rights and obligations of holders and writers are set forth in the Rules of the Options Clearing Corporation ("OCC"); see also OCC Rules, Chapters VIII (which governs exercise and assignment) and Chapter IX (which governs the discharge of delivery and payment obligations arising out of the exercise of physically settled stock option contracts).

¹¹ See Rule 19.5(b). The monthly expirations are subject to certain listing criteria for underlying securities described within Rule 19.3. Monthly listings expire the third Friday of the month. The term "expiration date" (unless separately defined elsewhere in the OCC By-Laws), when used in respect of an option contract (subject to certain exceptions), means the third Friday of the expiration month of such option contract, or if such Friday is a day on which the exchange on which such option is listed is not open for business, the preceding day on which such exchange is open for business. See OCC By-Laws Article I, Section 1. Pursuant to Rule 19.5(c), additional series of options of the same class may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying stock moves more than five strike prices from the initial exercise price or prices. New series of options on an individual stock may be added until the beginning of the month in which the options contract will expire. Due to unusual market conditions, the Exchange, in its discretion, may add a new series of options on an individual stock until the close of trading on the business day prior to expiration.

trading on a weekly,¹² monthly,¹³ or quarterly¹⁴ basis.

Pursuant to Rule 19.5, Interpretation and Policy .01, which governs strike prices of series of options on Fund Shares, the interval of strikes prices for series of options on Bitcoin Funds will be \$1 or greater when the strike price is \$200 or less and \$5 or greater where the strike price is over \$200.¹⁵ Additionally, the Exchange may list series of options pursuant to the \$1 Strike Price Interval Program,¹⁶ the \$0.50 Strike Program,¹⁷ the \$2.50 Strike Price Program,¹⁸ and the \$5 Strike Program.¹⁹ Pursuant to Rule 21.5, where the price of a series of a Bitcoin Fund option is less than \$3.00, the minimum increment will be \$0.05, and where the price is \$3.00 or higher, the minimum increment will be \$0.10.²⁰ Any and all new series of Bitcoin Fund options that the Exchange lists will be consistent and comply with the expirations, strike prices, and minimum increments set forth in Rules 19.5 and 21.5, as applicable.

Bitcoin Fund options will trade in the same manner as any other Fund Share options on the Exchange. The Exchange Rules that currently apply to the listing and trading of all Fund Share options on the Exchange, including, for example, Rules that govern listing criteria, expirations, exercise prices, minimum increments, margin requirements,

¹² See Rule 19.5, Interpretation and Policy .05.

¹³ See Rule 19.5, Interpretation and Policy .08.

¹⁴ See Rule 19.5, Interpretation and Policy .04.

¹⁵ The Exchange notes that for options listed pursuant to the Short Term Option Series Program, the Monthly Options Series Program, and the Quarterly Options Series Program, Rule 19.5, Interpretations and Policies .05, .08, and .04 specifically sets forth intervals between strike prices on Quarterly Options Series, Short Term Option Series, and Monthly Options Series, respectively.

¹⁶ See Rule 19.5, Interpretation and Policy .02.

¹⁷ See Rule 19.5, Interpretation and Policy .06.

¹⁸ See Rule 19.5, Interpretation and Policy .03.

¹⁹ See Rule 19.5(d)(5).

²⁰ If options on a Bitcoin Fund are eligible to participate in the Penny Interval Program, the minimum increment will be \$0.01 for series with a price below \$3.00 and \$0.05 for series with a price at or above \$3.00. See Rule 21.5(d) (which describes the requirements for the Penny Interval Program).

customer accounts, and trading halt procedures will apply to the listing and trading of Bitcoin Funds options on the Exchange in the same manner as they apply to other options on all other Fund Shares that are listed and traded on the Exchange, including the precious-metal backed commodity Fund Shares and the Fidelity and Ark 21 Funds already deemed appropriate for options trading [sic] on the Exchange pursuant to current already deemed appropriate for options trading [sic] on the Exchange pursuant to current Rule 19.3(i).

Pursuant to Rules 18.7²¹ and 18.9, the position and exercise limits, respectively, for each Bitcoin Fund option will be 25,000 same side option contracts. In considering the appropriate position and exercise limits for the Bitcoin Funds, the Exchange reviewed the data presented by NYSE American in its filing,²² NYSE American aggregated market capitalization, volume, and shares outstanding data of the Bitcoin Funds and compared that data to those of other ETFs, and compared the proposed position limit of the Bitcoin Funds to the position limits of the options overlying those other ETFs. The Exchange reviewed NYSE American's data that demonstrated that each of these three Bitcoin Funds would easily qualify for the 250,000-contract position limit available to other ETFs and ETPs.²³

²¹ See Regulatory Notice 23-12, available at: <https://info.memxtrading.com/wp-content/uploads/2023/09/RegNotice-23-12-Options-Position-Limits.pdf>, which informed Exchange members of the specific position limits applicable to options trading on MEMX Options, pursuant to Rule 18.7, as those position limits calculated and disseminated by the OCC, published daily and which can be found at: <https://www.theocc.com/market-data/market-data-reports/series-and-trading-data/position-limits>.

²² See NYSE American Approval.

²³ To be eligible for the 250,000 option contract limit, either the most recent six-month trading volume of the underlying security must have totaled at least 100,000,000 shares; or the most recent six-month trading volume of the underlying security must have totaled at least 75,000,000 shares and the underlying security must have at least 300,000,000 currently outstanding.

Bitcoin Fund	Total volume (shares) (as of September 30, 2024)
Grayscale Fund	723,758,100
Grayscale Mini Fund	335,492,930
Bitwise Fund	263,965,870

Based on this trading volume,²⁴ each Bitcoin Fund exceeded the requisite 100,000,000 shares necessary to qualify for the 250,000-contract position and exercise limits. By comparison, the underlying of other options with six-month trading volume less than the volumes in the table above are eligible

for position and exercise limits of at least 250,000.²⁵

Second, with respect to the outstanding shares of these three Bitcoin Funds, the Exchange reviewed NYSE American's data regarding the outstanding shares of each of these Bitcoin Funds. NYSE American performed an exercise to demonstrate that if a market participant held the

maximum number of contracts possible pursuant to the proposed position and exercise limits (25,000 contracts), the equivalent shares represented by the proposed position and exercise limits (2,500,000 shares) would represent the following approximate percentage of outstanding shares as of August 30, 2024:

Bitcoin Fund	Proposed position/exercise limits in equivalent shares	Outstanding shares	Percentage of outstanding shares (%)
Grayscale Fund	2,500,000	284,570,100	0.9
Grayscale Mini Fund	2,500,000	366,950,100	0.7
Bitwise Fund	2,500,000	68,690,000	3.6

As this table demonstrates, if a market participant held the maximum permissible options positions in one of the Bitcoin Fund options and exercised all of them at the same time, that market participant would control a small percentage of the outstanding shares of the underlying Bitcoin Fund. For

example, as noted above, a position limit of 25,000 same side contracts effectively restricts a market participant from holding positions that could result in the receipt of no more than 2,500,000 shares of the applicable Bitcoin Fund (if that market participant exercised all its options). NYSE American used the

number of shares outstanding for each Bitcoin Fund as of August 30, 2024, and calculated the approximate number of market participants that could hold the maximum of 25,000 same side positions in each Bitcoin Fund that would equate to the number of shares outstanding of that Bitcoin Fund:

Bitcoin Fund	Outstanding shares	Number of market participants with 25,000 same side positions
Grayscale Fund	284,570,100	114
Grayscale Mini Fund	366,950,100	147
Bitwise Fund	68,690,000	27

This means if 114 market participants had 25,000 same side positions in options on the Grayscale Fund, each of them would have to simultaneously exercise all of those options to create a scenario that may put the underlying security under stress. Similarly, this means if 147 market participants had 25,000 same side positions in options on the Grayscale Mini Fund, each of them would have to simultaneously exercise all of those options to create a scenario that may put the underlying security under stress. Finally, this means if 27 market participants had

25,000 same side positions in options on the Bitwise Fund, each of them would have to simultaneously exercise all of those options to create a scenario that may put the underlying security under stress. The Exchange believes it is highly unlikely for this to occur; however, even if such event did occur, the Exchange would not expect any of the Bitcoin Fund to be under stress because such an event would merely induce the creation of more shares through the trust's creation and redemption process.

NYSE American also performed an exercise to compare the size of the proposed position limit to the market capitalization of the Bitcoin market given that the issuer of each of these three Bitcoin Funds may create and redeem shares that represent an interest in Bitcoin. NYSE American took the global supply of Bitcoin, which was 19,747,066, and the price of one Bitcoin, which was approximately \$59,108.23, as of August 30, 2024, which equates to a market capitalization of approximately

²⁴ See FactSet, 9/30/2024, <https://www.factset.com/data-attribution>. Bitwise Fund shares began trading on July 31, 2024, and therefore

the data in the above table has only two months of trading data available.

²⁵ See <https://www.theocc.com/Market-Data/Market-Data-Reports/Series-and-Trading-Data/>

SeriesSearch (including the following symbols that have a position limit of 250,000: GLD, IAU, SLV, SIVR, SGOL).

\$1.167 trillion.²⁶ Consider the proposed position and exercise limit of 25,000 option contracts for each Bitcoin Fund option. A position and exercise limit of 25,000 same side contracts effectively restricts a market participant from holding positions that could result in

the receipt of no more than 2,500,000 shares of the Grayscale Fund, the Grayscale Mini Fund, or the Bitwise Fund, as applicable (if that market participant exercised all its options). NYSE American considered the share price of each Bitcoin Fund on August

30, 2024 and calculated the value of 2,500,000 shares of the Bitcoin Fund at that price, and the approximate percentage of that value of the size of the Bitcoin market:

Bitcoin Fund	Share price (\$)	Value of 2,500,000 shares	Percentage of bitcoin market
Grayscale Fund	46.75	116,875,000	0.010
Grayscale Mini Fund	5.20	13,000,000	0.001
Bitwise Fund	31.95	79,875,000	0.007

Therefore, if a market participant with the maximum 25,000 same side contracts in options on the Grayscale Fund, the Grayscale Mini Fund, or the

Bitwise Fund exercised all positions at one time, such an event would have no practical impact on the Bitcoin market. The Exchange also reviewed NYSE American's data regarding the market

capitalization of each of these three Bitcoin Funds relative to the market capitalization of the entire Bitcoin market, as of August 30, 2024:²⁷

	Bitcoin/shares outstanding	Market value (\$)	% of total Bitcoin market
Total Bitcoin Market	19,747,066	1,167,214,096,788	100
Grayscale Fund	284,570,100	13,443,091,524	1.15
Grayscale Mini Fund	366,950,100	1,930,157,526	0.17
Bitwise Fund	68,690,000	2,221,640,670	0.19

As this data gathered by NYSE American demonstrates, none of these three Bitcoin Funds represent more than 1.2% of the global supply of Bitcoin (19,747,066). Based on the \$46.75 price of a Grayscale Fund share on August 30, 2024, a market participant could have redeemed one Bitcoin for approximately 1,264 Grayscale Fund shares. Another 24,967,146,455 Grayscale Fund shares could be created before the supply of Bitcoin was exhausted. As a result, 9,987 market participants would have to simultaneously exercise 25,000 same side positions in Grayscale Fund options to receive shares of the Grayscale Fund holding the entire global supply of Bitcoin. Similarly, based on the \$5.20 price of a Grayscale Mini Fund share on August 30, 2024, a

market participant could have redeemed one Bitcoin for approximately 11,367 Grayscale Mini Fund shares. Another 224,464,249,382 Grayscale Mini Fund shares could be created before the supply of Bitcoin was exhausted. As a result, 89,786 market participants would have to simultaneously exercise 25,000 same side positions in Grayscale Mini Fund options to receive shares of Grayscale Mini Fund holding the entire global supply of Bitcoin. Similarly, based on the \$31.95 price of a Bitwise Fund share on August 30, 2024, a market participant could have redeemed one Bitcoin for approximately 1,850 Bitwise Fund shares. Another 36,532,522,591 Bitwise Fund shares could be created before the supply of Bitcoin was exhausted. As a result,

14,613 market participants would have to simultaneously exercise 25,000 same side positions in Bitwise Fund options to receive shares of Bitwise Fund holding the entire global supply of Bitcoin.

NYSE American also compared the proposed position limits to the position limit of CME Bitcoin futures, which as noted above is 2,000 futures. On August 28, 2024, CME Aug 24 Bitcoin Futures settled at \$58,950. A position of 2,000 CME Bitcoin futures, therefore, would have a notional value of \$589,500,000. The following table shows the share price of each Bitcoin Fund on August 28, 2024, and the approximate number of option contracts that equates to that notional value:

Bitcoin Fund	Share price (\$)	Number of option contracts
Grayscale Fund	46.94	125,585
Grayscale Mini Fund	5.23	1,127,151
Bitwise Fund	32.08	183,759

The approximate number of option contracts for each Bitcoin Fund that equate to the notional value of CME Bitcoin futures is significantly higher than the proposed limit of 25,000 options contracts for each Bitcoin Fund

option. As noted above, the fact that many options ultimately expire out-of-the-money and thus are not exercised for shares of the underlying, while the delta of a Bitcoin Future is 1, further demonstrates how conservative the

proposed limits of 25,000 options contracts are for the Bitcoin Fund options.

The Exchange notes, again, unlike options contracts, CME position limits are calculated on a net futures-

²⁶ See <https://www.blockchain.com/explorer/charts/total-bitcoins>.

²⁷ See id.

equivalent basis by contract and include contracts that aggregate into one or more base contracts according to an aggregation ratio(s).²⁸ Therefore, if a portfolio includes positions in options on futures, CME would aggregate those positions into the underlying futures contracts in accordance with a table published by CME on a delta equivalent value for the relevant spot month, subsequent spot month, single month and all month position limits.²⁹ If a position exceeds position limits because of an option assignment, CME permits market participants to liquidate the excess position within one business day without being considered in violation of its rules. Additionally, if at the close of trading, a position that includes options exceeds position limits for futures contracts, when evaluated using the delta factors as of that day's close of trading but does not exceed the limits when evaluated using the previous day's delta factors, then the position shall not constitute a position limit violation. Considering CME's position limits on futures for Bitcoin, the Exchange believes that that the proposed same side position limits are more than appropriate for the Grayscale Fund, Grayscale Mini Fund, and Bitwise Fund options.

While the supply of Bitcoin is limited to 21,000,000, it is believed that it will take more than 100 years to fully mine the remaining Bitcoin.³⁰ The Exchange notes that Bitcoin is a viable economic alternative to traditional assets. The price of goods denominated by Bitcoin has actually declined. This dynamic not only makes a fixed supply desirable, but a necessary condition of the value added by this asset in the broader economy. Unlike the Bitcoin Funds, the number of shares that corporations may issue is limited. However, like corporations, which authorize additional shares, repurchase shares, or split their shares, the Bitcoin Funds may create, redeem, or split shares in response to demand. Given the significant unlikelihood of any of events described above ever occurring, the Exchange does not believe options on the Bitcoin Funds should be subject to position and exercise limits even lower than those proposed (which are already equal to the lowest available limit for equity options in the industry) to protect the supply of Bitcoin.

Importantly, because the supply of Bitcoin is much larger than the available supply of most securities and the proposed 25,000 contract position limit is so conservative, the Exchange believes that evaluating the available supply of Bitcoin in establishing a position limit for options on each of the Bitcoin Funds would demonstrate that the proposed limit is safe for investors and the market.³¹ Each Bitcoin Fund represents less than 2% of the entire Bitcoin supply. When comparing the market capitalization of bitcoin against the largest securities, Bitcoin would rank 7th among those securities.³² Further, the Exchange believes that its proposal to list options on the Bitcoin Funds each with a position limit of 25,000 on the same side is a conservative position limit that does not lend itself to manipulation in the market given the ample market capitalization and liquidity in each Bitcoin Fund. If we look to the liquidity statistics of similar instruments and their concomitant position limits, we are able to extrapolate a reasonable standard for arriving at a position limit for a new product. In this case we can look to GLD, SLV, and the ProShares Bitcoin Strategy ETF. These products have volume statistics and "float" statistics, which gauge liquidity, which are in line, yet slightly lower than the Bitcoin Funds. All three of these reference products have position limits of 250,000 contracts. These reference products are remarkably similar in nature to the Bitcoin Funds; they are exchange-traded products ("ETPs") holding one asset in a trust.

The Exchange believes the available supply of Bitcoin is not relevant to the determination of position and exercise limits for options overlying the Bitcoin Funds.³³ Position and exercise limits are not a tool that should be used to address a potential limited supply of the underlying of an underlying. Position and exercise limits do not limit the total

number of options that may be held, but rather they limit the number of positions a single customer may hold or exercise at one time.³⁴ "Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise."³⁵ Position and exercise limit rules are intended "to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition, such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes."³⁶

The Exchange notes that a Registration Statement on Form S-1 was filed with the Commission for each Bitcoin Fund, each of which described the supply of Bitcoin as being limited to 21,000,000 (of which approximately 90% had already been mined), and that the limit would be reached around the year 2140.³⁷ Each Registration Statement permits an unlimited number of shares of the applicable Bitcoin Fund to be created. Further, the Commission approved proposed rule changes that permitted the listing and trading of shares of each Bitcoin Fund, which approval did not comment on the sufficient supply of Bitcoin or address whether there was a risk that permitting an unlimited number of shares for a Bitcoin Fund would impact the supply

³⁴ For example, suppose an option has a position limit of 25,000 option contracts and there are a total of 10 investors trading that option. If all 10 investors max out their positions, that would result in 250,000 option contracts outstanding at that time. However, suppose 10 more investors decide to begin trading that option and also max out their positions. This would result in 500,000 option contracts outstanding at that time. An increase in the number of investors could cause an increase in outstanding options even if position limits remain unchanged.

³⁵ See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-1997-11).

³⁶ See *id.*

³⁷ See iShares Fund Form S-1 Registration Statement, at p. 25 https://www.sec.gov/Archives/edgar/data/1980994/000143774923017574/bit20230608_s1.htm; Grayscale Fund Form S-1 Registration Statement, at p. 17, <https://www.sec.gov/Archives/edgar/data/1588489/000119312517013693/d157414ds1.htm>; Grayscale Mini Fund, Form S-1 Registration Statement, at p. 21, <https://www.sec.gov/Archives/edgar/data/2015034/000119312524065444/d785023ds1.htm>; and Bitwise Amendment No. 2, to S-1, at p. 47, https://www.sec.gov/Archives/edgar/data/1763415/000199937123000735/bitwise-s1a_120423.htm.

²⁸ See CME Rulebook Chapter 5, Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices.

²⁹ *Id.*

³⁰ See <https://www.blockchain.com/explorer/assets/btc> (citing 21 million as the "total supply" of bitcoin).

³¹ A supply consideration would likely be valuable for an option symbol that had far less liquidity than the Trust.

³² See <https://companiesmarketcap.com/usa/largest-companies-in-the-usa-by-market-cap/>.

³³ The Exchange is unaware of any proposed rule change related to position and exercise limits for any equity option (including commodity ETF options) for which the Commission required consideration of whether the available supply of an underlying (whether it be a corporate stock or an ETF) or the contents of an ETF (commodity or otherwise) should be considered when an exchange proposed to establish those limits. See, e.g., Securities Exchange Act Release No. 57894 (May 30, 2008), 73 FR 32061 (June 5, 2008) (SR-CBOE-2005-11) (approval order in which the Commission stated that the "listing and trading of Gold Trust Options will be subject to the exchanges' rules pertaining to position and exercise limits and margin").

of Bitcoin.³⁸ Therefore, the Exchange believes the Commission had ample time and opportunity to consider whether the supply of Bitcoin was sufficient to permit the creation of unlimited Bitcoin Fund shares, and does not believe considering this supply with respect to the establishment of position and exercise limits is appropriate given its lack of relevance to the purpose of position and exercise limits. However, given the significant size of the Bitcoin supply, the proposed positions limits are more than sufficient to protect investors and the market.

All of the above information demonstrates that the proposed position and exercise limits for the Bitcoin Fund options are more than reasonable and appropriate. The trading volume, ADV, and outstanding shares of each Bitcoin Fund demonstrate that these funds are actively traded and widely held, and proposed position and exercise limits are well below those of other ETFs with similar market characteristics. The proposed position and exercise limits are the lowest position and exercise limits available for equity options in the industry, are extremely conservative, and are more than appropriate given each Bitcoin Fund's market capitalization and ADV.

Today, the Exchange has an adequate surveillance program in place for options. The Exchange intends to apply those same program procedures to options on the Bitcoin Funds that it applies to the Exchange's other options products.³⁹ The Exchange's market surveillance staff would have access to the surveillances conducted by the Exchange and its affiliate exchange, MEMX Equities, with respect to the Bitcoin Funds, trading in the shares of the underlying Bitcoin Funds, and would review activity in the underlying Bitcoin Funds when conducting surveillances for market abuse or manipulation in the options on the Bitcoin Funds. Additionally, the Exchange is a member of the Intermarket Surveillance Group ("ISG") under the Intermarket Surveillance Group Agreement. ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets. In addition to obtaining information from its affiliated market, the Exchange would be able to obtain information regarding trading in shares of the Bitcoin Funds from their primary listing

market, NYSE Arca, and from other markets that trades shares of the Bitcoin Funds through ISG. In addition, the Exchange has a Regulatory Services Agreement with the Financial Industry Regulatory Authority ("FINRA") for certain market surveillance, investigation and examinations functions. Pursuant to a multi-party 17d-2 joint plan, all options exchanges allocate amongst themselves and FINRA responsibilities to conduct certain options-related market surveillance that are common to rules of all options exchanges.⁴⁰

The underlying shares of spot bitcoin exchange-traded products ("ETPs"), including the Bitcoin Funds, are also subject to safeguards related to addressing market abuse and manipulation. As the Commission stated in its order approving proposals of several exchanges to list and trade shares of spot bitcoin-based ETPs, "[e]ach Exchange has a comprehensive surveillance-sharing agreement with the CME via their common membership in the Intermarket Surveillance Group. This facilitates the sharing of information that is available to the CME through its surveillance of its markets, including its surveillance of the CME bitcoin futures market.⁴¹ The Exchange states that, given the consistently high correlation between the CME Bitcoin futures market and the spot bitcoin market, as confirmed by the Commission through robust correlation analysis, the Commission was able to conclude that such surveillance sharing agreements could reasonably be "expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [Bitcoin ETPs]." ⁴² In light of surveillance measures related to both options and futures as well as the

underlying Bitcoin Funds,⁴³ the Exchange believes that existing surveillance procedures are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading the proposed options on the Bitcoin Funds. Further, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on Bitcoin ETPs.

The Exchange has also analyzed its capacity and represents that it believes the Exchange and OPRA have the necessary systems capacity to handle the additional traffic associated with the listing of new series that may result from the introduction of options on Bitcoin Funds up to the number of expirations currently permissible under the Rules. Because the proposal is limited to two classes, the Exchange believes any additional traffic that may be generated from the introduction of Bitcoin Fund options will be manageable.

The Exchange believes that offering options on Bitcoin Funds will benefit investors by providing them with an additional, relatively lower cost investing tool to gain exposure to the price of Bitcoin and hedging vehicle to meet their investment needs in connection with Bitcoin-related products and positions. The Exchange expects investors will transact in options on Bitcoin Funds in the unregulated over-the-counter ("OTC") options market,⁴⁴ but may prefer to trade such options in a listed environment to receive the benefits of trading listing options, including (1) enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of

⁴⁰ Section 19(g)(1) of the Act, among other things, requires every self-regulatory organization ("SRO") registered as a national securities exchange or national securities association to comply with the Act, the rules and regulations thereunder, and the SRO's own rules, and, absent reasonable justification or excuse, enforce compliance by its members and persons associated with its members. See 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d-2. Section 17(d)(1) of the Act allows the Commission to relieve an SRO of certain responsibilities with respect to members of the SRO who are also members of another SRO ("common members"). Specifically, Section 17(d)(1) allows the Commission to relieve an SRO of its responsibilities to: (i) receive regulatory reports from such members; (ii) examine such members for compliance with the Act and the rules and regulations thereunder, and the rules of the SRO; or (iii) carry out other specified regulatory responsibilities with respect to such members.

⁴¹ See Bitcoin ETP Approval Order.

⁴² See Bitcoin ETP Approval Order, 89 FR at 3010-11.

⁴³ See Amendment No. 2 to Proposed Rule Change to List and Trade Shares of the Grayscale Bitcoin Trust (BTC) under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) (SR-NYSEARCA-2021-90), filed Jan. 5, 2024, available at <https://www.sec.gov/comments/sr-nysearca-2021-90/srnysearca202190-358659-884182.pdf>; Amendment No. 2 to Proposed Rule Change to List and Trade Shares of the Bitwise Bitcoin ETF under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) (SR-NYSEARCA-2023-44), filed Jan. 5, 2024, available at <https://www.sec.gov/comments/sr-nysearca-2023-44/srnysearca202344-358800-884322.pdf>; and Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Grayscale Bitcoin Mini Trust Under NYSE Arca Rule 8.201-E, CommodityBased Trust Shares, Securities Exchange Act Release No. 100290 (June 6, 2024), 89 FR 49931 (June 12, 2024) (SR-NYSEARCA-2024-45).

⁴⁴ The Exchange understands from customers that investors have historically transacted in options on Fund Shares in the OTC options market if such options were not available for trading in a listed environment.

³⁸ See Bitcoin ETP Approval Order.

³⁹ The surveillance program includes surveillance patterns for price and volume movements as well as patterns for potential manipulation (e.g., spoofing and marking the close).

all listed options. The Exchange believes that listing Bitcoin Fund options may cause investors to bring this liquidity to the Exchange, would increase market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow. The Fund Shares that hold financial instruments, money market instruments, or precious metal commodities on which the Exchange may already list and trade options are trusts structured in substantially the same manner as Bitcoin Funds and essentially offer the same objectives and benefits to investors, just with respect to different assets. The Exchange notes that it has not identified any issues with the continued listing and trading of any Fund Share options, including Fund Shares that hold commodities (*i.e.*, precious metals) that it currently lists and trades on the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁴⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁴⁶ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁴⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposal to list and trade options on the Bitcoin Funds will remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors because offering options on the Bitcoin Funds will provide investors with an opportunity to realize the benefits of utilizing options on a Bitcoin Fund, including cost efficiencies and

increased hedging strategies. The Exchange believes that offering options on a competitively priced ETF based on spot Bitcoin will benefit investors by providing them with an additional, relatively lower-cost risk management tool, allowing them to manage, more easily, their positions and associated risks in their portfolios in connection with exposure to spot Bitcoin. Today, the Exchange lists options on other commodity (including Bitcoin) ETFs structured as a trust, which essentially offer the same objectives and benefits to investors, and for which the Exchange has not identified any issues with the continued listing and trading of options on those ETFs.

The Exchange also believes the proposal to permit options on the Bitcoin Funds will remove impediments to and perfect the mechanism of a free and open market and a national market system, because options on the Bitcoin Funds will comply with current Exchange Rules. Options on the Bitcoin Funds must satisfy the initial listing standards and continued listing standards currently in the Rules, applicable to options on all ETFs, including options on other commodity ETFs already deemed appropriate for options trading on the Exchange pursuant to Rule 19.3(i). Additionally, as demonstrated above, the Bitcoin Funds are characterized by a substantial number of shares that are widely held and actively traded. Further, Rules that currently govern the listing and trading of options on ETFs, including permissible expirations, strike prices, minimum increments, position and exercise limits (as proposed herein), and margin requirements, will govern the listing and trading of options on the Bitcoin Funds.

The proposed position and exercise limits for options on each of the Bitcoin Funds is 25,000 contracts. These position and exercise limits are the lowest position and exercise limits available in the options industry, are extremely conservative and more than appropriate given Bitcoin Fund's market capitalization, ADV, and high number of outstanding shares. The proposed position limit, and exercise limit, is consistent with the Act as it addresses concerns related to manipulation and protection of investors because, as demonstrated above, the position limit (and exercise limit) is extremely conservative and more than appropriate given the Bitcoin Funds are actively traded. In support of the proposed position and exercise limits for options on the Bitcoin Funds of 25,000 contracts, the Exchange is citing the in depth analysis NYSE American did in

its filing. As noted above, NYSE American considered: (1) the applicable Bitcoin Fund's market capitalization and ADV, and proposed position limit in relation to other securities; (2) the market capitalization of the entire Bitcoin market in terms of exercise risk and availability of deliverables; (3) the proposed position limit by comparing it to position limits for derivative products regulated by the CFTC; and (4) the supply of Bitcoin. Based on the Exchange's review of this analysis, the Exchange believes that setting position and exercise limits for options on each of the Bitcoin Funds of 25,000 contracts is more than appropriate. The proposed position and exercise limits reasonably and appropriately balance the liquidity provisioning in the market against the prevention of manipulation. The Exchange believes these proposed limits are effectively designed to prevent an individual customer or entity from establishing options positions that could be used to manipulate the market of the underlying as well as the Bitcoin market.⁴⁸

The Exchange represents that it has the necessary systems capacity to support the new Bitcoin Fund options. As discussed above, the Exchange believes that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might arise from listing and trading Fund Share options, including Bitcoin Fund options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as the Bitcoin Fund options will be equally available to all market participants who wish to trade such options and will trade generally in the same manner as other options. The Rules that currently apply to the listing and trading of all Fund Share options on the Exchange, including, for example, Rules that govern listing criteria, expirations, exercise prices, minimum increments, margin requirements, customer accounts, and trading halt procedures will apply to the listing and trading of Bitcoin Funds options on the

⁴⁵ 15 U.S.C. 78f(b).

⁴⁶ 15 U.S.C. 78f(b)(5).

⁴⁷ *Id.*

⁴⁸ See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-1997-11).

Exchange in the same manner as they apply to other options on all other Fund Shares that are listed and traded on the Exchange. Also, and as stated above, the Exchange already lists options on other commodity-based Fund Shares (including Bitcoin-based [sic]).⁴⁹ Further, the Bitcoin Funds would need to satisfy the maintenance listing standards set forth in the Exchange Rules in the same manner as any other Fund Share for the Exchange to continue listing options on them.

The Exchange does not believe that the proposal to list and trade options on Bitcoin Funds will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the extent that the advent of Bitcoin Fund options trading on the Exchange may make the Exchange a more attractive marketplace to market participants at other exchanges, such market participants are free to elect to become market participants on the Exchange. The Commission recently approved a rule filing of another exchange to permit the listing and trading of options on the Bitcoin Funds.⁵⁰ The Exchange notes that listing and trading Bitcoin Fund options on the Exchange will subject such options to transparent exchange-based rules as well as price discovery and liquidity, as opposed to alternatively trading such options in the OTC market.

The Exchange believes that the proposed rule change may relieve any burden on, or otherwise promote, competition, as it is designed to increase competition for order flow on the Exchange in a manner that is beneficial to investors by providing them with a lower-cost option to hedge their investment portfolios. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues that offer similar products. Ultimately, the Exchange believes that offering Bitcoin Fund options for trading on the Exchange will promote competition by providing investors with an additional, relatively low-cost means to hedge their portfolios and meet their investment needs in connection with Bitcoin prices and Bitcoin-related products and positions on a listed options exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁵¹ and Rule 19b-4(f)(6) thereunder.⁵²

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)⁵³ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission previously approved the listing of options on the Bitcoin Funds.⁵⁴ The Exchange has provided information regarding the underlying Bitcoin Funds, including, among other things, information regarding trading volume, the number of beneficial holders, and the market capitalization of the Bitcoin Funds. The proposal also establishes position and exercise limits for options on the Bitcoin Funds and provides information regarding the surveillance procedures that will apply to options on the Bitcoin Funds. The Commission believes that waiver of the operative delay could benefit investors by providing an additional venue for trading options on the Bitcoin Funds. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the

⁵¹ 15 U.S.C. 78s(b)(3)(A).

⁵² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

⁵³ 17 CFR 240.19b-4(f)(6)(iii).

⁵⁴ See *supra* note 4.

Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.⁵⁵

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MEMX-2024-47 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-MEMX-2024-47. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also

⁵⁵ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁴⁹ See Rule 19.3(i).

⁵⁰ See NYSE American Approval.

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-MEMX-2024-47 and should be submitted on or before January 16, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁶

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-30779 Filed 12-23-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-586, OMB Control No. 3235-0647]

Submission for OMB Review; Comment Request; Extension: Rule 204

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) has submitted to the Office of Management and Budget (“OMB”) a request for approval of extension of the previously approved collection of information provided for in Rule 204 (17 CFR 242.204), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 204(a) provides that a participant of a registered clearing agency must deliver securities to a registered clearing agency for clearance and settlement on a long or short sale in any equity security by settlement date, or if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security for a long or short sale transaction in the equity security, the participant shall, by no later than the beginning of regular trading hours on the applicable close-out date, immediately close out its fail to deliver positions by borrowing or purchasing securities of like kind and quantity. For a short sale transaction, the participant

must close out a fail to deliver by no later than the beginning of regular trading hours on the settlement day following the settlement date. If a participant has a fail to deliver that the participant can demonstrate on its books and records resulted from a long sale, or that is attributable to bona-fide market making activities, the participant must close out the fail to deliver by no later than the beginning of regular trading hours on the third consecutive settlement day following the settlement date. Rule 204 is intended to help further the Commission’s goal of reducing fails to deliver by maintaining the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission. In addition, Rule 204 is intended to help further the Commission’s goal of addressing potentially abusive “naked” short selling in all equity securities.

The information collected under Rule 204 will continue to be retained and/or provided to other entities pursuant to the specific rule provisions and will be available to the Commission and self-regulatory organization (“SRO”) examiners upon request. The information collected will continue to aid the Commission and SROs in monitoring compliance with these requirements. In addition, the information collected will aid those subject to Rule 204 in complying with its requirements. These collections of information are mandatory.

Several provisions under Rule 204 will impose a “collection of information” within the meaning of the Paperwork Reduction Act.

Allocation Notification Requirement: As of quarter four of 2023, there were 3,429 registered broker-dealers.¹ Each of these broker-dealers could clear trades through a participant of a registered clearing agency and, therefore, become subject to the notification requirements of Rule 204(d). If a participant allocates a fail to deliver position to a broker or dealer pursuant to Rule 204(d), the broker or dealer that has been allocated the fail to deliver position in an equity security must determine whether such fail to deliver position was closed out in accordance with Rule 204(a). If such broker or dealer does not comply with the provisions of Rule 204(a), such broker or dealer must immediately notify the participant that it has become subject to the requirements of Rule 204(b). The Commission estimates that

a broker or dealer could have to make such determination and notification with respect to approximately 2.44 equity securities per day.² The Commission estimates a total of 2,108,424 potential notifications in accordance with Rule 204(d) across all registered broker-dealers that could be allocated responsibility to close out a fail to deliver position per year (3,429 registered broker-dealers notifying participants once per day³ on 2.44 equity securities, multiplied by 252 trading days in 2023). The total estimated annual burden hours per year will be approximately 337,348 burden hours (2,108,424 multiplied by 0.16 hours/notification⁴).

Demonstration Requirement for Fails to Deliver on Long Sales: As of December 29, 2023, there were 129 participants of NSCC that were registered as broker-dealers. If a participant of a registered clearing agency has a fail to deliver position in an equity security at a registered clearing agency and determined that such fail to deliver position resulted from a long sale, the Commission estimates that a participant of a registered clearing agency will have to make such a determination with respect to approximately 30 securities per day.⁵ The Commission estimates a total of 975,240 potential demonstrations in accordance with Rule 204(a)(1) across all broker-dealer participants per year (129 participants checking for compliance once per day on 30 securities, multiplied by 252 trading days in 2023). The total approximate estimated annual burden hours per year

² DERA estimates that there were approximately 8,378 average daily fail to deliver positions during 2023. Across 3,429 registered broker-dealers, the number of securities per registered broker-dealer per trading day is approximately 2.44 (8,378 ÷ 3,429) equity securities.

³ Because failure to comply with the close-out requirements of Rule 204(a) is a violation of the rule, the Commission believes that a broker or dealer would make the notification to a participant that it is subject to the borrowing requirements of Rule 204(b) at most once per day.

⁴ See Amendments to Regulation SHO, Exchange Act Release No. 60388 (July 27, 2009), 74 FR 38265 (July 31, 2009) (“Rule 204 Adopting Release”) (July 27, 2009) (making permanent the amendments to Regulation SHO contained in Interim Final Temporary Rule 204T and incorporating by reference the time estimates from the Rule 204T Adopting Release for compliance with the notification, demonstration, and certification requirements of Rule 204).

⁵ DERA estimates that during 2023 approximately 46.6% of trade volume was long. DERA estimates that there were approximately 8,378 average daily fail to deliver positions during 2023. Across 129 broker-dealer participants of the NSCC, the number of securities per participant per day is approximately 65 (8,378 ÷ 129) equity securities. 46.6% of 65 equity securities per trading day equals approximately 30 securities per day.

¹ The Commission’s Division of Economic and Risk Analysis (“DERA”) estimates that there were approximately 3,429 registered broker-dealers as of quarter four of 2023, based on FOCUS filings data.

⁵⁶ 17 CFR 200.30-3(a)(12), (59).

will be approximately 156,038 burden hours (975,240 multiplied by 0.16 hours/demonstration ⁶).

Pre-Borrow Notification Requirement: As of December 29, 2023, there were 129 participants of NSCC that were registered as broker-dealers. If a participant of a registered clearing agency has a fail to deliver position in an equity security, the participant must determine whether the fail to deliver position was closed out in accordance with Rule 204(a). The Commission estimates that a participant of a registered clearing agency will have to make such determination with respect to approximately 65 equity securities per day.⁷ The Commission estimates a total of 2,113,020 potential notifications in accordance with Rule 204(c) across all participants per year (129 broker-dealer participants notifying broker-dealers once per day on 65 securities, multiplied by 252 trading days in 2023). The total estimated annual burden hours per year will be approximately 338,083 burden hours (2,113,020 multiplied by 0.16 hours/notification ⁸).

Certification Requirement: As of quarter four 2023, there were 3,429 registered broker-dealers. Each of these broker-dealers may clear trades through a participant of a registered clearing agency. If the broker-dealer determines that it has not incurred a fail to deliver position on settlement date for a long or short sale in an equity security for which the participant has a fail to deliver position at a registered clearing agency or has purchased or borrowed securities in accordance with the pre-fail credit provision of Rule 204(e), the Commission estimates that a broker-dealer could have to make such determination with respect to approximately 2.44 securities per day.⁹ The Commission estimates that each such registered broker-dealer could have to certify to a participant that the broker-dealer has not incurred a fail to deliver position on settlement date for a long or short sale in an equity security for which the participant has a fail to deliver position at a registered clearing agency or, alternatively, that the broker-dealer is in compliance with the requirements set forth in the pre-fail credit provision of Rule 204(e), 2,108,424 times per year (3,429 registered broker-dealers certifying once per day on 2.44 securities, multiplied by 252 trading days in 2023). The total approximate estimated annual burden hours per year will be approximately

337,348 burden hours (2,108,424 multiplied by 0.16 hours/certification ¹⁰).

Pre-Fail Credit Demonstration Requirement: As of quarter four 2023, there were 3,429 registered broker-dealers. If a broker-dealer purchased or borrowed securities in accordance with the conditions specified in Rule 204(e) and determined that it had a net long position or net flat position on the settlement day for which the broker-dealer is claiming pre-fail credit, the Commission estimates that a broker-dealer could have to make such determination with respect to approximately 2.44 securities per day.¹¹ The Commission estimates that the total number of times per year that such registered broker-dealers could have to demonstrate on their respective books and records that the broker-dealer has a net long position or net flat position on the settlement day for which the broker-dealer is claiming pre-fail credit is 2,108,424 times per year (3,429 registered broker-dealers checking for compliance once per day on 2.44 equity securities, multiplied by 252 trading days in 2023). The total approximate estimated annual burden hours per year will be 337,348 burden hours (2,108,424 multiplied by 0.16 hours/demonstration ¹²).

The total aggregate annual burden for the collection of information undertaken pursuant to all five provisions is thus 1,506,165 hours per year (337,348 + 156,038 + 338,083 + 337,348 + 337,348).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view and comment on this information collection request at: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202410-3235-002 or send an email comment to MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov within 30 days of the day after publication of this notice by January 27, 2025.

Dated: December 19, 2024.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024-30770 Filed 12-23-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-637, OMB Control No. 3235-0687]

Proposed Collection; Comment Request; Extension: Rule 239

Upon Written Request Copies Available

From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 239 (17 CFR 230.239) provides exemptions under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) and the Trust Indenture Act of 1939 (U.S.C. 77aaa *et seq.*) for security-based swaps issued by certain clearing agencies satisfying certain conditions. The purpose of the information required by Rule 239 is to make certain information about security-based swaps that may be cleared by the registered or the exempt clearing agencies available to eligible contract participants and other market participants. We estimate that each registered or exempt clearing agency issuing security-based swaps in its function as a central counterparty will spend approximately 2 hours each time it provides or update the information in its agreements relating to security-based swaps or on its website. We estimate that each registered or exempt clearing agency will provide or update the information approximately 20 times per year. In addition, we estimate that 75% of the 2 hours per response (1.5 hours) is prepared internally by the clearing agency for a total annual reporting burden of 180 hours (1.5 hours per response × 20 times × 6 respondents).

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of

⁶ See *supra* note 4.

⁷ See *supra* note 5.

⁸ See *supra* note 4.

⁹ See *supra* note 2.

¹⁰ See *supra* note 4.

¹¹ See *supra* note 2.

¹² See *supra* note 4.

information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by February 24, 2025.

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 control number.

Please direct your written comment to Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Tanya Ruttenberg, 100 F Street, NE, Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov.

Dated: December 19, 2024.

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-30771 Filed 12-23-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101967; File No. SR-NYSEAMER-2024-79]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change to Amend Sections 140 and 141 of the NYSE American Company Guide to Amend the Original and Annual Listing Fees for Bonds and the Annual Fee for Stock Issues

December 18, 2024

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (“Act”) ² and Rule 19b-4 thereunder, ³ notice is hereby given that, on December 16, 2024, NYSE American LLC (“NYSE American” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Sections 140 and 141 of the NYSE American Company Guide (the “Company Guide”) to (i) amend the original and annual listing fees for

bonds, and (ii) amend the annual fee for stock issues. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Sections 140 and 141 of the Company Guide to (i) amend the original and annual listing fees for bonds, and (ii) amend the annual fee for stock issues. The proposed changes will take effect from the beginning of the calendar year commencing on January 1, 2025.

The Exchange currently charges an annual fee of \$55,000 to issuers with 50 million or fewer shares outstanding and an annual fee of \$75,000 to issuers with more than 50 million shares outstanding. The Exchange proposes to amend Section 141 of the Company Guide to increase the annual fee for issuers with 50 million or fewer shares outstanding to \$60,000, and to increase the annual fee for issuers with more than 50 million shares outstanding to \$80,000.

The proposed increase to the annual fee for stock issues reflects increases in the costs the Exchange incurs in providing services to listed companies on an ongoing basis including in relation to company events and advocacy on behalf of listed companies, as well as increases in the costs of conducting its related regulatory activities. The Exchange proposes to make the aforementioned fee increases to better reflect the Exchange’s costs related to listing equity securities and the corresponding value of such listing to companies.

The revised annual fee for stock issues will be applied in the same manner to all issuers with listed

securities in the affected categories and the Exchange believes that the changes will not disproportionately affect any specific category of issuers.

Pursuant to Section 140 of the Company Guide, the Exchange currently charges an original listing fee for bond issues equal to \$100 per \$1 million principal amount (or fraction thereof) and subject to a minimum original listing fee of \$5,000 and a maximum fee of \$10,000. Pursuant to Section 141 of the Company Guide, the Exchange currently charges an annual fee for listed bonds equal to \$5,000.

Similar to bonds listed on New York Stock Exchange LLC (“NYSE”), bonds that are listed on NYSE American trade on the NYSE Bonds platform. The quantitative original listing standards for bonds listed on the NYSE or NYSE American exchanges are nearly identical.⁴ Because bonds listed on NYSE American and NYSE are subject to the same quantitative listing standards (except as described in Footnote 3) and trade on the same NYSE Bonds platform, the Exchange believes it is appropriate to align the original and annual fee schedule for bonds listed on NYSE American with the schedule applicable to bonds listed on the NYSE⁵ as the value of a bond listing is the same to an issuer regardless of the exchange on which the bond is listed.

Accordingly, the Exchange proposes to amend Section 140 of the Company Guide to specify that listed bonds will be subject to a flat original listing fee of \$25,000.⁶ The Exchange proposes to

⁴ See Section 104 of the Company Guide and Sections 102.03 and 103.05 of the NYSE Listed Company Manual. To qualify for original listing, both NYSE American and NYSE require that a bond (i) have an aggregate market value or principal amount of at least \$5,000,000, and (ii) meet one of several enumerated issuer or bond rating statuses. With respect to convertible bonds, the NYSE requires that an issue have an aggregate market value or principal amount of no less than \$10,000,000. NYSE American does not have a similar requirement.

⁵ See Section 902.08 of the NYSE Listed Company Manual.

⁶ Section 902.08 of the NYSE Listed Company Manual specifies that domestic listed debt of issuers exempt from registration under the Securities and Exchange Act of 1934 (“Exempt Issuers”) is not subject to any listing fee. Section 902.08 of the NYSE Listed Company Manual further specifies that bonds whose listing is transferred from another national securities exchange or that list in conjunction with their voluntary delisting from a regulated foreign exchange are not subject to initial listing fees or any annual listing fee in their first partial year of listing. NYSE American does not currently list debt securities of Exempt Issuers so it does not propose to add this provision to its rule. Similarly, issuers have not historically transferred bonds to NYSE American from another national securities exchange or listed bonds on NYSE American in conjunction with their voluntary delisting from a regulated foreign exchange. Therefore, NYSE American does not propose to add this provision to its rules.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

amend the annual fees for bonds contained in Section 141 of the Company Guide to eliminate the \$5,000 flat annual fee and instead adopt a tiered annual fee schedule based on the number of bonds that an issuer has listed on the Exchange. As revised, an issuer that has at least one and no more than five listed bonds will pay an annual fee of \$25,000. An issuer that has at least six and no more than 10 listed bonds will pay an annual fee of \$50,000. An issuer that has at least 11 and no more than 15 listed bonds will pay an annual fee of \$75,000. An issuer that has more than 15 listed bonds will pay an annual fee of \$100,000. Because the Exchange is seeking to adopt a tiered annual fee schedule, the Exchange proposes to delete language in Section 141 related to prorating the annual fee for a bond in its first year of listing. The Exchange notes that the proposed amendment will result in a fee increase for issuers that list bonds on the Exchange. However, as discussed above, because bonds listed on the Exchange trade on the NYSE Bonds platform similar to bonds listed on the NYSE, the Exchange believes that the value of the bond listing is comparable across NYSE American and NYSE and it is appropriate to align the fee schedule.

The Exchange further notes that Section 141 of the Company Guide currently sets forth the annual fee for listed bonds of companies whose equity securities are not listed on the Exchange, but does not contain a corresponding fee schedule for listed bonds of companies whose equity securities are listed on the Exchange.⁷ Under Section 104 of the Company Guide, a bond may qualify for listing if its issuer has equity securities listed on the Exchange, the New York Stock Exchange or Nasdaq. With respect to bond listing fees, the Exchange doesn't believe that issuers should be charged differently depending on where their equity securities are listed. Therefore, the Exchange proposes to delete the limiting text in Section 141 that the current fee schedule applies only to listed bonds of companies whose equity securities are not listed on the Exchange. Instead, the proposed fee schedule will apply to all listed bonds regardless of where the issuer's equity securities are listed.

The Exchange proposes to further amend Section 141 of the Company Guide to adopt an overall cap of \$100,000 on the original and annual fees that may be paid by an issuer of listed

bonds in any calendar year. The Exchange notes that issuers will frequently issue bonds from various wholly-owned financing subsidiaries. Therefore, for purposes of calculating the fee cap, the Exchange will aggregate listing fees for bonds of an issuer and its wholly-owned subsidiaries.⁸

The Exchange notes that companies frequently issue several series of bonds at the same time. For example, as part of a single offering, a company may issue debt securities of different series with varying maturities (ex. 5-year, 10-year, 20-year or 30-year). In the Exchange's experience, there are efficiencies in (i) qualifying for listing multiple series of bonds of the same issuer, and (ii) servicing such listings on an ongoing basis. Because of these efficiencies, the Exchange believes it is appropriate to establish a maximum fee of \$100,000 payable by an issuer of listed bonds in any calendar year.⁹

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(4)¹¹ of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹² in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to amend Section 141 of the Company Guide to increase the annual fees for listed equity securities as set forth above because of the increased costs incurred by the Exchange since it established the current rates.

⁸ The Exchange will determine that an issuer is a wholly-owned subsidiary of an affiliated issuer based on the offering documents for the applicable bond issuance.

⁹ Concurrent with this filing, the New York Stock Exchange is proposing to also adopt a \$100,000 maximum fee cap for bond listing fees.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78f(b)(5).

The Exchange believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to amend Sections 140 and 141 of the Company Guide to adopt (i) a flat \$25,000 original listing fee for bonds and (ii) a tiered annual listing fee for bonds based on the number of bonds an issuer has listed on the Exchange. In this regard, the Exchange believes it is reasonable to align the Exchange's bond original and annual listing fees with those of the NYSE, as bonds listed on either exchange trade on the NYSE Bonds platform and are subject to nearly identical quantitative listing standards.

The Exchange believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to amend Section 141 to establish a maximum fee cap payable in any calendar year by an issuer of bonds because the Exchange experiences efficiencies in qualifying and servicing the listing of multiple series of bonds of the same issuer (or a wholly-owned subsidiary of such issuer).

The Proposed Changes Are Reasonable

The Exchange believes that the proposed changes to the annual fee schedule for listed equity securities are reasonable. In that regard, the Exchange notes that its general costs to support its listed companies have increased, including due to price inflation. The Exchange also continues to expand and improve the services it provides to listed companies. Specifically, the Exchange has (among other things) increased expenditure on listed companies and the value of an NYSE listing by increasing programming for listed companies and enhancing its conference space which can be utilized by listed companies.

The Exchange believes it is reasonable to align the Exchange's bond original and annual listing fees with those of the NYSE, as bonds listed on either exchange trade on the NYSE Bonds platform and are subject to nearly identical quantitative listing standards. Therefore, the value of a bond listing to an issuer is the same regardless of the exchange on which the bond is listed.

The Exchange believes that it is reasonable to establish a maximum fee cap payable in any calendar year by an issuer of bonds because there are efficiencies in listing multiple series of bonds of the same issuer (or a wholly-owned subsidiary of such issuer).

The Exchange operates in a highly competitive marketplace for the listing of the various categories of securities affected by the proposed annual fee adjustments. The Commission has repeatedly expressed its preference for

⁷ Currently, there are no bonds listed on the Exchange that are issued by companies whose equity securities are listed on the Exchange.

competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS,¹³ 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.”¹⁴

The Exchange believes that the ever-shifting market share among the exchanges with respect to new listings and the transfer of existing listings between competitor exchanges demonstrates that issuers can choose different listing markets in response to fee changes. Accordingly, competitive forces constrain exchange listing fees. Stated otherwise, changes to exchange listing fees can have a direct effect on the ability of an exchange to compete for new listings and retain existing listings.

Given this competitive environment, the adoption of the proposed increase the annual listing fee for equity securities represents a reasonable attempt to address the Exchange’s increased costs in servicing these listings while continuing to attract and retain listings. The establishment of a flat original listing fee, a tiered annual listing fee, and a maximum fee cap payable in a calendar year by an issuer of bonds represents a reasonable attempt to accurately reflect the Exchange’s costs in listing and servicing such securities.

The Exchange proposes to make the aforementioned fee increases in Sections 140 and 141 of the Company Guide to better reflect the value of such listing to issuers.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants.

The Exchange believes that the proposed amendments to the annual fees for equity securities are equitable because they do not change the existing framework for such fees, but simply increase the amount of the annual fee to reflect increased operating costs. Similarly, as the fee structure remains effectively unchanged apart from the proposed increases in the rates paid by all issuers, the changes to the annual fee for equity securities neither target nor

will they have a disparate impact on any particular category of issuer.

The Exchange believes that the adoption of a flat original listing fee and a tiered annual listing fee for bonds is equitable because it accurately reflects the value of a bond listing to an issuer while recognizing the efficiencies realized by the Exchange when listing multiple series of bonds. The Exchange believes that the proposed flat original fee and tiered annual fee is equitable because it will apply equally to all issuers and will not target nor have a disparate impact on any particular category of issuer.

The Exchange believes that the proposed maximum fee cap for issuers of bonds is equitable because the work required to list a bond does not increase on a proportional basis for each additional series of bonds that are listed on the Exchange. There are efficiencies in listing multiple series of bonds and the Exchange believes that its proposed fee cap is an equitable reflection of such efficiencies.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. The proposed fee changes are not unfairly discriminatory among issuers of operating company equity securities because the same fee schedule will apply to all such issuers. The proposed changes to the original and annual fee schedule for bonds is not unfairly discriminatory because the same schedule will apply to all bond issuers and the proposed fee cap will be available to all issuers. Further, the Exchange operates in a competitive environment and its fees are constrained by competition in the marketplace. Other venues currently list all of the categories of securities covered by the proposed fees and if a company believes that the Exchange’s fees are unreasonable it can decide either not to list its securities or to list them on an alternative venue. Currently, there are few bonds listed on the Exchange. While the listing fees for such bonds will increase under the proposed rule change, the Exchange notes that all listed bonds (whether listed on the Exchange or the NYSE) trade on the NYSE Bonds platform. The value of the listing to a specific bond issuer, therefore, is the same. Accordingly, the Exchange believes it is not unfairly discriminatory to align the Exchange’s bond listing fee schedule with the NYSE’s corresponding schedule.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to ensure that the fees charged by the Exchange accurately reflect the services provided and benefits realized by listed issuers. The market for listing services is extremely competitive. Each listing exchange has a different fee schedule that applies to issuers seeking to list securities on its exchange. Issuers have the option to list their securities on these alternative venues based on the fees charged and the value provided by each listing. Because issuers have a choice to list their securities on a different national securities exchange, the Exchange does not believe that the proposed fee changes impose a burden on competition.

Intramarket Competition

The proposed amended fees will be charged to all listed issuers on the same basis. The Exchange does not believe that the proposed amended fees will have any meaningful effect on the competition among issuers listed on the Exchange.

Intermarket Competition

The Exchange operates in a highly competitive market in which issuers can readily choose to list new securities on other exchanges and transfer listings to other exchanges if they deem fee levels at those other venues to be more favorable. Because competitors are free to modify their own fees, and because issuers may change their chosen listing venue, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁵ and Rule 19b-4(f)(2) thereunder¹⁶ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not

¹³ Securities Exchange Act Release No. 34-51808 (June 9, 2005); 70 FR 37496 (June 29, 2005) (“Regulation NMS”).

¹⁴ See Regulation NMS, 70 FR at 37499.

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 240.19b-4.

the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEAMER-2024-79 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSEAMER-2024-79. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 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-NYSEAMER-2024-79 and should be submitted on or before January 16, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024-30687 Filed 12-23-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101966; File No. SR-NYSE-2024-78]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Sections 902.02, 902.03 and 902.08 of the NYSE Listed Company Manual To Amend Initial Listing Fees and Certain of Its Annual Fees Applicable to Listed Issuers and Establish a Maximum Fee for Debt Securities and Structured Products

December 18, 2024.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 ("Act") ² and Rule 19b-4 thereunder, ³ notice is hereby given that on December 5, 2024, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Sections 902.02, 902.03 and 902.08 of the NYSE Listed Company Manual (the "Manual") to (i) amend its initial listing fee and certain of its annual fees charged to listed issuers, and (ii) establish a maximum fee payable in a calendar year for debt securities and structured products listed on the NYSE Bonds platform. The proposed rule

change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its initial listing fee and certain of its annual fees charged to listed issuers as set forth in Sections 902.02 and 902.03 of the Manual. The proposed changes will take effect from the beginning of the calendar year commencing on January 1, 2025.

The Exchange currently charges a flat initial listing fee of \$300,000 the first time an issuer lists a class of common shares on the Exchange. The Exchange proposes to increase this flat initial listing fee by \$25,000 from \$300,000 to \$325,000. Section 902.03 of the Manual contains examples of how listing fees are calculated for certain UPREITs, U.S. issuers and foreign private issuers. The Exchange proposes to make conforming changes to these examples in Section 902.03 to reflect the new \$325,000 flat initial listing fee.

The Exchange currently charges an annual fee of \$0.001265 per share for each of the following: a primary class of common shares (including Equity Investment Tracking Stocks); each additional class of common shares (including tracking stock); a primary class of preferred stock (if no class of common shares is listed); each additional class of preferred stock (whether primary class is common or preferred shares); and each class of warrants or rights. The Exchange proposes to change the per share annual fee for the foregoing classes of securities from \$0.001265 per share to \$0.001285 per share.

¹⁷ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

The annual fee for a primary class of common shares (including Equity Investment Tracking Stocks) and a primary class of preferred stock (if no class of common shares is listed) is currently subject to a minimum fee of \$80,000 per year. The Exchange proposes to increase the minimum fee for such securities from \$80,000 per year to \$82,000 per year.

The proposed increase in (i) the initial listing fee, (ii) the per share rates for annual fees, and (iii) the minimum annual fee for a primary class of equity or preferred stock reflects increases in the costs the Exchange incurs in providing services to listed companies on an ongoing basis, as well as increases in the costs of conducting its related regulatory activities. As described below, the Exchange proposes to make the aforementioned fee increases to better reflect the Exchange's costs related to listing equity securities and the corresponding value of such listing to companies.

The revised annual fees will be applied in the same manner to all issuers with listed securities in the affected categories and the Exchange believes that the changes will not disproportionately affect any specific category of issuers.

The Exchange currently charges a flat \$25,000 initial listing fee for (i) all securities that list under the debt standard in Section 703.19 of the Manual and trade on NYSE Bonds, and (ii) all debt securities that list under Sections 102.03 and 103.05 of the Manual and trade on NYSE Bonds (such securities described in items (i) and (ii), collectively, "NYSE Bonds Securities"). The Exchange charges annual fees for NYSE Bonds Securities on a tiered basis (from \$25,000 to \$100,000) according to the number of such securities listed and traded on the NYSE Bonds platform.⁴ The Exchange now proposes to adopt an overall cap of \$100,000 on the initial and annual fees that may be paid by an issuer of NYSE Bonds Securities in any calendar year. The Exchange notes that issuers will frequently issue NYSE Bonds Securities from various wholly-owned financing subsidiaries. Therefore, for purposes of calculating the fee cap, the Exchange will aggregate listing fees for NYSE Bonds Securities of an issuer and its wholly-owned subsidiaries.⁵

⁴ The fee schedule contained in Section 902.08 of the Manual applies only to NYSE Bonds Securities that trade on the NYSE Bonds platform. Securities that list under the equity standards of Section 703.19 are subject to the fee schedule contained in Section 902.05 of the Manual.

⁵ The Exchange will determine that an issuer is a wholly-owned subsidiary of an affiliated issuer

The Exchange notes that companies frequently issue several series of NYSE Bonds Securities at the same time. For example, as part of a single offering, a company may issue debt securities of different series with varying maturities (ex. 5-year, 10-year, 20-year or 30-year). In the Exchange's experience, there are efficiencies in (i) qualifying for listing multiple series of NYSE Bonds Securities of the same issuer, and (ii) servicing such listings on an ongoing basis. Because of these efficiencies, the Exchange believes it is appropriate to establish a maximum fee of \$100,000 payable by an issuer of NYSE Bonds Securities in any calendar year.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(4)⁷ of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to amend Sections 902.02 and 902.03 to (i) increase the initial listing fee and annual fees for the various categories of equity securities, and (ii) increase the minimum annual fee for a primary class of common equity or preferred stock because of the increased costs incurred by the Exchange since it established the current rates. The Exchange believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to amend Sections 902.08 to establish a maximum fee cap payable in any calendar year by an issuer of NYSE Bonds Securities because the Exchange experiences efficiencies in qualifying

based on the offering documents for the applicable bond issuance.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78f(b)(5).

and servicing the listing of multiple series of bonds of the same issuer (or a wholly-owned subsidiary of such issuer). Currently, there are more than 170 issuers of NYSE Bonds Securities and the substantial majority of those issuers will not see their fees change as a result of the proposed maximum fee cap. No issuer will see an increase in its listing fees for NYSE Bonds Securities.

The Proposed Changes Are Reasonable

The Exchange believes that the proposed changes to its initial listing fee and the annual fee schedule (including the minimum fee) are reasonable. In that regard, the Exchange notes that its general costs to support its listed companies have increased, including due to price inflation. The Exchange also continues to expand and improve the services it provides to listed companies. Specifically, the Exchange has (among other things) increased expenditure on listed companies and the value of an NYSE listing by increasing programming for listed companies and enhancing its conference space which can be utilized by listed companies.

The Exchange believes that it is reasonable to establish a maximum fee cap payable in any calendar year by an issuer of NYSE Bonds Securities because there are efficiencies in listing multiple series of bonds of the same issuer (or a wholly-owned subsidiary of such issuer).

The Exchange operates in a highly competitive marketplace for the listing of the various categories of securities affected by the proposed annual fee adjustments. 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,⁹ 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."¹⁰

The Exchange believes that the ever-shifting market share among the exchanges with respect to new listings and the transfer of existing listings between competitor exchanges demonstrates that issuers can choose different listing markets in response to

⁹ Securities Exchange Act Release No. 34-51808 (June 9, 2005); 70 FR 37496 (June 29, 2005) ("Regulation NMS").

¹⁰ See Regulation NMS, 70 FR 37499.

fee changes. Accordingly, competitive forces constrain exchange listing fees. Stated otherwise, changes to exchange listing fees can have a direct effect on the ability of an exchange to compete for new listings and retain existing listings.

Given this competitive environment, the adoption of the proposed increase to the initial listing fee and annual fees for various categories of equity securities represents a reasonable attempt to address the Exchange's increased costs in servicing these listings while continuing to attract and retain listings. The establishment of a maximum fee cap payable in a calendar year by issuers of NYSE Bonds Securities represents a reasonable attempt to accurately reflect the Exchange's costs in listing and servicing such securities.

The Exchange proposes to make the aforementioned fee increases in Sections 902.02, 902.03 and 903.08 to better reflect the value of such listing to issuers.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants.

The Exchange believes that the proposed amendments to the initial listing fee and annual fees for equity securities are equitable because they do not change the existing framework for such fees, but simply increase the amount of the flat initial listing fee, minimum annual fee, and per unit annual fee to reflect increased operating costs. Similarly, as the fee structure remains effectively unchanged apart from the proposed increases in the rates paid by all issuers, the changes to the initial listing fee or annual fees for equity securities neither target nor will they have a disparate impact on any particular category of issuer.

The Exchange believes that the proposed maximum fee cap for issuers of NYSE Bonds Securities is equitable because the work required to list a bond does not increase on a proportional basis for each additional series of bonds that are listed on the Exchange. There are efficiencies in listing multiple series of bonds and the Exchange believes that its proposed fee cap is an equitable reflection of such efficiencies.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. The proposed fee changes are not unfairly discriminatory among issuers of operating company equity securities because the same fee schedule will apply to all such issuers and the

proposed fee cap will be available to all issuers. Further, the Exchange operates in a competitive environment and its fees are constrained by competition in the marketplace. Other venues currently list all of the categories of securities covered by the proposed fees and if a company believes that the Exchange's fees are unreasonable it can decide either not to list its securities or to list them on an alternative venue.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to ensure that the fees charged by the Exchange accurately reflect the services provided and benefits realized by listed companies. The market for listing services is extremely competitive. Each listing exchange has a different fee schedule that applies to issuers seeking to list securities on its exchange. Issuers have the option to list their securities on these alternative venues based on the fees charged and the value provided by each listing. Because issuers have a choice to list their securities on a different national securities exchange, the Exchange does not believe that the proposed fee changes impose a burden on competition.

Intramarket Competition

The proposed amended fees will be charged to all listed issuers on the same basis. The Exchange does not believe that the proposed amended fees will have any meaningful effect on the competition among issuers listed on the Exchange.

Intermarket Competition

The Exchange operates in a highly competitive market in which issuers can readily choose to list new securities on other exchanges and transfer listings to other exchanges if they deem fee levels at those other venues to be more favorable. Because competitors are free to modify their own fees, and because issuers may change their chosen listing venue, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹¹ and Rule 19b-4(f)(2) thereunder¹² the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2024-78 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-NYSE-2024-78. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4.

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-NYSE-2024-78 and should be submitted on or before January 16, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-30686 Filed 12-23-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-518, OMB Control No. 3235-0576]

Submission for OMB Review; Comment Request; Extension: Regulation G

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Regulation G (17 CFR 244.100—244.102) under the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78a *et seq.*) requires publicly reporting companies that disclose or releases financial information in a manner that is calculated or presented other than in accordance with generally

accepted accounting principles ("GAAP") to provide a reconciliation of the non-GAAP financial information to the most directly comparable GAAP financial measure. Regulation G implemented the requirements of Section 401 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7261). We estimate that approximately 7,196 public companies must comply with Regulation G approximately six times a year for a total of 43,176 responses annually. We estimated that it takes approximately 0.5 hours per response (0.5 hours per response x 43,176 responses) for a total reporting burden of 21,588 hours annually.

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 control number.

Public comment instructions: The public may view and comment on this information collection request at: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202412-3235-021 or send an email comment to MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov within 30 days of the day after publication of this notice by January 27, 2025.

Dated: December 19, 2024.

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-30767 Filed 12-23-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101965; File No. SR-NASDAQ-2024-059]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Modify the Package of Complimentary Services Provided to Certain Eligible Switches and To Modify the Definition of an Eligible Switch

December 18, 2024.

On October 17, 2024, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to modify the package of complimentary services provided to certain Eligible

Switches and to modify the definition of an Eligible Switch. The proposed rule change was published for comment in the Federal Register on November 5, 2024.³

Section 19(b)(2) of the Act⁴ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission will either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is December 20, 2024. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁵ designates February 3, 2025, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-NASDAQ-2024-059).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-30685 Filed 12-23-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-336, OMB Control No. 3235-0379]

Submission for OMB Review; Comment Request; Extension: Form F-X

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street, NE, Washington, DC 20549-2736.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities

³ See Securities Exchange Act Release No. 101483 (October 30, 2024), 89 FR 87914 ("Notice").

⁴ 15 U.S.C. 78s(b)(2).

⁵ 15 U.S.C. 78s(b)(2).

⁶ 17 CFR 200.30-3(a)(31).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

and Exchange Commission (“Commission”) is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and

Form F–X (17 CFR 239.42) is used to appoint an agent for service of process by Canadian issuers registering securities on Forms F–7, F–8, F–9, or F–10 under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) or filing periodic reports on Form 40–F under the Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The information collected must be filed with the Commission and is publicly available. We estimate that it takes approximately 2 hours per response to prepare Form F–X and that the information is filed by approximately 137 respondents for a total annual reporting burden of 274 hours (2 hours per response × 137 responses).

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 control number.

Public Comment Instructions: The public may view and comment on this information collection request at: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202412-3235-014 or send an email comment to MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov within 30 days of the day after publication of this notice by January 27, 2025.

Dated: December 19, 2024.

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024–30769 Filed 12–23–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–621, OMB Control No. 3235–0672]

Proposed Collection; Comment Request; Extension: Electronic Data Collection System Form TCR

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) is soliciting comments on the collection of information

summarized below. The Commission plans to submit an extension for these two current collections of information to the Office of Management and Budget for approval.

The Commission invites comment on updates to its Electronic Data Collection System database (the Database), which will support information provided by members of the public who would like to file an online tip, complaint or referral (TCR) to the Commission. The Database will be a web based e-filed dynamic report based on technology that pre-populates and establishes a series of questions based on the data that the individual enters. The individual will then complete specific information on the subject(s) and nature of the suspicious activity, using the data elements appropriate to the type of complaint or subject. The information collection is voluntary. The public interface to the Database will be available using the agency’s website, www.sec.gov. The Commission estimates that it takes a complainant, on average, 30 minutes to submit a TCR through the Database. Based on the receipt of an average of approximately 35,000 annual TCRs for the past three fiscal years, the Commission estimates that the annual reporting burden is 17,500 hours.

The Commission further invites comment on updates to Form TCR, which is a hard copy form adopted by the Commission in 2011.¹ Form TCR may be submitted by whistleblowers who wish to provide information to the Commission and its staff regarding potential violations of the federal securities laws. The Commission estimates that it takes a whistleblower, on average, one and one half hours to complete Form TCR. Based on the receipt of an average of approximately 170 annual Form TCR submissions for the past three fiscal years, the Commission estimates that the annual reporting burden of Form TCR is 255 hours.

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency’s estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of

¹ Implementation of the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934, Release No. 34–64545; File No. S7–33–10 (adopted May 25, 2011).

information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by February 24, 2025.

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 control number.

Please direct your written comment to Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Tanya Ruttenberg, 100 F Street, NE, Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov.

Dated: December 19, 2024.

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024–30772 Filed 12–23–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101954; File No. SR–NASDAQ–2024–065]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend Equity 4 To Establish Halt Cross Price Protections and Make Other Related Changes

December 18, 2024.

On November 6, 2024, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b–4 thereunder,² a proposed rule change to amend Equity 4 to establish halt cross price protections and make other related changes. The proposed rule change was published for comment in the **Federal Register** on November 20, 2024.³

Section 19(b)(2) of the Act ⁴ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 101620 (Nov. 14, 2024), 89 FR 91853 (“Notice”). The Commission has received no comment letters on the proposed rule change.

⁴ 15 U.S.C. 78s(b)(2).

self-regulatory organization consents, the Commission will either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is January 4, 2025. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change, so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁵ designates February 18, 2025, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-NASDAQ-2024-065).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-30677 Filed 12-23-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 1:30 p.m. on Friday, December 20, 2024.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.sec.gov>.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5

U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION:

For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Authority: 5 U.S.C. 552b.

Dated: December 20, 2024.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-31060 Filed 12-20-24; 4:15 pm]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101969; File No. SR-CboeBZX-2024-055]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Exempt Closed-End Management Investment Companies Registered Under the Investment Company Act of 1940 From the Annual Meeting of Shareholders Requirement Set Forth in Exchange Rule 14.10(f)

December 18, 2024.

On June 25, 2024, Cboe BZX Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to exempt closed-end management investment companies registered under the Investment Company Act of 1940 from the annual meeting of shareholders requirement set

forth in Exchange Rule 14.10(f). On July 2, 2024, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on July 15, 2024.³

On August 28, 2024, pursuant to Section 19(b)(2) of the Exchange Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On October 11, 2024, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.⁷

Section 19(b)(2) of the Act⁸ provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on July 15, 2024.⁹ The 180th day after publication of the proposed rule change is January 11, 2025. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change, as modified by Amendment No. 1, so that it has sufficient time to

³ See Securities Exchange Act Release No. 100473 (July 9, 2024), 89 FR 57491. Comments on the proposed rule change are available at: <https://www.sec.gov/comments/sr-cboebzx-2024-055/sr-cboebzx2024055.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 100867, 89 FR 71944 (Sept. 4, 2024). The Commission designated October 13, 2024, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change, as modified by Amendment No. 1.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 101322, 89 FR 83724 (Oct. 17, 2024).

⁸ 15 U.S.C. 78s(b)(2).

⁹ See *supra* note 3 and accompanying text.

⁵ 15 U.S.C. 78s(b)(2).

⁶ 17 CFR 200.30-3(a)(31).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

consider the proposed rule change, the issues raised therein, and the comments received. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,¹⁰ designates March 12, 2025, as the date by which the Commission shall either approve or disapprove the proposed rule change, as modified by Amendment No. 1 (File No. SR–CboeBZX–2024–055).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024–30689 Filed 12–23–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101977; File No. SR–PEARL–2024–58]

Self-Regulatory Organizations; MIAx PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Make Certain Clarifying Changes Related to New Time-In-Force Instructions on MIAx Pearl Equities

December 19, 2024

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),² and Rule 19b–4 thereunder,³ notice is hereby given that on December 10, 2024, MIAx PEARL, LLC (“MIAx Pearl” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make clarifying changes related to new Time-In-Force (“TIF”) instructions that were adopted as part of a recent proposal to expand the trading hours of its equity trading platform (referred to herein as “MIAx Pearl Equities”).

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 make clarifying changes related to new TIF instructions that were adopted as part of a recent proposal to expand the trading hours of MIAx Pearl Equities. The Exchange recently submitted a proposed rule change to expand its hours of operations by adopting both an Early and Late Trading Session.⁴ Pursuant to that proposal,⁵ the Early Trading Session would operate from 4:00 a.m. until 9:30 a.m. Eastern Time. Then the existing Regular Trading Hours⁶ would follow, which currently operates from 9:30 a.m. until 4:00 p.m. Eastern Time. Within Regular Trading Hours, the Exchange also operates the existing Regular Trading Session,⁷ which operates from the completion of the Exchange’s Opening Process described in Exchange Rule 2615 until 4:00 p.m. Eastern Time. The Late Trading Session would follow and operate from 4:00 p.m. until 8:00 p.m. Eastern Time.

The Exchange currently offers two TIF instructions, Immediate-Or-Cancel (“IOC”) and Regular Hours Only (“RHO”), the operation of each are described under Exchange Rule 2614(b)(1) and (2), respectively. In its proposal to add the Early and Late Trading Sessions, among other things, the Exchange amended its rules to adopt the following four additional TIF instructions: Day, Fill-Or-Kill (“FOK”),

Good-til Time (“GTT”), and Good-til Extended Day (“GTX”). In sum, the Day TIF is an instruction that may be attached to an order stating that an order to buy or sell which, if not executed, expires at the end of Regular Trading Hours. The FOK TIF is an instruction that may be attached to an order stating that the order is to be executed in its entirety as soon as it is received and, if not so executed, cancelled. The GTT TIF is an instruction that may be attached to an order specifying the time of day at which the order expires. Lastly, the GTX TIF is an instruction that may be attached to an order to buy or sell which, if not executed, will be cancelled by the close of the Late Trading Session.

Like RHO, the TIF instructions of Day, GTT, and GTX all allow Equity Members⁸ to instruct the Exchange to post their order to the MIAx Pearl Equities Book if not executed upon entry. Also, like IOC, the TIF instruction of FOK provides that an order be executed upon entry and not posted to the MIAx Pearl Equities Book. Therefore, as part of its proposal to add the Early and Late Trading Session, the Exchange amended provisions within its rules to account for the TIF instructions where appropriate, such as adding the TIF instructions of Day, GTT, and GTX following references to RHO, or FOK following references to IOC.⁹

The Exchange now proposes to make other clarifying changes to its rules to account for the new TIF instructions that it inadvertently did not include in its earlier proposed rule change. As described below, each of these changes would ensure the Exchange’s rules provide for the consistent treatment of like TIF instructions, provide additional clarity, and are consistent with the rules of other national securities exchanges. The Exchange does not propose to make any other changes to its rules or to amend functionality. Each of these changes are as follows:

- Exchange Rule 2614(a)(1)(ii) currently provides that a Limit Order may include a TIF of IOC or RHO. In the filing to adopt the Early and Late Trading Sessions and additional TIF instructions, Exchange Rule 2614(a)(1)(ii) was amended to also provide that a Limit Order may include a TIF of FOK, Day, GTT, or GTX.¹⁰ The Exchange now proposes to amend Exchange Rule 2614(a)(1)(vi) to account for the new additional TIF instructions by providing that “[d]uring a Short Sale

⁴ See Securities Exchange Act Release No. 101358 (October 16, 2024), 89 FR 84406 (October 22, 2024) (SR–PEARL–2024–47) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Both an Early and Late Trading Session on its Equity Trading Platform).

⁵ *Id.*

⁶ See Exchange Rule 1901.

⁷ *Id.*

⁸ The term “Equity Member” is a Member authorized by the Exchange to transact business on MIAx Pearl Equities. See Exchange Rule 1901.

⁹ See *supra* note 3.

¹⁰ *Id.*

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30–3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

Period, as defined in Exchange Rule 2614(g)(3)(i), the System will immediately cancel any portion of an incoming Limit Order designated as ISO and short that includes a time-in-force instruction RHO, Day, GTT, or GTX that cannot be executed or displayed at its limit price at the time of entry pursuant to Rule 201 of Regulation SHO.”

- In sum, Exchange Rule 2614(c)(7) provides that Minimum Execution Quantity (“MEQ”) is an order instruction that may be attached to a non-displayed order requiring the System to execute the order only to the extent that a minimum quantity can be satisfied. Exchange Rule 2614(c)(7)(B) describes the operation of orders with an MEQ instruction when resting on the MIAx Pearl Equities Book. The Exchange now proposes to amend Exchange Rule 2614(c)(7)(ii) to account for the new additional TIF instructions and provide that “[w]here there is insufficient size to satisfy an incoming order’s minimum quantity condition, that incoming order with a Minimum Execution Quantity instruction with a time-in-force of RHO, Day, GTT, or GTX will not trade and will be posted on the MIAx Pearl Equities Book.”

- Exchange Rule 2614(e) provides for the cancelation and replacement of an existing order. The Exchange now proposes to amend Exchange Rule 2614(e)(1) to include the new additional TIF instruction of FOK and provide that “[o]rders may only be cancelled or replaced if the order has a time-in-force term other than IOC or FOK and if the order has not yet been executed.”

- Exchange Rule 2615(e) describes how the Exchange re-opens a security following a halt and provides, in sum, that the re-opening process would operate in the same manners as the Exchange’s Opening Process set forth under Exchange Rule 2615(a)—(c), with certain exceptions. One exception is provided for under Exchange Rule 2615(e)(1) which states that orders with a TIF instruction of IOC would be cancelled or rejected, as applicable. The Exchange proposes to amend Exchange Rule 2615(e)(1) to include the TIF instruction of FOK and provide that “ISOs and orders that include a time-in-force of IOC or FOK be cancelled or rejected, as applicable.”

- Exchange Rule 2622 discusses the Exchange’s mechanisms to comply with the Limit Up-Limit Down Plan.

- First, Exchange Rule 2622(h)(2)(i)5.a. provides that Market Orders and orders designated IOC will only be executed at or within the Price Bands. This provision would be amended to also provide that orders

designated as FOK will only be executed at or within the Price Bands.

- Second, Exchange Rule 2622(h)(3)(B) provides that during any Operational Halt, the System will accept all orders, except orders designated as ISO and orders that include a TIF instruction of IOC, for queuing and participation in the Re-Opening Process pursuant to Rule 2615(e). This provision would be amended to also provide that orders that include a TIF instruction of FOK will not be accepted for queuing and participation in the Re-Opening Process pursuant to Rule 2615(e).

Implementation

Due to the technological changes associated with this proposed change, the Exchange will issue a trading alert publicly announcing the implementation date of the proposed enhancements to its risk controls set forth herein. The Exchange anticipates that the implementation date will be in the first or second quarter of 2025.¹¹

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5),¹³ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Exchange believes the proposed amendments will remove impediments to and perfect the mechanism of a free and open market and a national market system because they would provide for the consistent treatment of like TIF instructions and are consistent with the rules of other national securities exchanges.¹⁴ The

¹¹ See, e.g., MIAx Pearl Equities—Roll Out of Extended Hours Trading & Update to Mandatory FOI and MEO Upgrade Deadline, dated November 13, 2024, available at <https://www.miaxglobal.com/alert/2024/11/13/miax-pearl-equities-roll-out-extended-hours-trading-update-mandatory-foi>.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ See, e.g., NYSE Arca, Inc. (“NYSE Arca”) Rule 7.31(i)(3)(C); and Cboe EDGA Exchange, Inc. (“Cboe EDGA”) and Cboe EDGX Exchange, Inc. (“Cboe EDGX”) Rules 11.8(c)(6). Like NYSE Arca, Exchange Rule Exchange Rule 2614(c)(7)(ii) lists all TIF instructions that if offers that allow for an order to be posted to the order book. While Cboe EDGA and Cboe EDGX offer the same TIF instructions that are listed in this proposal, Exchange Rule Exchange

proposed rule change is also consistent with changes the Exchange proposed in its earlier filing to adopt the Early and Late Trading Sessions where it amended certain Exchange Rules to account for the additional TIF instructions.¹⁵ The Exchange does not propose any new changes to functionality, but rather to provide additional clarity within the rule text, make the Exchange’s rules easier to understand, and accurately reflect Exchange functionality. The proposed rule changes would, therefore, help prevent any potential investor confusion and thus protect investors and the public interest, as well as remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange also believes that the proposed rule change is non-discriminatory as it would apply to all Equity Members uniformly and all Equity Members would be treated equally.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes its proposal will not impose any burden on inter-market competition because the proposal simply seeks to provide for the consistent treatment of like TIF instructions, provide market participants additional clarity within the Exchange’s Rules, and provide consistency with the rules of other national securities exchanges.¹⁶ The proposal is not designed to enhance the Exchange’s competitive standing, but rather ensure its rules accurately reflect functionality. The proposal also does not seek to amend any functionality proposed in the Exchange’s previous proposal to adopt the Early and Late Trading Sessions.¹⁷ The Exchange believes its proposal will not impose any burden on intra-market competition because all orders coupled with the above listed TIF instructions would be treated equally under the proposed amendments.

Rule 2614(a)(1)(vi) lists the TIF instruction while the Cboe EDGA and Cboe EDGX Rules lack this additional specificity.

¹⁵ See *supra* note 3.

¹⁶ See *supra* note 13.

¹⁷ See *supra* note 3.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.¹⁸

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-PEARL-2024-58 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-2024-58. This file number should be included on the

subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 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-2024-58 and should be submitted on or before January 16, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-30781 Filed 12-23-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101956; File No. SR-NSCC-2024-012]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Clearing Agency Operational Risk Management Framework

December 18, 2024.

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 December 11, 2024, National Securities Clearing

Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(4) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Clearing Agency Operational Risk Management Framework ("ORM Framework" or "Framework") of NSCC and its affiliates The Depository Trust Company ("DTC") and Fixed Income Clearing Corporation ("FICC," and together with NSCC and DTC, the "Clearing Agencies") in order to reflect recent changes to group names and make other nonmaterial clarifying edits.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Clearing Agencies adopted the ORM Framework⁵ to provide an outline for how each of the Clearing Agencies manages its operational risks. In this way, the Framework supports the Clearing Agencies' compliance with Rule 17ad-22(e)(17) under the Act,⁶ as described in the Initial Filing. In addition to setting forth the way each of the Clearing Agencies addresses these requirements, the ORM Framework also contains a section titled "Framework

¹⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁹ 17 CFR 200.30-3(a)(12), (59).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(4).

⁵ See Securities Exchange Act Release No. 81745 (Sept. 28, 2017), 82 FR 46332 (Oct. 4, 2017) (SR-DTC-2017-014; SR-NSCC-2017-013; SR-FICC-2017-017) ("Initial Filing").

⁶ 17 CFR 240.17ad-22(e)(17).

Ownership and Change Management” that, among other matters, describes the Framework ownership and the required governance process for review and approval of changes to the Framework.

In connection with the annual review and approval of the Framework by the Board of Directors of each of the Clearing Agencies, the Clearing Agencies are proposing to make certain revisions to the Framework. Such proposed changes would include updating the ORM Framework to reflect recent changes to group names and making other nonmaterial clarifying edits. The proposed changes are described in greater detail below.

i. Proposed Amendments To Update Organizational Name Changes

The Framework is owned and managed by an officer within the Operational Risk group within the Group Chief Risk Office of DTCC,⁷ who works with the Technology Risk Management group within the Group Chief Risk Office in administration of the Framework. The Technology Risk Management group’s name has changed to the Cyber Security & Technology Risk Management group. The proposed changes to the Framework would reflect the recent organizational name change.

ii. Proposed Changes To Make Nonmaterial Clarifying Edits

The proposed rule change would make additional immaterial edits to the Framework that include (a) the removal of a defined term not used in the Framework and therefore unnecessary, and (b) adding additional context in Section 6 related to data centers. The proposed changes to Section 6 add context around data centers, specifically the out-of-region centers, to allow for greater understanding of configurations, parameters, and limitations. This proposed change also provides consistency across the Clearing Agencies disclosures. These immaterial changes do not alter how the Clearing Agencies comply with the applicable requirements of Rule 17ad-22(e)(17) under the Act.⁸

2. Statutory Basis

The Clearing Agencies believe that the proposed changes are consistent with Section 17A(b)(3)(F) of the Act⁹ for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a registered clearing agency be designed

to promote the prompt and accurate clearance and settlement of securities transactions, and 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.¹⁰ The proposed changes to update the ORM Framework to reflect recent changes to group names and making other nonmaterial clarifying edits would update and clarify the Framework and would make it more comprehensive in how it describes the methods and tools currently used by the Clearing Agencies to manage operational risks and therefore comply with Section 17A(b)(3)(F) of the Act.¹¹ By creating clearer, updated and more comprehensive descriptions, the Clearing Agencies believe the proposed changes would make the ORM Framework more effective in providing an overview of the important risk management activities described therein. Therefore, the Clearing Agencies believe that the proposed changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act.¹²

(B) Clearing Agency’s Statement on Burden on Competition

The Clearing Agencies do not believe that the proposed changes to the ORM Framework described above would have any impact, or impose any burden, on competition. The proposed changes would enhance the Framework by providing additional clarity and accuracy concerning the Clearing Agencies’ operational risk management processes. The proposed changes to the Framework would not advantage or disadvantage any participant or user of the Clearing Agencies’ services or unfairly inhibit access to the Clearing Agencies’ services. As such, the Clearing Agencies do not believe that the proposed rule changes would have any impact on competition.

(C) Clearing Agency’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Clearing Agencies have not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the

Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission’s instructions on how to submit comments, available at <https://www.sec.gov/regulatory-actions/how-to-submitcomments>. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission’s Division of Trading and Markets at tradingandmarkets@sec.gov or 202-551-5777.

The Clearing Agencies reserve the right to not respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)¹³ of the Act and paragraph (f)¹⁴ of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NSCC-2024-012 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR-NSCC-2024-012. This file

⁷ The Depository Trust & Clearing Corporation (“DTCC”) is the parent company of the Clearing Agencies.

⁸ 17 CFR 240.17ad-22(e)(17).

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f).

number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC 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-NSCC-2024-012 and should be submitted on or before January 16, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-30679 Filed 12-23-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35423; File No. 812-15538]

MidCap Financial Investment Corporation, et al.

December 18, 2024.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice.

Notice of application for an 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: MidCap Financial Investment Corporation, Apollo Debt Solutions BDC, Apollo Diversified Credit Fund, Apollo S3 Private Markets Fund, Middle Market Apollo Institutional Private Lending, Apollo Investment Management, L.P., Apollo Credit Management, LLC, Apollo Capital Credit Adviser, LLC, Apollo S3 RIC Management, L.P., AA Direct, L.P., AA Infrastructure Fund 1 Ltd., ACE Credit Fund, L.P., AGRE Debt Fund I, L.P., AGRE U.S. Real Estate Fund, L.P., Amissima Diversified Income ICAV, AMN Loan Fund, L.P., AP Kent Credit Master Fund, L.P., Apollo Accord Master Fund II, L.P., Apollo Accord Master Fund III, L.P., Apollo Accord Fund III B, L.P., Apollo Accord Fund IV, L.P., Apollo A-N Credit Fund, L.P., Apollo Asia Real Estate Fund II, L.P., Apollo Atlas Master Fund, LLC, Apollo Chiron Credit Fund, L.P., Apollo Commercial Real Estate Finance, Inc., Apollo Credit Master Fund Ltd., Apollo Credit Opportunity Fund III LP, Apollo Credit Strategies Master Fund Ltd., Apollo European Principal Finance Fund III (Dollar A), L.P., Apollo Hybrid Value Fund, L.P., Apollo Hybrid Value Fund II, L.P., Apollo Impact Mission Fund, L.P., Apollo Infrastructure Opportunities Fund II, L.P., Apollo Investment Fund IX, L.P., Apollo Investment Fund VII, L.P., Apollo Investment Fund VIII, L.P., Apollo Lincoln Fixed Income Fund, L.P., Apollo Moultrie Credit Fund, L.P., Apollo Natural Resources Partners II, L.P., Apollo Natural Resources Partners III, L.P., Apollo Navigator Aviation Fund I, L.P., Apollo Revolver Fund, L.P., Apollo Strategic Origination Partners, L.P., Apollo Tactical Value SPN Investments, L.P., Apollo Total Return Master Fund L.P., Apollo Tower Credit Fund, L.P., Apollo U.S. Real Estate Fund II L.P., Apollo U.S. Real Estate Fund III, L.P., Apollo/Cavenham European Managed Account II, L.P., Athene Holding Ltd., Athora Lux Invest S.C.Sp, Financial Credit Investment II, L.P., Financial Credit Investment III, L.P., Financial Credit Investment IV, L.P., MidCap FinCo Holdings Limited, NNN Investor 1, L.P., Athora Lux Invest NL S.C.Sp, ACE Credit Management, LLC, ACF Europe Management, LLC,

ACREFI Management, LLC, Aegon Ireland plc, AGRE-CRE Debt Manager, LLC, AGRE NA Management, LLC, AP Kent Management, LLC, Apollo Accord Management II, LLC, Apollo Accord Management III, LLC, Apollo Accord Management III B, L.P., Apollo Accord Management IV, L.P., Apollo A-N Credit Management, LLC, Apollo Asia Management II, L.P., Apollo Asset Management Europe LLP, Apollo Atlas Management, LLC, Apollo Capital Management, L.P., Apollo Centre Street Management, LLC, Apollo Centre Street Partnership, L.P., Apollo Chiron Management, LLC, Apollo Credit Management (CLO), LLC, Apollo Credit Opportunity Management III, LLC, Apollo EPF Management III, LLC, Apollo Europe Management III, LLC, Apollo European Senior Debt Management, LLC, Apollo European Strategic Management, L.P., Apollo Global Real Estate Management, L.P., Apollo Hercules Management, LLC, Apollo Hercules Partners, L.P., Apollo Hybrid Value Management, L.P., Apollo Hybrid Value Management II, L.P., Apollo Impact Mission Management, L.P., Apollo India Credit Opportunity Management, LLC, Apollo Infrastructure Opportunities Management II, L.P., Apollo Investment Management Europe LLP, Apollo Kings Alley Credit Fund Management, LLC, Apollo Lincoln Fixed Income Management, LLC, Apollo Lincoln Private Credit Management, LLC, Apollo Management International LLP, Apollo Management IX, L.P., Apollo Management VII, L.P., Apollo Management VIII, L.P., Apollo Moultrie Credit Fund Management LLC, Apollo NA Management II, LLC, Apollo NA Management III, LLC, Apollo Navigator Management I, LLC, Apollo Oasis Management, LLC, Apollo Origination Management, L.P., Apollo PPF Credit Strategies Management, LLC, Apollo Oasis Partners, L.P., Apollo Origination Partnership, L.P., Apollo Palmetto Strategic Partnership, L.P., Apollo Revolver Capital Management, LLC, Apollo ST Fund Management LLC, Apollo Strategic Origination Management, L.P., Apollo Tactical Value SPN Management, LLC, Apollo Tower Credit Management, LLC, Apollo Union Street Management, LLC, Apollo Union Street Partners, L.P., Apollo Zeus Strategic Management, LLC, Apollo/Cavenham EMA Management II, LLC, Financial Credit Investment II Manager, LLC, Financial Credit Investment III Manager, LLC, Financial Credit Investment IV Manager, LLC, Apollo Investment Management Europe (Luxembourg) S.a r.l., Apollo Total Return Management LLC, Apollo

¹⁵ 17 CFR 200.30-3(a)(12).

Commodities Management, L.P., Apollo Insurance Solutions Group LP, Apollo MidCap US Direct Lending 2019, L.P., NNN Investor 2 (Auto), L.P., NNN Opportunities Fund, L.P., Apollo PPF Opportunistic Credit Partners (Lux), SCSP, Apollo PPF Credit Strategies, LLC, Apollo PPF Credit Management, LLC, Apollo Co-Investment Capital Management, LLC, Alteri Investments II, SCSP, Merx Aviation Finance, LLC, Apollo Accord+ Fund (Lux), SCSP, Apollo Accord+ Offshore Fund, L.P., Apollo Accord+ Fund, L.P., Apollo Revolver Fund II (Offshore), L.P., Apollo Revolver Fund II, L.P., Apollo Revolver Fund II (ATH), L.P., Apollo Accord+ Management, L.P., Apollo Revolver Management II (ATH), L.P., Apollo Revolver Management II, L.P., Apollo Accord Fund V, L.P., Apollo Investment Fund X, L.P., Apollo Total Return Fund—Investment Grade, L.P., Apollo Accord Management V, L.P., Apollo Management X, L.P., Apollo Total Return Fund—Investment Grade Management, L.P., ACMP Holdings, LLC, Apollo Aligned Alternatives, L.P., Redding Ridge Asset Management, LLC, Apollo Asset-Backed Finance Fund, L.P., Apollo Origination Partnership II (Levered), L.P., Apollo Origination Partnership II (Unlevered), L.P., Apollo Delphi Fund, L.P., Apollo Credit Strategies Absolute Return Fund, L.P., Apollo European Principal Finance Fund IV (Dollar A), L.P., Apollo European Principal Finance Fund IV (Dollar B), L.P., Apollo European Principal Finance Fund IV (Euro B1), L.P., Apollo European Principal Finance Fund IV (Lux Euro B2), SCSP, Apollo EPF Management IV, L.P., Apollo Accord Offshore Fund V, L.P., Apollo Accord Fund V (Lux), SCSP, Apollo Clean Transition Capital Overseas II, L.P., Apollo Clean Transition Capital Fund, L.P., Apollo Calliope Fund, L.P., Apollo Digital Origin Partners, L.P., Apollo Starmoon CEPF Co-Invest (Overseas), L.P., Apollo Infrastructure Opportunities Fund II (Overseas), L.P., Apollo Infrastructure Opportunities Fund II (TE 892), L.P., Apollo Infrastructure Opportunities Fund II (Lux), SCSP, Apollo Infrastructure Opportunities Fund III (Overseas), L.P., Apollo Infrastructure Opportunities Fund III (TE 892), L.P., Apollo Infrastructure Opportunities Fund III (Lux), SCSP, Apollo Infrastructure Opportunities Fund III, L.P., RRE 17 Loan Management Designated Activity Company, RRE 16 Loan Management Designated Activity Company, RRE 9 Loan Management Designated Activity Company, RRE 12 Loan Management Designated Activity Company, RRE 8

Loan Management Designated Activity Company, RRE 7 Loan Management Designated Activity Company, RRE 10 Loan Management Designated Activity Company, RRE 6 Loan Management DAC, RRE 15 Loan Management Designated Activity Company, RRE 2 Loan Management Designated Activity Company, RRE 11 Loan Management Designated Activity Company, RRE 3 Loan Management Designated Activity Company, RRE 5 Loan Management Designated Company, RRE 1 Loan Management Designated Activity Company, RR 1 Ltd., RR 14 Ltd., RR 15 Ltd., RR 16 Ltd., RR 17 Ltd., RR 18 Ltd., RR 19 Ltd., RR 2 Ltd., RR 20 Ltd., RR 21 Ltd., RR 22 Ltd., RR 23 Ltd., RR 24 Ltd., RR 25 Ltd., RR 26 Ltd., RR 27 Ltd., RR 4 Ltd., RR 5 Ltd., RR 6 Ltd., RR 7 Ltd., RR 8 Ltd., RR Berbere 2 Ltd., RR Bhut Jolokia 3 Ltd., RR Cayenne 4 Ltd., RR Poblano 4 Ltd., RR Reaper Brown Carolina 2 Ltd., RR Reaper Brown Carolina 3 Ltd., RR Tabasco 1 Ltd., AP Tundra Holdings LLC, ALM 2020, Ltd., AOP Finance Partners, L.P., Athora Lux Invest SCSP Duration Fund, Mercer Multi-Asset Credit Fund, Apollo Credit Funds ICAV—Apollo Helius Multi-Credit Fund I, AAA Aviation Holdings, L.P., AA Pencil Holdings, L.P., AA Tundra Investor, L.P., Aspen American Insurance Company, Aspen Specialty Insurance Company, Apollo Credit Secondaries Fund I, L.P., Apollo US Broadly Syndicated Loans Fund, Apollo Opportunistic Credit Fund, MMJV LLC, Apollo S3 Equity & Hybrid Solutions Fund, L.P., Apollo S3 Equity & Hybrid Solutions Offshore Fund, L.P., Apollo S3 Equity & Hybrid Solutions Fund (TE 892), L.P., Apollo S3 Equity & Hybrid Solutions Offshore Fund (Lux), SCSP, AA MMF 1 HoldCo LP, ACE Credit Allocation Fund I, AM—EDL (Lux) SCSP, Apollo Accord Fund VI (Lux), SCSP, Apollo Accord Fund VI, L.P., Apollo Accord+ II Fund, L.P., Apollo Accord+ II Offshore Fund, L.P., Apollo Alster Lending Fund (Lux) SCSP, Apollo Broad Middle Markets Lending Fund, L.P., Apollo Credit Strategies IDF, LP, Apollo Debt Solutions IDF, LP, Apollo European Direct Lending SCSP, Apollo European Private Credit (Master) SCSP, Apollo Excelsior Co-Invest, L.P., Apollo Excelsior, L.P., Apollo GLDC Fund, L.P., Apollo Jade Partnership, L.P., Cervus Loan Origination III, MICAD Account (Cayman), LP, Apollo Libra Credit Opportunities Fund, L.P., Apollo PPF Credit Strategies (Lux), SCSP, Apollo S3 Private Markets (Master) SCSP, Apollo S3 Credit Solutions Fund II, L.P., RR 12 LTD, RR 3 LTD, RR 28 LTD, RR 29 LTD, RR 30 LTD, RR 31 LTD, RR 32 LTD, RR 33

LTD, RR Shishito 1 LTD, RRE 18 Loan Management Designated Activity Company, RRE 19 Loan Management Designated Activity Company, RRE 20 Loan Management Designated Activity Company, RRE 21 Loan Management Designated Activity Company, RRE Portrush 1 Designated Activity Company, RRE 5 LTD, RRE 6 LTD, RRE 7 LTD, RRAM Beta 1, Ltd., RRAM Beta 1 Tax Subsidiary Inc., RRE 22 Loan Management Designated Activity Company, RRE Belfry 1 Designated Activity Company, Apollo M—EDL Management, L.P., Apollo Alster Management, LLC, Apollo European Direct Lending Management, L.P., Apollo Excelsior Management, L.P., Apollo Capital Markets Management, L.P., Redding Ridge Asset Management (UK) LLP, Apollo S3 Investment Management, L.P., Lord Abbett Flexible Income Fund and Lord Abbett FIF Advisor LLC.

Filing Dates: The application was filed on January 5, 2024, and amended on June 26, 2024, October 11, 2024, and December 9, 2024.

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 January 13, 2025 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 at Secretarys-Office@sec.gov.

ADDRESSES: The Commission: Secretarys-Office@sec.gov. Applicants: David Blass at David.Blass@stblaw.com and Steven Grigoriou at Steven.Grigoriou@stblaw.com.

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel, or Terri G. Jordan, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal

analysis, and conditions, please refer to Applicants' third amended and restated application, dated December 9, 2024, 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.

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-30655 Filed 12-23-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101955; File No. SR-FICC-2024-013]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Clearing Agency Operational Risk Management Framework

December 18, 2024.

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 December 11, 2024, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(4) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Clearing Agency Operational Risk Management Framework ("ORM Framework" or "Framework") of FICC and its affiliates National Securities Clearing Corporation ("NSCC") and The Depository Trust

Company ("DTC," and together with NSCC and FICC, the "Clearing Agencies") in order to reflect recent changes to group names and make other nonmaterial clarifying edits.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Clearing Agencies adopted the ORM Framework⁵ to provide an outline for how each of the Clearing Agencies manages its operational risks. In this way, the Framework supports the Clearing Agencies' compliance with Rule 17ad-22(e)(17) under the Act,⁶ as described in the Initial Filing. In addition to setting forth the way each of the Clearing Agencies addresses these requirements, the ORM Framework also contains a section titled "Framework Ownership and Change Management" that, among other matters, describes the Framework ownership and the required governance process for review and approval of changes to the Framework.

In connection with the annual review and approval of the Framework by the Board of Directors of each of the Clearing Agencies, the Clearing Agencies are proposing to make certain revisions to the Framework. Such proposed changes would include updating the ORM Framework to reflect recent changes to group names and making other nonmaterial clarifying edits. The proposed changes are described in greater detail below.

i. Proposed Amendments To Update Organizational Name Changes

The Framework is owned and managed by an officer within the Operational Risk group within the

Group Chief Risk Office of DTCC,⁷ who works with the Technology Risk Management group within the Group Chief Risk Office in administration of the Framework. The Technology Risk Management group's name has changed to the Cyber Security & Technology Risk Management group. The proposed changes to the Framework would reflect the recent organizational name change.

ii. Proposed Changes To Make Nonmaterial Clarifying Edits

The proposed rule change would make additional immaterial edits to the Framework that include (a) the removal of a defined term not used in the Framework and therefore unnecessary, and (b) adding additional context in Section 6 related to data centers. The proposed changes to Section 6 add context around data centers, specifically the out-of-region centers, to allow for greater understanding of configurations, parameters, and limitations. This proposed change also provides consistency across the Clearing Agencies disclosures. These immaterial changes do not alter how the Clearing Agencies comply with the applicable requirements of Rule 17ad-22(e)(17) under the Act.⁸

2. Statutory Basis

The Clearing Agencies believe that the proposed changes are consistent with Section 17A(b)(3)(F) of the Act⁹ for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a registered clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and 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.¹⁰ The proposed changes to update the ORM Framework to reflect recent changes to group names and making other nonmaterial clarifying edits would update and clarify the Framework and would make it more comprehensive in how it describes the methods and tools currently used by the Clearing Agencies to manage operational risks and therefore comply with Section 17A(b)(3)(F) of the Act.¹¹ By creating clearer, updated and more comprehensive descriptions, the Clearing Agencies believe the proposed changes would make the ORM

⁷ The Depository Trust & Clearing Corporation ("DTCC") is the parent company of the Clearing Agencies.

⁸ 17 CFR 240.17ad-22(e)(17).

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ *Id.*

¹¹ *Id.*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(4).

⁵ See Securities Exchange Act Release No. 81745 (Sept. 28, 2017), 82 FR 46332 (Oct. 4, 2017) (SR-DTC-2017-014; SR-NSCC-2017-013; SR-FICC-2017-017) ("Initial Filing").

⁶ 17 CFR 240.17ad-22(e)(17).

Framework more effective in providing an overview of the important risk management activities described therein. Therefore, the Clearing Agencies believe that the proposed changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act.¹²

(B) Clearing Agency's Statement on Burden on Competition

The Clearing Agencies do not believe that the proposed changes to the ORM Framework described above would have any impact, or impose any burden, on competition. The proposed changes would enhance the Framework by providing additional clarity and accuracy concerning the Clearing Agencies' operational risk management processes. The proposed changes to the Framework would not advantage or disadvantage any participant or user of the Clearing Agencies' services or unfairly inhibit access to the Clearing Agencies' services. As such, the Clearing Agencies do not believe that the proposed rule changes would have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Clearing Agencies have not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at <https://www.sec.gov/regulatory-actions/how-to-submitcomments>. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at tradingandmarkets@sec.gov or 202-551-5777.

The Clearing Agencies reserve the right to not respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)¹³ of the Act and paragraph (f)¹⁴ of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-FICC-2024-013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549. All submissions should refer to File Number SR-FICC-2024-013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public

Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of 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-2024-013 and should be submitted on or before January 16, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-30678 Filed 12-23-24; 8:45 am]

BILLING CODE 8011-01-P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA-2024-0055]

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes one new request, as well as extensions and revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers. (OMB) Office of Management and Budget, Attn: Desk Officer for SSA (SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, Mail Stop 3253 Altmeyer, 6401 Security Blvd., Baltimore, MD 21235, Fax: 833-410-1631, Email

¹² *Id.*

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f).

¹⁵ 17 CFR 200.30-3(a)(12).

address: *OR.Reports.Clearance@ssa.gov*

Or you may submit your comments online through <https://www.reginfo.gov/public/do/PRAmain> by clicking on Currently under Review—Open for Public Comments and choosing to click on one of SSA's published items. Please reference Docket ID Number [SSA–2024–0055] in your submitted response.

The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than February 24, 2025.

Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Request for Hearing by Administrative Law Judge—20 CFR

404.929, 404.933, 416.1429, 404.1433, 418.1350, and 42 CFR 405.722–0960–0269. When SSA denies applicants', claimants', or beneficiaries' requests for new or continuing disability benefits or payments, the Act entitles those applicants, claimants, or beneficiaries to request a hearing to appeal the decision. To request a hearing, individuals complete Form HA–501; the associated Modernized Claims System (MCS) or Supplemental Security Income (SSI) Claims System interview; or the internet application (i501). SSA uses the information to determine if the individual: (1) filed the request within the prescribed time; (2) is the proper party; and (3) took the steps necessary to obtain the right to a hearing. SSA also uses the information to determine: (1) the individual's reason(s) for

disagreeing with SSA's prior determinations in the case; (2) if the individual has additional evidence to submit; (3) if the individual wants an oral hearing or a decision on the record; and (4) whether the individual has (or wants to appoint) a representative. The respondents are Social Security or SSI disability applicants and recipients who want to appeal SSA's denial of their request for new or continued benefits for disability and non-medical hearing requests; and Medicare Part B recipients who must pay the Medicare Part B Income-Related Monthly Adjustment Amount.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in a field office (minutes) **	Total annual opportunity cost (dollars) ***
HA–501; MCS; SSI Claims System	162,904	1	10	27,151	* 31.48	** 24	*** 2,906,013
i501 (Internet iAppeals)	281,819	1	15	70,455	* 31.48	** 0	*** 2,217,923
Totals	444,723	.....	.....	97,606	.....	.....	*** 5,123,936

* We based this figure on average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (https://www.bls.gov/oes/current/oes_nat.htm).

** We based this figure on the average FY 2024 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

2. Surveys in Accordance with E.O. 12862 for the Social Security Administration—0960–0526. Under the auspices of Executive Order 12862, Setting Customer Service Standards, SSA conducts multiple customer satisfaction surveys each year. These voluntary customer satisfaction

assessments include paper, internet, and telephone surveys; mailed questionnaires; and customer comment cards. The purpose of these questionnaires is to assess customer satisfaction with the timeliness, appropriateness, access, and overall quality of existing SSA services and

proposed modifications or new versions of services. The respondents are recipients of SSA services (including most members of the public), professionals, and individuals who work on behalf of SSA beneficiaries.

Type of Request: Extension of an OMB-approved information collection.

	Number of respondents (burden for all activities within that year)	Frequency of response	Range of response times (minutes)	Burden (burden for all activities within that year; reported in hours)
Year 1	1,290,304	1	3–90	615,549
Year 2	1,290,304	1	3–90	615,549
Year 3	1,290,304	1	3–90	615,549
Totals	3,870,912	.....	.....	1,846,647

3. Request for Reconsideration—20 CFR 404.907–404.921, 416.1407–416.1421, 408.1009, and 418.1325—0960–0622. The Social Security Act states those individuals who are dissatisfied with the results of an initial determination regarding their Title II disability; Title XVI disability

(Supplemental Security Income); Title VIII (Special Veterans benefits); or Title XVIII (Medicare benefits), they can request a reconsideration hearing. Individuals use Form SSA–561–U2; the associated MCS or SSI Claims System interview; or the internet application (i561) to initiate a request for

reconsideration of a denied claim. SSA uses the information to document the request and to determine an individual's eligibility or entitlement to Social Security benefits (Title II); SSI payments (Title XVI); Special Veterans Benefits (Title VIII); Medicare (Title XVIII); and for initial determinations regarding

Medicare Part B income-related premium subsidy reductions. The respondents are applicants, claimants,

beneficiaries, or recipients filing for reconsideration of an initial determination.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount * (dollars)	Average wait time in field office ** (minutes)	Total annual opportunity cost *** (dollars)
SSA-561, MCS, SSI Claims System	339,217	1	8	45,229	* 31.48	** 24	*** 5,695,236
i561 (Internet iAppeals)	447,139	1	15	111,785	* 31.48	** 0	*** 3,518,992
Totals	786,356	.....	.....	157,014	.....	.....	*** 9,214,228

* We based this figure on average U.S worker's hourly wages, as reported by Bureau of Labor Statistics data (https://www.bls.gov/oes/current/oes_nat.htm).

** We based this figure on the average FY 2024 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

4. Supportive Housing & Individual Placement and Support (SHIPS) Study—0960–0840.

Background: Homelessness and unemployment are linked issues, with rising housing costs often leaving people unable to afford homes when combined with unemployment. The instability of housing makes finding employment even more challenging, creating a difficult cycle to break. While studies have shown that supportive housing programs improve housing stability, there is no significant evidence that such programs reliably increase employment among residents. (For the purposes of this study, supportive housing is defined as housing services coupled with additional services that include case management support. These include place-based permanent supportive housing, scattered site permanent supportive housing, and rapid rehousing. Conversely, Individual Placement and Support (IPS), a proven method for supporting employment, has not demonstrated effectiveness in stabilizing housing. SSA is requesting clearance to collect data for the Supportive Housing and Individual Placement and Support (SHIPS) study, under the Interventional Cooperative Agreement Program (ICAP), to determine whether participation in Individual Placement and Support (IPS) improves the employment, income, health, and self-sufficiency of people who are recently homeless and living in supportive housing. ICAP allows SSA to partner with various non-federal groups and organizations to advance interventional research connected to the Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) programs. SSA awarded Westat a cooperative agreement to conduct SHIPS. In addition to SSA, Westat is partnering with three subrecipients for

this project: (1) People Assisting the Homeless (PATH); (2) the University of Southern California (U.S.C.); and (3) the Research Foundation for Mental Hygiene (RFMH) to implement the SHIPS study.

ICAP SHIPS Study Project Description: The SHIPS study is a randomized controlled trial (RCT) designed to determine whether participation in Individual Placement and Support (IPS) improves the employment, income, health, and self-sufficiency of people who are recently homeless and living in supportive housing. The SHIPS study will mark the first study testing the effectiveness of implementing IPS in a supportive housing program. SSA hypothesizes that combining the two most successful evidence-based practices that separately address homelessness and supported employment will yield a single intervention that effectively addresses both. The intent of the SHIPS study is to measure the effectiveness of evidence-based IPS compared to the services provided by local WorkSource Centers broadly available to jobseekers in the Los Angeles area. The housing case managers will refer PATH clients interested in finding employment and will randomly assign participants to one of two groups:

- **IPS:** The Individual Placement and Support (IPS) service team will offer a range of structured services customized to participants' personal needs, preferences, and challenges related to disabilities and/or mental health conditions. IPS was specifically designed as a supported employment model for individuals with serious mental illness and includes standardized training and fidelity requirements. Components of IPS that differ from those offered by WorkSource Services include integrated treatment

that incorporates vocational and mental health services; benefits planning; and focus on rapid job search without extensive training.

- **WorkSource Centers:** Under PATH's current housing model, housing case managers refer PATH clients who express interest in finding employment to local American Job Centers, known as WorkSource Centers in Los Angeles. The WorkSource Centers are operated by the City of Los Angeles Economic and Workforce Development Department, and follow an employment services model that varies by WorkSource Center, is not evidence-based or subject to fidelity monitoring and is not necessarily responsive to the individual needs of jobseekers with disabilities.

The primary goals of the SHIPS study are:

- To measure the effects of IPS participation on employment, income, health, and long-term self-sufficiency measured as a combination of housing stability, income, and receipt of DI and SSI benefits.
- To describe the study population to understand both the generalizability of the study's findings and the potential reasons for the observed effects.
- To explore the IPS implementation process to understand barriers and facilitators to high-fidelity IPS implementation in the supportive housing context.

Grantee researchers and SSA will use the information collected during this study to: (1) assess the short-term and long-term effectiveness of the proposed intervention to improve employment, income, and self-sufficiency; (2) understand the implementation process; (3) provide detailed subgroup-specific data related to the effect of IPS.

The respondents are residents in supportive housing units operated by

PATH who are unemployed and looking for employment.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of participants	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount * (dollars)	Average wait time in office or for teleservice centers ** (minutes)	Total annual opportunity cost *** (dollars)
Study participants baseline interview	200	1	200	60	200	* 13.30	** 24	*** 3,724
Study participants quarterly interviews	200	7	1,400	10	233	* 13.30	** 21	*** 4,030
Study participants final interviews	200	1	200	60	200	* 13.30	** 21	*** 3,591
PATH Interviews: Staff	5	1	5	60	5	* 32.05	** 24	*** 224
SHIPS Interviews: participants	5	1	5	60	5	* 13.30	** 24	*** 93
Totals	610			250	643			*** 11,662

* We based this figure on the average DI payments based on SSA's current FY 2024 data (<https://www.ssa.gov/legislation/2024FactSheet.pdf>), and survey researchers (<https://www.bls.gov/oes/current/oes193022.htm>)

** We based this figure on averaging both the average FY 2024 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

Dated: December 19, 2024.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2024–30764 Filed 12–23–24; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 12615]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “Iba N’Diaye: Between Latitude and Longitude” Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition “Iba N’Diaye: Between Latitude and Longitude” at The Metropolitan Museum of Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2024–30708 Filed 12–23–24; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 290 (Sub-No. 5) (2025–1)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Surface Transportation Board has adopted the first quarter 2025 Rail Cost Adjustment Factor and cost index filed by the Association of American Railroads.

DATES: *Applicability Date:* January 1, 2025.

FOR FURTHER INFORMATION CONTACT:

Pedro Ramirez, (202) 245–0333. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245–0245.

SUPPLEMENTARY INFORMATION: The rail cost adjustment factor (RCAF) is an index formulated to represent changes in railroad costs incurred by the nation’s largest railroads over a specified period of time. The Surface Transportation Board (Board) is required by law to publish the RCAF on at least a quarterly basis. Each quarter, the Association of American Railroads computes three types of RCAF figures and submits those figures to the Board for approval. The Board has reviewed the submission and adopts the RCAF figures for the first quarter of 2025. The first quarter 2025 RCAF (Unadjusted) is 0.944. The first quarter 2025 RCAF (Adjusted) is 0.367. The first quarter 2025 RCAF–5 is 0.347. Additional information is contained in the Board’s decision, which is available at www.stb.gov.

Decided: December 18, 2024.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz.

Stefan Rice,
Clearance Clerk.

[FR Doc. 2024–30705 Filed 12–23–24; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36818]

Central Oregon & Pacific Railroad, Inc.—Lease and Operation Exemption Including Interchange Commitment—Union Pacific Railroad Company

Central Oregon & Pacific Railroad, Inc. (CORP), a Class III rail carrier, has filed a verified notice of exemption pursuant to 49 CFR 1150.41 to lease from Union Pacific Railroad Company (UP) and operate the (1) Brooklyn

Subdivision from milepost 616 to milepost 660.58; (2) the Springfield and Marcola Industrial Leads from milepost 646.58 to milepost 648.39 in Springfield, Or.; and (3) the Coos Bay Industrial Lead from milepost 648.2 to milepost 652.11 in Eugene, Or., totaling approximately 27.58 miles (the Line).¹

According to the verified notice, UP is the current operator of the Line. CORP states that it has entered into an agreement with UP to lease and operate the Line.

CORP certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier but its annual revenues currently exceed \$5,000,000. Pursuant to 49 CFR 1150.42(e), if a carrier's projected annual revenues will exceed \$5 million, it must, at least 60 days before the exemption becomes effective, post a notice of its intent to undertake the proposed transaction at the workplace of the employees on the affected lines, serve a copy of the notice on the national offices of the labor unions with employees on the affected lines, and certify to the Board that it has done so. In an exhibit attached to its verified notice of exemption, CORP certified that notice of the transaction was posted at the workplaces of current UP employees on the Line on December 10, 2024, and that it was concurrently serving a copy of the certification and the verified notice on the national offices of the labor unions for those employees.

According to the verified notice, the lease contains an interchange commitment. CORP has provided additional information regarding the interchange commitment, as required by 49 CFR 1150.43(h).²

The earliest this transaction may be consummated is February 8, 2025 (60 days after the certification under 49 CFR 1150.42(e) was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than January 31, 2025.

All pleadings, referring to Docket No. FD 36818, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW,

Washington, DC 20423-0001. In addition, a copy of each pleading must be served on CORP's representative, Eric M. Hocky, Clark Hill PLC, Two Commerce Square, 2001 Market Street, Suite 2620, Philadelphia, PA 19103.

According to CORP, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: December 18, 2024.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2024-30607 Filed 12-23-24; 8:45 am]

BILLING CODE 4915-01-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

2025 Tariff Rate Quota Quantity Limitations Under the U.S.-Australia Free Trade Agreement; Correction

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice; correction.

SUMMARY: The Office of the United States Trade Representative (USTR) published a notice in the **Federal Register** on December 11, 2024 (December 11 notice), in accordance with the U.S.-Australia Free Trade Agreement, providing notice of the tariff-rate quota quantity limitations in calendar year 2025 of originating goods of Australia entering the United States under certain subheadings of the Harmonized Tariff Schedule of the United States (HTSUS). This notice corrects an error in the December 11 notice in paragraph 10 of the Annex.

DATES: The changes made by this notice are applicable on January 1, 2025.

FOR FURTHER INFORMATION CONTACT: Sarah Fasano, Office of Agricultural Affairs, 202.395.6127 or Sarah.E.Fasano@ustr.eop.gov.

SUPPLEMENTARY INFORMATION: In the December 11 notice (89 FR 99959), USTR provided notice of the tariff-rate quota quantity limitations in calendar year 2025 of originating goods of Australia entering the United States under certain subheadings of the HTSUS. USTR became aware of a ministerial error in paragraph 10 of the Annex of the December 11 notice. This paragraph indicates that for purposes of U.S. note 17 to subchapter XXII of chapter 98 of the HSTUS, the aggregate

quantity of originating goods of Australia entered under subheading 9822.04.45 shall not exceed 1,355,423 metric tons for calendar year 2025. USTR is correcting this paragraph to indicate that for purposes of U.S. note 17 to subchapter XXII of chapter 98 of the HSTUS, the aggregate quantity of originating goods of Australia entered under subheading 9822.04.45 shall not exceed 1,355 metric tons for calendar year 2025.

Douglas McKalip,

Chief Agricultural Negotiator, Office of the United States Trade Representative.

[FR Doc. 2024-30657 Filed 12-23-24; 8:45 am]

BILLING CODE 3390-F4-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA-2024-0083]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) to approve a new information collection. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 27, 2025.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 0083 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to <https://www.regulations.gov>.

Follow the online instructions for submitting comments.

Fax: 1-202-493-2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Melissa Corder, 202-366-5853, Office of

¹ CORP will also lease certain related excepted track under 49 U.S.C. 10906 and the Eugene yard, at Eugene.

² CORP filed a copy of the agreement under seal with the verified notice. See 49 CFR 1150.43(h)(1).

Real Estate Services, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 7 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: We published a **Federal Register** Notice with a 60-day public comment period on this information collection on September 27, 2024, at 89 FR 79333. There were no comments received.

Title: Relocation Assistance Personal Interviews for FHWA Federal and Federally Assisted Programs under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act).

Background: This program implements 42 U.S.C. 4602, concerning acquisition of real property and relocation assistance for persons displaced by FHWA Federal and federally assisted programs. It requires the provision of relocation assistance and payments to U.S. citizens and persons legally present in the United States. The information collected consists of a personal interview of affected persons to establish eligibility for relocation assistance and payments. Displacing agencies will request each person who is to be displaced by a FHWA Federal or federally assisted project to voluntarily assist the agency in determining the benefits that their household, business, farm, or non-profit organization may be eligible to receive through the personal interview to determine their needs and preferences related to the move. This information is not required from the displaced person for the agency to proceed.

Respondents: Any of the 56 State Departments of Transportation (52, including the District of Columbia, Puerto Rico), and the United States territories of American Samoa, Guam, N. Mariana Is., and the Virgin Islands of the United States (4 territories), local government agencies, persons administering projects or programs receiving financial assistance for expenditures of Federal funds on acquisition and relocation payments and required services to displaced persons that are subject to the Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Act) for determination of Uniform Act relocation program benefit amounts, and file maintenance.

Frequency: The information will be collected once per displacement of a household, business, farm, or non-profit organization.

Estimated Average Burden per Response: 1 hour per respondent per personal interview.

Estimated Total Annual Burden Hours: It is expected that there is an estimated total of 4,600 annual burden hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: December 18, 2024.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2024-30638 Filed 12-23-24; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2024-0293]

Commercial Driver's License: Application for Exemption; American Public Transportation Association

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application for an exemption from the American Public Transportation Association (APTA), on behalf of public transit agencies and their contractor partners, to allow State Driver Licensing Agencies (SDLAs) to waive the "under-the-hood" portion of the pre-trip vehicle inspection skills test requirement for commercial driver's license (CDL) applicants seeking to operate vehicles in public transportation, including interstate commerce. FMCSA requests public comment on APTA's request for an exemption.

DATES: Comments must be received on or before January 27, 2025.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2024-0293 by any of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. See the Public Participation and Request for Comments section below for further information.

- **Mail:** Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590-0001.

- **Hand Delivery or Courier:** West Building, Ground Floor, 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-2024-0293) 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: If you do not have access to the internet, you may view the docket by visiting Docket Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, 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 regulatory process. DOT posts these comments, including any personal information the commenter provides, to www.regulations.gov described in the system of records notice DOT/ALL-14 FDMS, which can be reviewed under the "Department Wide System of Records Notices" at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>. The comments are posted without edit and are searchable by the name of the submitter.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA; (202) 366-2722; richard.clemente@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2024–0293), indicate the specific section of this document to which the comment applies, and provide a reason for your 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–2024–0293” in the “Keyword” box, and click “Search.” When the new screen appears, click on the “Comment” button and type your comment into the text box in 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.

Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the notice, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as “PROPIN” to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the notice. Submissions containing CBI

should be sent to Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 or via email at brian.g.dahlin@dot.gov. At this time, you need not send a duplicate hardcopy of your electronic CBI submissions to FMCSA headquarters. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this notice.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including the applicant’s safety analyses. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely maintain a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305(a)). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)). If granted, the notice will identify the regulatory provision(s) from which the applicant will be exempt, the effective period, and all terms and conditions of the exemption (49 CFR 381.315(c)(1)). If the exemption is denied, the notice will explain the reasons for the denial (49 CFR 381.315(c)(2)). The exemption may be renewed (49 CFR 381.300(b)).

III. Current Regulatory Requirements

The CDL regulations at 49 CFR 383.113(a) require that applicants for a CDL possess basic pre-trip vehicle inspection skills for the vehicle class that they operate or expect to operate. Applicants must be able to identify each safety-related part on the test vehicle and explain what needs to be examined during a pre-trip vehicle inspection to ensure the safe operation of the commercial motor vehicle. Under 49 CFR 383.113(a)(1)(i), applicants must possess this skill for the engine compartment of the vehicle. This portion of the test is known as the “under-the-hood” testing component.

IV. Applicant’s Request

APTA, on behalf of public transit agencies and their contractor partners, applied for an exemption from the

“under-the-hood” portion of the pre-trip inspection segment of the CDL skills test. The exemption would allow SDLAs to waive the engine compartment component of the pre-trip vehicle inspection skills test required under 49 CFR 383.113(a)(1)(i) for CDL applicants seeking to operate vehicles in public transportation, including interstate transportation.

According to the applicant, the public transit industry continues to experience a severe shortage of drivers and is struggling to maintain its workforce. APTA has identified the “under-the-hood” testing requirement as a significant impediment to hiring bus operators, leading to reduced transit service, missed trips, and increased costs for public transit agencies. APTA believes that the CDL “under-the-hood” test is completely unrelated to transit bus operators’ job responsibilities; creates equity concerns and serves as a deterrent to certain individuals who would otherwise thrive in this career; and is increasingly becoming obsolete with the transition to zero-emission vehicles. The applicant further adds that its members’ bus operator hiring issues are similar to those faced by the school bus industry and that FMCSA has granted similar relief allowing States to waive the “under-the-hood” test for CDL applicants intending to become school bus operators.

In support of its application, APTA submitted a research report it commissioned entitled, “Impact of CDL Under-the-Hood Testing Requirement on Public Transit Agencies’ Ability to Hire Bus Operators,” dated November 1, 2024.

A copy of APTA’s application for exemption and its research report are available for review in the docket for this notice.

V. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on the APTA’s application for an exemption. 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 also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested

persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024–30737 Filed 12–23–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; Multiple Departmental Offices Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on the proposed information collections listed below, in accordance with the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before February 24, 2025.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8100, Washington, DC 20220, or email at PRA@treasury.gov.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Spencer W. Clark by emailing PRA@treasury.gov, calling (202) 927–5331, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

1. *Title:* Solicitation of Proposal Information for Award of Public Contracts.

OMB Control Number: 1505–0081.

Type of Review: Extension without change of a currently approved collection.

Description: Treasury Bureaus and the Office of the Procurement Executive collect information when inviting firms to submit proposals for public contracts for supplies and services. The information collection is necessary for compliance with the Federal Property and Administrative Services Act (41 U.S.C. 251 *et seq.*), the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) and applicable acquisition regulations.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 20,946.

Frequency of Response: On occasion.
Estimated Total Number of Annual Responses: 20,946.

Estimated Time per Response: Varies depending on proposal type and proposal requirements. Average burden estimate is 10.48 hours per submission.
Estimated Total Annual Burden Hours: 217,812.

2. *Title:* Coronavirus Economic Relief for Transportation Services (CERTS).

OMB Control Number: 1505–0273.

Type of Review: Extension without change of a currently approved collection.

Description: On December 27, 2020, the President signed the Consolidated Appropriations Act, 2021. Division N, Title IV, Subtitle B, Section 421 of the Act provides \$2 billion for the U.S. Department of the Treasury to provide grants to eligible providers of transportation services (“Recipients”) under the Coronavirus Economic Relief for Transportation Services (“CERTS”) Program. Recipients include motorcoach companies, school bus companies, passenger vessel companies, and pilotage companies. Under Section 421 of the Act, Recipients must demonstrate significant revenue losses as a result of COVID–19, and must use grant funds for payroll costs and for other eligible operating expenses. At this point, all funds have been distributed and reporting requirements have been completed. Recipients are required to retain records for three years after funds are expended or returned to Treasury.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 1,460.

Frequency of Response: On occasion.
Estimated Total Number of Annual Responses: 1,460.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 365.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden of the collection of information; (c) ways to

enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: 44 U.S.C. 3501 *et seq.*

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2024–30783 Filed 12–23–24; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0629]

Agency Information Collection Activity: Application for Extended Care Services

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Comments must be received on or before February 24, 2025.

ADDRESSES: Comments must be submitted through www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Program-Specific information: Rebecca Mimmall, 202–695–9434, vhacopra@va.gov.

VA PRA information: Maribel Aponte, 202–461–8900, vacopaperworkreduact@va.gov.

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, VHA invites comments on: (1) whether the proposed collection of information is necessary

for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA'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.

Title: Application for Extended Care Services (VA Form 10–10EC).

OMB Control Number: 2900–0629.

https://www.reginfo.gov/public/do/PRASearch (Once at this link, you can enter the OMB Control Number to find the historical versions of this Information Collection).

Type of Review: Revision of a currently approved collection.

Abstract: Title 38 U.S.C. chapter 17 authorizes VA to provide hospital care, medical services, domiciliary care, and nursing home care to eligible Veterans. Title 38 U.S.C. 1705 requires VA to design, establish, and operate a system of annual patient enrollment in accordance with a series of stipulated priorities. A consequence of this is that many groups of Veterans who are in a lower priority group (WWI Veterans, Veterans with disabilities rated as 0% service-connected seeking treatment for other than their service-connected conditions, Veterans exposed to a toxic substance, radiation, or environmental hazard and nonservice-connected Veterans) may request that they be allowed to be income tested in order to gain a higher priority. Title 38 U.S.C. 1722 establishes eligibility assessment procedures for cost-free VA medical care, based on income levels, which will determine whether nonservice-connected and 0% service-connected non-compensable Veterans are able to defray the necessary expenses of care for nonservice-connected conditions. Title 38 U.S.C. 1722A establishes the eligibility assessment procedures, based on income levels, for determining Veterans' eligibility for cost-free medications. Title 38 U.S.C. 1710B defines the procedures for establishing eligibility for cost-free Extended Care benefits. Title 38 U.S.C. 1729 authorizes VA to recover from Veterans' health insurance carriers the cost of care furnished for their nonservice-connected conditions.

VA Form 10–10EC, Application for Extended Care Services, is used to collect financial information necessary to determine a Veteran's copayment obligation for extended care services,

also known as long term care (LTC). The 10–10EC design has been revised to clarify the instructions and make it easier to understand and complete the form. However, there are no changes to the anticipated annual number of responses or burden hours for this information collection.

Affected Public: Individuals or Households.

Estimated Annual Burden: 3,000 hours.

Estimated Average Burden per Respondent: 90 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 2,000.

(Authority: 44 U.S.C. 3501 *et seq.*)

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–30639 Filed 12–23–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Funding Opportunity Under Supportive Services for Veteran Families

AGENCY: Department of Veterans Affairs.

ACTION: Notice of funding availability.

SUMMARY: The Department of Veterans Affairs (VA) is announcing the availability of funds for grants under the SSVF Program. This NOFO contains information concerning the SSVF Program, the renewal and new applicant grant application processes, and the amount of funding available. Awards made for grants will fund operations beginning October 1, 2025.

DATES: Applications for grants must be received by 4 p.m. eastern standard time on March 3, 2025. In the interest of fairness to all competing applicants, this deadline is firm as to date and hour. VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and submit their materials early to avoid risk of loss of eligibility, unanticipated delays, computer service outages, or other submission-related problems.

ADDRESSES: Information about the application can be downloaded from the SSVF website at <https://www.va.gov/homeless/ssvf/index.html>. Questions may be referred to the SSVF Program Office via email at ssvf@va.gov. For detailed SSVF Program information and requirements, see 38 CFR part 62.

Application Submission: Applicants must submit applications electronically

following instructions found at <https://www.va.gov/homeless/ssvf/index.html>. Applications may not be hand-carried, emailed, mailed, or sent by facsimile (fax). Applications must be received by the SSVF Program Office no later than 4 p.m. eastern standard time on the application deadline date March 3, 2025. Applications must arrive as a complete package. Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected or not funded. See Section II.B. and II.C. of this NOFO for the maximum allowable grant amounts. Applicants are advised to refer to this NOFO when completing the online application.

Technical Assistance: Information on obtaining technical assistance for preparing a grant application is available on the program website at <https://www.va.gov/homeless/ssvf/index.html>.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Funding Opportunity Title: Supportive Services for Veteran Families. *Announcement Type:* New and Renewal. *Funding Opportunity Number:* VA–SSVF–2026. *Assistance Instrument:* Grant.

Assistance Listing: 64.033, VA Supportive Services for Veteran Families Program—System for Award Management (SAM.gov).

Funding Details: SSVF expects to award approximately \$799 million via this NOFO with over 200 awards, with a range of \$118,000 to \$22,942,240 in awards.

System for Award Management: Before submitting an application, organizations must provide a valid unique entity identifier in their application and continue to maintain an active registration in SAM.gov with current information at all times during which they have an active Federal award or an application or plan under consideration by a Federal agency.

A. Purpose: The SSVF Program's purpose is to provide supportive services grants to private non-profit organizations and consumer cooperatives who will coordinate or provide supportive services to very low-income Veteran families who (i) are residing in permanent housing and at risk of becoming homeless, (ii) are homeless and scheduled to become residents of permanent housing within a specified time period or (iii) after exiting permanent housing within a specified time period, are seeking other housing that is responsive to such low-income Veteran family's needs and

preferences. SSVF delivers services using a housing-first approach that emphasizes permanent housing placement and supportive services as the primary objectives. Housing First is an evidence-based, cost-effective approach to ending homelessness for the most vulnerable and chronically homeless individuals. (<https://www.usich.gov/tools-for-action/housing-first-checklist>).

SSVF prioritizes the delivery of rapid re-housing services to homeless Veteran households. Rapid re-housing is an intervention designed to help individuals and families quickly exit homelessness, return to housing in the community, and avoid homelessness again in the near term. The core components of a rapid re-housing program are housing identification, move-in and rent financial assistance, and rapid rehousing case management and services. These core components represent the minimum that a program must provide to households to be considered a rapid rehousing program. Applicants should familiarize themselves with the Homelessness Prevention and Rapid Re-housing Best Practice Standards found at <https://www.va.gov/homeless/ssvf/index.html>.

B. Funding Priorities: The principal goal of this NOFO is to seek entities that have the greatest capacity to end homelessness among Veterans or sustain gains made in ending homelessness among Veterans. Priority will be given to grantees who can demonstrate the adoption of evidence-based practices in their application. Please note that the priorities for SSVF for fiscal year (FY) 2026 are different than in previous years.

Under Priority 1, SSVF is introducing a new priority for FY 2026 to expand services to Tribal and rural communities and the U.S. territories. VA has the ability to award up to a 3-year project period to Tribal and rural communities and the U.S. territories under this NOFO. Indian Tribe means a Tribe that is a federally recognized Tribe or a State recognized tribe. See 25 U.S.C. 4103(13). With this priority, SSVF is seeking Native-led organizations, organizations who are deeply invested in providing services on Tribal lands and reservations, and organizations who have extensive experience working with Native Veterans and Veteran families. There is an emphasis on organizations that would serve the 29 Tribal communities that have Tribal Department of Housing and Urban Development—VA Supportive Housing (HUD-VASH) (https://www.hud.gov/press/press_releases_media_advisories/hud_no_24_220).

Rural communities are defined using the U.S. Department of Agriculture's (USDA) definition of a rural area. Rural means: 1. Open countryside; 2. Rural towns (places with fewer than 5,000 people and 2,000 housing units); and 3. Urban areas with populations ranging up to 50,000 people that are not part of larger labor market areas (metropolitan areas) (<https://www.ers.usda.gov/topics/rural-economy-population/rural-classifications/>).

The U.S. territories are a priority including American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands. Priority 1 for FY 2026 is open to new and existing applicants; however, priority will be given to organizations that have a demonstrated track record of serving the Tribal or rural community or the U.S. territory that they are proposing to serve. Additionally, applicants should have demonstrated cultural awareness and language access for the areas they are proposing to serve.

Under Priority 2, VA will provide funding to existing grantees who have at least one of the following accreditations: 3-year accreditation from the Commission on Accreditation of Rehabilitation Facilities (CARF) in Employment and Community Services: Rapid Rehousing and Homeless Prevention standards, a 4-year accreditation in Housing Stabilization and Community Living Services from the Council on Accreditation (COA), or a 3-year accreditation in The Joint Commission's (JC) Behavioral Health Care: Housing Support Services Standards. Priority 2 applicants must demonstrate that accreditation is active at the date of submission, and accreditation must be maintained throughout the project period and/or funding cycle.

Under Priority 3, existing SSVF grantees not included in Priority 2 but who have annual awards and are seeking to renew their grants, may apply. Existing grantees are SSVF grantees that have a Memorandum of Agreement (MOA) for operations through September 30, 2025.

C. Definitions: Part 62 of title 38 CFR, contains definitions of terms used in the SSVF Program. In addition to the definitions and requirements described in 38 CFR part 62, this NOFO provides additional resources to secure permanent housing. These resources may be provided by the SSVF grantee under 38 CFR 62.34 to assist Veterans in remaining in or obtaining permanent housing. Grantees will be allowed to provide up to the equivalent of 2 months' rent in addition to the security

deposit to landlords under 38 CFR 62.34(g) as a resource for any lease of not less than 1 year when necessary to assist a Veteran in remaining in or obtaining permanent housing.

The additional funds may be used to facilitate the leasing of rental units to tenants with significant housing barriers. Landlords are less likely to lease to certain groups due to the risk of non-payment of rent or concerns about damage or disruption to their buildings. Tenants with significant housing barriers might include Veterans with poor credit histories and criminal justice involvement that might otherwise disqualify them from obtaining a lease. Veterans with histories of sex offenses are generally considered high-risk tenants by landlords. Veterans are sometimes reluctant to move into apartments that do not offer any of the comforts typically associated with living independently.

The General Housing Stability Assistance (GHSAs), provided under 38 CFR 62.34(e), while offering some funds for bedding and kitchen supplies, leaves significant needs unaddressed. Therefore, grantees also will be allowed to provide up to \$1,000 to Veteran families for miscellaneous move-in expenses under 38 CFR 62.34(g), to encourage them to obtain permanent housing with a lease of not less than 1 year. These funds are to be provided to assist Veterans through accounts established at local merchants, such as grocery stores and retailers, in the enrolled Veteran's name. These items could include, but are not limited to, food, furniture, household items, electronics (including televisions), or other items typically associated with independent living in permanent housing.

Furthermore, internet can now be considered as utilities as the definition for financial assistance as utility payments under 38 CFR 62.34(b) is expected with this NOFO to include these changes. Access to the internet is an essential component of the modern economy, comparable to utilities. Veterans without such access are put at a disadvantage in finding and applying for work opportunities, purchasing needed consumer goods at the lowest possible cost, and communicating through email and other forms of social media.

In addition to the definitions and requirements described in 38 CFR part 62, this NOFO provides further clarification in this paragraph on the use of Emergency Housing Assistance (EHA). EHA may be provided by the SSVF grantee under 38 CFR 62.34(f) to

offer transition in place when a permanent housing voucher is pending completion of the housing inspection and administrative processes necessary for leasing. In such circumstances, the EHA payment cannot exceed what would otherwise be paid when the voucher is issued. EHA may also be used as part of Rapid Resolution, also known as diversion or housing problem-solving, that helps Veteran households avoid entry into homelessness through placements with family or friends. EHA may also be used as an outreach tool to engage and offer housing to unsheltered homeless Veterans with significant housing needs who refuse to access traditional emergency shelter services in the community.

D. Approach: Respondents to this NOFO should base their proposals and applications on the current requirements of part 62. Grantees will be expected to leverage supportive services grant funds to enhance the housing stability of very low-income Veteran families who are occupying permanent housing. In doing so, grantees are required to establish relationships with local community resources. Therefore, agencies must work through coordinated partnerships built either through formal agreements or the informal working relationships commonly found among successful social service providers.

Through this NOFO, grantees can pay fees related to securing a lease of at least 1 year. In addition, as noted previously herein, Veterans are sometimes reluctant to move into apartments that do not offer any of the comforts typically associated with living independently. Pursuant to this NOFO, grantees would be able to use funds for miscellaneous expenses associated with moving into a new home. Moreover, nationally, the median average rental unit has increased in price by 28% since September 2023.

Furthermore, service-connected Veterans with high levels of disability may have incomes that exceed the current SSVF income threshold of 50% of the Area Median Income (AMI). These Veterans, some of the most vulnerable served by the VA, can be left ineligible for critically needed SSVF services. As a result, VA is invoking the provision in 38 U.S.C. 2044(f)(6)(C) and 38 CFR 62.2, allowing VA to establish an income ceiling higher or lower than 50% of the AMI if VA determines that such variations are necessary because the area has unusually high or low construction costs, fair market rents (as determined under section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f) or family incomes. AMI is one factor

SSVF uses to establish eligibility. A higher income ceiling, as reflected by the AMI, will allow grantees to serve Veterans who have endured significant increases in their housing cost burden, placing them at greater risk for homelessness. For the purposes of this NOFO, grantees will be able to serve Veterans in their communities who have up to 80% of AMI. Aligning SSVF and HUD-VASH eligibility will allow SSVF grantees' housing navigators to assist Veterans eligible for HUD-VASH as necessary with identifying and obtaining permanent housing. Aligning SSVF and HUD-VASH eligibility will also improve the coordination of care and simplify and standardize eligibility determinations.

Applicants are strongly encouraged to provide letters of support from the Continuums of Care (CoC) in the location where they plan to deliver services, reflecting the applicant's engagement in the CoC's efforts to coordinate services. A CoC is a community planning entity that organizes and delivers housing and services to meet the needs of people who are homeless as they move to stable housing and maximize housing stability. The CoC develops and implements plans to end homelessness and prevent a return to homelessness. CoC locations and contact information can be found at <https://www.hudexchange.info/grantees/contacts/>.

The CoC's letter of support should note if the applicant is providing assistance to the CoC in building local capacity to build Coordinated Entry Systems (CES) and the value and form of that assistance, whether support is direct funding or staffing. CES requires that providers operating within the CoC's geographic area must also work together to ensure the CoC's coordinated entry process allows for coordinated screening, assessment, and referrals (HUD Notice: CPD-17-01). The CoC's letter of support also must describe the applicant's participation in the CoC's community planning efforts. Failure for a Priority 2 or Priority 3 applicant to provide a letter of support from the CoC as described may limit the maximum award to 90% of the award made in the previous fiscal year as described herein at II.C.6. In addition, any applicant proposing to serve a Native American Tribal area is strongly encouraged to provide a letter of support from the relevant Tribal Government. Priority 1 applicants are strongly encouraged to provide a CoC letter of support, a letter from the relevant Indian Tribal Government, or other relevant letter of support.

The aim of the provision of supportive services is to assist very low-income Veteran families residing in permanent housing to remain stably housed and to rapidly transition those not currently in permanent housing to stable housing. Assistance in obtaining or retaining permanent housing is a fundamental goal of the SSVF Program. SSVF emphasizes the placement of homeless Veteran families who are described in 38 CFR 62.11(b)–(c) as follows:

(b)(1) Is lacking a fixed, regular and adequate nighttime residence, meaning:

(i) That the Veteran family's primary nighttime residence is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned bus or train station, airport, or camping ground,

(ii) That the Veteran family is living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by Federal, State, or local government programs for low-income individuals), or

(iii) That the Veteran family is exiting an institution where the Veteran family resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution,

(b)(2) Are at risk to remain in the situation described herein at paragraph,

(b)(1) of this section but for the grantee's assistance, and

(b)(3) Scheduled to become a resident of permanent housing within 90 days pending the location or development of housing suitable for permanent housing or; (c) Has met any of the conditions described herein at paragraph (b)(1) of this section after exiting permanent housing within the previous 90 days to seek other housing that is responsive to the very low-income Veteran family's needs and preferences.

E. Authority: Funding available under this NOFO is authorized by 38 U.S.C. 2044. VA implements the SSVF Program through regulations in 38 CFR part 62. Funds made available under this NOFO are subject to the requirements of these regulations.

F. Requirements for the Use of Supportive Services Grant Funds: The applicant's request for funding must be consistent with the limitations and uses of supportive services grant funds set forth in 38 CFR part 62 and this NOFO. In accordance with 38 CFR part 62 and this NOFO, the following requirements apply to supportive services grants awarded under this NOFO:

1. Grantees may use a maximum of 10% of supportive services grant funds for administrative costs identified in 38 CFR 62.70(e).

2. Grantees must enroll a minimum of 60% of Veteran households who are

literally homeless and qualify under 38 CFR 62.11(b). (*Note:* Grantees may request a waiver to decrease this minimum number of literally homeless households, as discussed herein at section V.B.4.a.).

3. Grantees are required to have available temporary financial assistance resources that can be paid directly to a third party on behalf of a participant and may be used for childcare, emergency housing assistance, transportation, rental assistance, utility-fee payment assistance, security deposits, utility deposits, moving costs, and general housing stability assistance (which includes emergency supplies) and as otherwise stated in 38 CFR 62.33 and 38 CFR 62.34.

4. Grantees are able to provide up to \$1,000 supplemental assistance to every Veteran household who obtains a lease of not less than 1 year to cover miscellaneous move-in expenses.

5. Grantees are able to pay landlords up to an amount equal to 2 months' rent for fees related to securing a lease of at least 1 year. This incentive may be provided at lease-up or split up into multiple payments to be paid within the first 90 days of the Veteran being housed.

G. Guidance for Use of Supportive Services Grant Funds: Grantees are expected to demonstrate the adoption of evidence-based practices most likely to prevent and lead to reductions in homelessness. As part of their application, the applying organization's Executive Director must certify on behalf of the agency that they will actively participate in community planning efforts and operate the program in a manner consistent with core concepts found at <https://www.va.gov/homeless/ssvf/ssvf-coreconcepts/>. Housing is not contingent on compliance with mandated therapies or services; instead, participants must comply with a standard lease agreement and be provided with the services and supports that are necessary to help them do so successfully. Case management supporting permanent housing should include tenant counseling, mediation with landlords and outreach to landlords.

Grantees must develop plans that will ensure that Veteran participants have the level of income and economic stability needed to remain in permanent housing after the conclusion of the SSVF intervention. Both employment and benefits assistance from VA and non-VA sources represent a significantly underutilized source of income stability for homeless Veterans. Income is not a pre-condition for housing. Case

management should include income maximization strategies to ensure households have access to benefits, employment, and financial counseling. The complexity of program rules and the stigma some associate with entitlement programs contribute to their lack of use. For this reason, grantees are encouraged to consider strategies that can lead to prompt and successful access to employment and benefits that are essential to retaining housing.

Consistent with 38 CFR 62.30–62.34, grantees are expected to offer the following supportive services: counseling participants about housing; assisting participants in understanding leases; securing utilities; making moving arrangements; providing representative payee services concerning rent and utilities when needed; using health care navigation services to help participants access health and mental health care; providing legal services; and providing mediation and outreach to property owners related to locating or retaining housing. Grantees also may assist participants by providing rental assistance; security or utility deposits; moving costs; emergency housing; or general housing stability assistance; or using other Federal resources, such as the HUD Emergency Solutions Grants Program (ESG) or supportive services grant funds subject to the limitations described in this NOFO and 38 CFR 62.34.

1. As SSVF is a short to medium-term crisis intervention, grantees must develop plans with Veterans and Veteran families that will maximize income and supports to help Veterans sustain permanent housing at the conclusion of SSVF. Grantees must ensure the availability of employment and vocational services either through providing the services directly or through formal or informal service agreements with other agencies. Agreements with the Homeless Veteran Reintegration Programs funded by the U.S. Department of Labor are strongly encouraged. For participants unable to work due to disability, income must be established through available benefits programs.

2. Per 38 CFR 62.33, grantees must assist participants in obtaining public benefits. Grantees must screen all participants for eligibility for a broad range of entitlements such as the U.S. Department of Health and Human Services' (HHS) Temporary Assistance for Needy Families, Social Security, the USDA's Supplemental Nutrition Assistance Program, the HHS Low-Income Home Energy Assistance Program, the Earned Income Tax Credit, and local General Assistance programs.

Grantees are expected to access the Substance Abuse and Mental Health Services Administration's Supplemental Security Income/Social Security Disability Insurance Outreach, Access, and Recovery (SOAR) program directly by training staff and providing the service or subcontracting services to an organization to provide SOAR services. In addition, where available, grantees should access information technology tools to support case managers in their efforts to link participants to benefits.

3. In accordance with 38 CFR 62.33(g), grantees must assist participants in obtaining and coordinating the provision of legal services relevant to issues that interfere with the participants' ability to obtain or retain permanent housing or supportive services. Grantees may provide legal services directly, through a formal referral agreement as contract services, or through referrals to another entity. (*NOTE:* Information regarding legal services provided may be protected from being released to the grantee or VA under attorney-client privilege, although the grantee must provide sufficient information to demonstrate the frequency and type of service delivered.) Support for legal services can include paying for court filing fees to assist a participant with issues that interfere with the participant's ability to obtain or retain permanent housing or supportive services, including issues that affect the participant's employability and financial security. Grantees (in addition to employees and members of grantees) may represent participants before VA with respect to a claim for VA benefits, but only if they are recognized for that purpose pursuant to 38 U.S.C. chapter 59. Further, the individual providing such representation must be accredited pursuant to 38 U.S.C. chapter 59.

4. Access to mental health and addiction services is required by SSVF; however, grantees cannot fund these services directly through the SSVF grant. Applicants must demonstrate their ability to promote rapid access to and engagement with mental health and addiction services for Veterans and Veteran families. In the past, grantees were able to add health care navigator responsibilities to existing positions as an alternative to hiring a Health Care Navigator. Beginning in FY 2026, the Health Care Navigator position is required. Grantees are required to hire at least one Health Care Navigator that will assist participants with accessing health and mental health services.

5. When serving participants who are residing in permanent housing, the defining question to ask is "Would this

individual or family be homeless but for this assistance?” The grantee must use a VA-approved screening tool with criteria that target those most at risk of homelessness (https://www.va.gov/HOMELESS/ssvf/docs/SSVF_HP_Screener_10_2023.pdf).

6. SSVF grantees are required to participate in local planning efforts designed to end Veteran homelessness. Grantees may use grant funds to support SSVF involvement in such community planning by sub-contracting with CoCs, when such funding is essential, to create or sustain the development of these data driven plans.

7. When other funds from community resources are not readily available to assist program participants, grantees may choose to use supportive services grants, to the extent described in this NOFO and in 38 CFR 62.33 and 62.34, to provide temporary financial assistance. Such assistance may, subject to the limitations in this NOFO and 38 CFR part 62, be paid directly to a third party on behalf of a participant for childcare; transportation; family emergency housing assistance; rental assistance; utility-fee payment assistance; security or utility deposits; moving costs; and general housing stability assistance as necessary.

8. SSVF requires grantees to offer Rapid Resolution (also known as diversion or problem-solving) services. These services engage Veterans immediately before or after they become homeless and assist them to avoid continued homelessness. These efforts can reduce the trauma and expense associated with extended periods of homelessness, and the strain on the crisis response and affordable housing resources in the community. Through Rapid Resolution, the grantee and the Veteran explore safe, alternative housing options immediately before or quickly after they become homeless.

Rapid Resolution can identify an immediate safe place to stay within the Veteran's network of family, friends, or other social networks. All Veterans requesting SSVF services should have a Rapid Resolution screening and if not appropriate for Rapid Resolution grantees should then assess the Veteran for other SSVF services. More information about Rapid Resolution can be found at <https://www.va.gov/homeless/ssvf/index.html>.

II. Award Information

A. *Overview:* This NOFO announces the availability of funds for supportive services grants under the SSVF Program and pertains to proposals for the renewal of existing supportive services grant programs.

B. *Funding:* The funding priorities for this NOFO are as follows: Under Priority 1, SSVF is introducing a new priority for FY 2026 to expand services to Tribal and rural communities and U.S. territories. VA has the ability to award up to a 3-year project period to Tribal and rural communities and U.S. territories under this NOFO. Indian Tribe means a Tribe that is a federally recognized Tribe or a State-recognized tribe. See 25 U.S.C. 4103(13). With this priority, SSVF is seeking Native-led organizations, organizations who are deeply invested in providing services on Tribal lands and reservations, and organizations who have extensive experience working with Native Veterans and Veteran families. There is an emphasis on organizations that would serve the 29 Tribal communities that have Tribal HUD-VASH (https://www.hud.gov/press/press_releases/media_advisories/hud_no_24_220). Rural communities are defined using USDA's definition of a rural area. Rural means: 1. Open countryside; 2. Rural towns (places with fewer than 5,000 people and 2,000 housing units); and 3. urban areas with populations ranging up to 50,000 people that are not part of larger labor market areas (metropolitan areas) (<https://www.ers.usda.gov/topics/rural-economy-population/rural-classifications/>). There is a priority for the U.S. territories including American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands. Priority 1 for FY 2026 is open to new and existing applicants; however, priority will be given to organizations that have a demonstrated track record of serving the Tribal or rural community, or U.S. territory that they are proposing to serve. Additionally, applicants should have demonstrated cultural awareness and language access for the areas they are proposing to serve.

Under Priority 2, VA will provide funding to existing grantees who have at least one of the following accreditations: 3-year accreditation from CARF in Employment and Community Services; Rapid Rehousing and Homeless Prevention standards, a 4-year accreditation in Housing Stabilization and Community Living Services from the COA or a 3-year accreditation in the JC's Behavioral Health Care: Housing Support Services Standards. Priority 2 applicants must demonstrate that accreditation is active at the date of submission, and accreditation must be maintained throughout the project period and/or funding cycle. Existing grantees previously awarded under this priority with grants scheduled to end by

September 30, 2025, must apply using the renewal application. To be eligible for renewal of a supportive services grant, applicants' program must be substantially the same as the program of the grantee's current award. Renewal applications can request funding that is equal to or less than their current annualized amount. If sufficient funding is available, VA may provide an increase of the previous year's award. Any funding increase, if provided, will be based on previous grant funding utilization and enrollment. VA may award a 3-year project period to those submitting successful applications who remain in good standing and show proof of accreditation as defined above. VA may also elect to decrease the grant award to an amount that is less than the previous fiscal year award. This will be done based on available funds as well as previous grant utilization and enrollment.

Grantees previously awarded a 3-year project period that is not scheduled to end by September 30, 2025, cannot submit a renewal application under this NOFO but instead are required to submit a Letter of Intent (LOI) application package by the NOFO deadline indicating their intention of continuing SSVF services in FY 2026. All grantees submitting a LOI must include a letter of support from the CoC (see section II.C.6.) and a proposed budget for FY 2026. Priority 2 grantees submitting a LOI must also submit proof of continued accreditation. Based on the results of audit findings or performance concerns, VA may change grantees' previously awarded funds from Priority 2 to Priority 3 at renewal. The reprioritized grantees would then be required to submit a renewal application for the FY 2027 grant year.

Under Priority 3, existing SSVF grantees not included in Priority 2 but who have annual awards and are seeking to renew their grants, may apply. Existing grantees are SSVF grantees that have a MOA for operations through September 30, 2025. Priority 3 includes all other existing grantees seeking to renew their annual grant awards. Priority 3 applicants must apply using the renewal application. To be eligible for renewal of a supportive services grant, Priority 3 applicants' program must be substantially the same as the program of the grantees' current grant award. Renewal applications can request funding that is equal to or less than their current annualized award. If sufficient funding is available, VA may provide an increase of the previous year's award. Any funding increase, if provided, will be based on previous grant funding utilization and

enrollment. VA may also elect to decrease the grant award to an amount that is less than the previous fiscal year award. This will be done based on available funds as well as previous grant utilization and enrollment.

C. Allocation of Funds: Funding for grantees for a 1-year project period (Priority 3) or a 3-year project period (Priority 1 and 2) will be awarded under this NOFO beginning October 1, 2025. The followings requirements apply to supportive services grants awarded under this NOFO:

1. New and existing organizations can apply under Priority 1. For existing grantees, a new application is required if they are pursuing Priority 1.

2. Only existing grantees can apply under Priority 2 and Priority 3.

3. If a Priority 2 or 3 applicant is not renewed, all existing SSVF grants made to the non-renewed grantee, including awards made to support 62.34(a), will be discontinued on September 30, 2025.

4. If a grantee failed to use any previously awarded funds or had unspent funds returned to VA, VA may elect to limit the renewal award to the amount of funds used in the previous fiscal year or in the current fiscal year less the money swept.

5. If, during the course of the grant year, VA determines that grantee spending is not meeting the following minimum percentage milestones, VA may elect to recoup projected unused funds and reprogram such funds to provide supportive services in areas with higher need. Should VA elect to recoup unspent funds, reductions in available grant funds would take place the first business day following the end of the quarter. VA may elect to recoup funds under the following circumstances:

a. By the end of the first quarter (December 31, 2025) of the grantee's supportive services annualized grant award period, the grantee's cumulative requests for supportive services grant funds are less than an amount equal to 15% of the total supportive services grant award. (During this same period, the grantee's cumulative requests for supportive services grant funds may not exceed 35% of the total supportive services grant award.)

b. By the end of the second quarter (March 31, 2026) of the grantee's supportive services annualized grant award period, the grantee's cumulative request for supportive services grant funds is less than an amount equal to 40% of the total supportive services grant award. (During this same period, the grantee's cumulative requests for supportive services grant funds may not

exceed 60% of the total supportive services grant award.)

c. By the end of the third quarter (June 30, 2026) of the grantee's supportive services annualized grant award period, the grantee's cumulative requests for supportive services grant funds are less than an amount equal to 65% of the total supportive services grant award. (During this same period, the grantee's cumulative requests for supportive services grant funds may not exceed 80% of the total supportive services grant award.)

6. Priority 2 and Priority 3 applicants who fail to provide a letter of support from at least one of the CoCs that they plan to serve will be eligible for renewal funding at a level no greater than 90% of their previous award. Applicants are responsible for determining who in each serviced CoC is authorized to provide such letters of support. Existing Priority 2 grantees operating under a 3-year project period that are only required to submit a LOI application package in response to this NOFO must also submit a letter of support from at least one of the CoC's that they plan to serve. The letter of support should include the following information described herein at 6a and 6b of this section. Applicants may seek an exception to this requirement if they submit a letter from the CoC stating that by policy they cannot provide a letter of support. To meet this requirement and allow the applicant to be eligible for full funding, letters must include the following:

a. A detailed description of the applicant's participation in the CoC's Coordinated Entry process or planning activities and overall community planning efforts (for example, confirmation of the applicant's active participation in coordinated entry; commitment to participate in coordinated entry; hours spent on a CoC-sponsored committee or work group; and the names of said committees or work groups).

b. The applicant's contribution to the CoC's coordinated entry process capacity building efforts, detailing the specific nature of this contribution (for example, the hours of staff time and/or the amount of funding provided), if such SSVF capacity has been requested by the CoC or otherwise has shown to be of value to the CoC.

7. Should additional funding become available over the course of the grant term from funds recouped under the Award Information section of this Notice, from funds that are voluntarily returned by grantees, from funds that become available due to a grant termination, or from other funds still available for grant awards, VA may elect

to offer these funds to grantees in areas where demand has exceeded available SSVF resources. Additional funds will be provided to the highest scoring grantee in the selected area who is in compliance with their grant agreement and has the capacity to use the additional funds.

D. Supportive Services Grant Award Period: Priority 1 and 2 grants are made for a 3-year project period. Priority 3 grants are made for a 1-year period. Some grantees who obtain accreditation may be eligible to apply as Priority 2 and could be selected for an award with the option to continue funding each year for up to 3 years, if they meet the criteria described herein at section VI.C.6. Grant renewals are eligible to be renewed subject to the availability of funding.

III. Eligibility Information

A. Eligible Applicants: Only eligible entities, as defined in 38 U.S.C. 2044(f), can apply in response to this NOFO. Eligible entities are private nonprofit organizations or consumer cooperatives.

B. Cost Sharing or Matching: None.

IV. Application and Submission Information

A. Obtaining an Application Package: Applications are located at <https://www.va.gov/homeless/ssvf/index.html>. Any questions regarding this process may be referred to the SSVF Program Office via email at SSVF@va.gov. For detailed SSVF Program information and requirements, see 38 CFR part 62 at: <https://www.ecfr.gov/current/title-38/chapter-I/part-62>.

B. Content and Form of Application: Applicants must submit applications electronically following instructions found at: <https://www.va.gov/homeless/ssvf/index.html>.

C. Submission Dates and Times: Applications for supportive services grants under the SSVF Program must be received by the SSVF Program Office by 4 p.m. eastern time on March 3, 2025. Awards made for supportive services grants will fund operations beginning October 1, 2025. Applications must arrive as a complete package. Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected. This includes letters of support which must be received within the application package, not separately. In addition, in the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this

practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays, computer service outages, or other delivery-related problems.

D. Funding Restrictions: Funding will be awarded for new and existing supportive services grants under this NOFO depending on funding availability. Priority 1, Priority 2, and Priority 3 applicants should fill out separate applications for each supportive services funding request. Priority 2 and Priority 3 applicants must use applications designated for renewal applicants. Funding will be awarded under this NOFO to all grantees beginning October 1, 2025.

1. Funding used for staff education and training cannot exceed 5% of the overall program grant award. This limitation does not include the cost to attend VA-mandated training. All training costs must be directly related to the provision of services to homeless Veterans and their families.

2. Expenses related to maintaining accreditation are allowable. Grantees are allowed to include expenses for seeking initial accreditation only once in a 5-year period. The expenses to renew full accreditation are allowed and are based on the schedule of the accrediting agency: for example, every 3 years for CARF and every 4 years for COA. Expenses related to the renewal of less than full accreditation are not allowed.

E. Other Submission Requirements:

1. Existing applicants applying for Priority 2 or Priority 3 grants may apply only as renewal applicants using the application designed for renewal grants.

2. At the discretion of VA, multiple grant proposals submitted by the same Lead agency may be combined into a single grant award if the proposals provide services to contiguous areas.

3. Additional supportive services grant application requirements are specified in the application package. Submission of an incorrect or incomplete application package will result in the application being rejected during threshold review. The application packages must contain all required forms and certifications. Selections will be made based on criteria described in 38 CFR part 62 and this NOFO. Applicants and grantees will be notified of any additional information needed to confirm or clarify information provided in the application and the deadline by which to submit such information. Applicants must submit applications electronically. Applications may not be mailed, hand carried, or faxed.

F. Intergovernmental Review

This NOFO is not subject to Executive Order 12372, Intergovernmental Review of Federal Programs. To learn more about your State's process, see the State Single Point of Contact List.

V. Application Review Information

A. Criteria

1. VA will screen all applications to identify those that meet the threshold requirements described in 38 CFR 62.21.

2. VA will use the criteria described in 38 CFR 62.24 to score grantees applying for renewal of a supportive services grant.

3. VA will use the criteria described in 38 CFR 62.22 and 62.23 to score new applications for supportive services grants.

B. Review and Selection Process: VA will review all supportive services grant applications in response to this NOFO. This section pertains to renewal applications only. A review will be conducted according to the following steps:

1. LOI applications that meet threshold requirements described in 38 CFR 62.21 will be offered funding.

2. Score all renewal applications that meet the threshold requirements described in 38 CFR 62.21.

3. Rank those renewal applications that score at least 75 cumulative points and receive at least 1 point under each of the categories identified for renewal applicants in 38 CFR 62.24. The applications will be ranked in order from highest to lowest scores in accordance with 38 CFR 62.25 for renewal applicants.

4. VA will use the ranked scores of renewal applications as the primary basis for selection. However, VA also will use the following considerations in 38 CFR 62.23(d) to select applicants for funding:

(a) Give preference to applications that provide or coordinate the provision of supportive services for very low-income Veteran families transitioning from homelessness to permanent housing. Consistent with this preference, applicants are required to enroll no less than 60% of participants who are homeless as defined in 38 CFR 62.11(b) and (c). Rural communities are defined using USDA's definition of a rural area. Rural means: 1. Open countryside; 2. Rural towns (places with fewer than 5,000 people and 2,000 housing units); and 3. urban areas with populations ranging up to 50,000 people that are not part of larger labor market areas (metropolitan areas) (<https://www.ers.usda.gov/topics/rural-economy-population/rural-classifications/>).

Other areas may seek waivers to this 60% requirement when grantees can demonstrate significant local progress toward eliminating homelessness in the target service area. Waiver requests must include data from authoritative sources such as point-in-time

counts and by-name-lists indicating that a community has made enough progress on reducing homelessness that it can shift additional resources to prevention. Waiver requests must include an endorsement by the impacted CoC explicitly stating that a shift in resources from rapid rehousing to prevention will not result in an increase in homelessness. Grantees who are exempt or receive waivers to this 60% requirement must still enroll no less than 40% of all participants who are homeless as defined in 38 CFR 62.11 (b) and (c).

(b) To the extent practicable, ensure that supportive services grants are equitably distributed across geographic regions, including rural communities, U.S. territories, and Tribal lands. This equitable distribution criteria will be used to ensure that SSVF resources are provided to those communities with the highest need as identified by VA's assessment of expected demand and available resources to meet that demand.

5. Subject to the considerations noted previously herein at paragraph B.4. VA will fund the highest-ranked applicants for which funding is available.

C. Risk Review

Prior to making a Federal grant award, the SSVF Program Office will review eligibility information for applicants and financial integrity information for applicants available in the Office of Management and Budget-designated databases per the Payment Integrity Information Act of 2019 (Pub. L. 116–117), the “Do Not Pay Initiative” (31 U.S.C. 3354), and 41 U.S.C. 2313.

The SSVF program Office will review the responsibility and qualification records available in the non-public segment of SAM.gov prior to making a Federal award. The SSVF Program Office will conduct a risk assessment to evaluate the risks posed by applicants before issuing a Federal award. Items that will be considered include: financial stability, management systems and standards, history of performance (if applicable), audit reports and findings (if applicable), and the ability to effectively implement the grant requirements.

VI. Award Administration Information

A. Award Notices: Although subject to change, the SSVF Program Office expects to announce grant recipients for all applicants in the fourth quarter of FY 2025 with grants beginning October 1, 2025. Prior to executing a funding agreement, VA will contact the applicants, make known the amount of proposed funding, and verify that the applicant is still seeking funding. Once VA verifies that the applicant is still seeking funding, VA will execute an agreement and make payments to the grant recipient in accordance with 2 CFR part 200, 38 CFR part 62 and this NOFO.

B. Administrative and National Policy Requirements: As cited in 38 CFR 62.38 SSVF grants cannot be used to fund ineligible activities.

C. Reporting: VA places great emphasis on the responsibility and accountability of grantees. As described in 38 CFR 62.63 and 62.71, VA has procedures in place to monitor supportive services provided to participants and outcomes associated with the supportive services provided under the SSVF Program. Applicants should be aware of the following:

1. Upon execution of a supportive services grant agreement with VA, grantees will have a VA Regional Coordinator assigned by the SSVF Program Office who will provide oversight and monitor supportive services provided to participants.

2. Grantees will be required to enter data into a Homeless Management Information System (HMIS) web-based software application. This data will consist of information on the participants served and types of supportive services provided by grantees. Grantees must treat the data for activities funded by the SSVF Program separate from that of activities funded by other programs.

Grantees will be required to work with their HMIS Administrators to export client-level data for activities funded by the SSVF Program to VA on at least a monthly basis. The completeness, timeliness and quality of grantee uploads into HMIS will be factored into the evaluation of their grant performance.

3. VA will complete annual monitoring evaluations of each grantee. Monitoring will also include the submittal of quarterly and annual financial and performance reports by the grantee. The grantee will be expected to demonstrate adherence to the grantee's proposed program as described in the grantee's application. All grantees are subject to audits conducted by VA or its representative. Pursuant to § 62.80, when a grantee fails to comply with the terms, conditions, or standards of the supportive services grant, VA may, on 7-days notice to the grantee, withhold further payment, suspend the supportive services grant, or prohibit the grantee from incurring additional obligations of supportive services grant funds, pending corrective action by the grantee or a decision to terminate. Additionally, grantees who are identified as not meeting performance standards pursuant to § 62.80 are subject to withholding, suspension, de-obligation, termination, and recovery of funds by VA.

4. Grantees will be assessed based on their ability to meet critical performance measures. In addition to meeting program requirements defined by the regulations and applicable NOFO(s), grantees will be assessed on their ability to place participants into housing and the housing retention rates of participants served. Higher placement for homeless participants and higher housing retention rates for participants at risk of homelessness are expected for low-income Veteran families when compared to extremely low-income Veteran families with incomes below 30% of the area median income.

5. Grantees' performance will be assessed based on their consumer satisfaction scores. These scores include the participation rates and satisfaction results of the standardized survey offered to all participant households.

6. Organizations receiving priority 1 or renewal awards that have had ongoing SSVF program operation for at least 1 year (as measured from the start of initial SSVF services until March 3, 2025 may be eligible for a 3-year project period.

Grantees meeting outcome goals defined by VA and in substantial compliance with their grant agreements (defined by meeting targets and having no outstanding corrective action plans) and who, in addition, are providing supportive services to Veterans in Tribal or rural communities or the U.S. territories or who have a 3-year accreditation from either CARF in Employment and Community Services: Rapid Rehousing and Homeless Prevention standards, a 4-year accreditation from COA in Supported Community Living Services, or a 3-year accreditation in The Joint Commission's Behavioral Health Care: Housing Support Services Standards are eligible for a 3-year project period. (NOTE: Multi-year project periods are contingent on funding availability.) If awarded a multiple year renewal, grantees may be eligible for funding increases as defined in NOFOs that correspond to years two and three of their renewal funding. At its discretion, VA may reduce 3-year project periods to a 1-year project period based on previous fiscal year performance concerns or most recent audit results.

D. Post-Award Requirements and Administration

The terms and conditions for this award will be outlined in the MOA. Applicants may review the general terms and conditions of award at <https://www.va.gov/homeless/ssvf/grants-management/>. In accepting a VA award, the grantee assumes legal, financial, administrative, and

programmatic responsibility for administering the award. Grantees must comply with all applicable appropriations, laws, statutes, rules, regulations (e.g., 38 CFR part 50, 38 CFR part 62, 2 CFR part 200), NOFO requirements, Executive Orders governing assistance awards, statutory and national policy requirements (e.g., 2 CFR 200.300 and 41 U.S.C. 4712), and these terms and conditions which will be incorporated into this award. While VA may provide grantees with reminder notices regarding award requirements, the absence of receiving such notice will not relieve grantees of their responsibility to meet all applicable award requirements. Under the MOA, grantees must agree to provide what is outlined in the grant award and application along with any modifications that occur as a result of official changes approved by the VA SSVF Program Office.

VII. Other Information

A. VA Goals and Objectives for Funds Awarded Under this NOFO: In accordance with 38 CFR 62.24(c), VA will evaluate an applicant's compliance with VA goals and requirements for the SSVF Program. VA goals and requirements include the provision of supportive services designed to enhance the housing stability and independent living skills of very low-income Veteran families occupying permanent housing across geographic regions and program administration in accordance with all applicable laws, regulations, guidelines, and the SSVF grant agreement. For purposes of this NOFO, VA goals and requirements also include the provision of supportive services designed to rapidly re-house or prevent homelessness among people in the following target populations who also meet all requirements for being part of a very low-income Veteran family occupying permanent housing:

1. Veteran families earning less than 30% of area median income as most recently published by HUD for programs under section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f) (<https://www.huduser.org>).

2. Veterans with at least one dependent family member.

3. Veterans returning from Operation Enduring Freedom, Operation Iraqi Freedom or Operation New Dawn).

4. Veteran families located in a community, as defined by HUD's CoC, or a county not currently served by a SSVF grantee.

5. Veteran families located in a community, as defined by HUD's CoC, where the current level of SSVF services is not sufficient to meet demand of

literally homeless Veterans and currently homeless Veteran families. CoC and ESG Homeless Eligibility—Category 1: Literally Homeless—HUD Exchange.

6. Veteran families located in a rural area.

7. Veteran families located on Tribal areas.

8. Veteran families located in a U.S. territory.

B. Payments of Supportive Services Grant Funds: Grantees will receive payments electronically through the HHS Payment Management System. Grantees will have the ability to request payments as frequently as they choose subject to the following limitations:

1. During the first quarter of the grantee's supportive services annualized grant award period, the grantee's cumulative requests for supportive

services grant funds may not exceed 35% of the total supportive services grant award without written approval by VA.

2. By the end of the second quarter of the grantee's supportive services annualized grant award period, the grantee's cumulative requests for supportive services grant funds may not exceed 60% of the total supportive services grant award without written approval by VA.

3. By the end of the third quarter of the grantee's supportive services annualized grant award period, the grantee's cumulative requests for supportive services grant funds may not exceed 80% of the total supportive services grant award without written approval by VA.

4. By the end of the fourth quarter of the grantee's supportive services

annualized grant award period, the grantee's cumulative requests for supportive services grant funds may not exceed 100% of the total supportive services grant award.

Signing Authority:

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on December 16, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

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

[FR Doc. 2024–30662 Filed 12–23–24; 8:45 am]

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Part II

Department of Energy

10 CFR Part 430

Energy Conservation Program: Energy Conservation Standards for
Consumer Gas-fired Instantaneous Water Heaters; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2017–BT–STD–0019]

RIN 1904–AF65

Energy Conservation Program: Energy Conservation Standards for Consumer Gas-fired Instantaneous Water Heaters

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

ACTION: Final rule.

SUMMARY: The Energy Policy and Conservation Act, as amended (“EPCA”), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including gas-fired instantaneous water heaters, which are a type of consumer water heater. EPCA also requires the U.S. Department of Energy (“DOE” or the “Department”) to periodically review its existing standards to determine whether more-stringent standards would be technologically feasible and economically justified, and would result in significant energy savings. In this final rule, DOE is adopting amended energy conservation standards for gas-fired instantaneous water heaters. It has determined that the amended energy conservation standards for these products would result in significant conservation of energy, and are technologically feasible and economically justified.

DATES: The effective date of this rule is March 11, 2025. Compliance with the amended standards established for gas-fired instantaneous water heaters in this final rule is required on and after December 26, 2029.

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

The docket web page can be found 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.

For further information on how to review the docket, contact the Appliance and Equipment Standards

Program staff at (202) 287–1445 or by email: ApplianceStandardsQuestions@ee.doe.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Julia Hegarty, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC, 20585–0121. Telephone: (202) 586–0729. Email: ApplianceStandardsQuestions@ee.doe.gov.

Mr. Uchechukwu “Emeka” Eze, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC, 20585–0121. Telephone: (240) 961–8879. Email: uchechukwu.eze@hq.doe.gov.

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 - C. Review Under the Paperwork Reduction Act
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 - E. Review Under Executive Order 13132
 - F. Review Under Executive Order 12988
 - G. Review Under the Unfunded Mandates Reform Act of 1995
 - H. Review Under the Treasury and General Government Appropriations Act, 1999
 - I. Review Under Executive Order 12630
 - J. Review Under the Treasury and General Government Appropriations Act, 2001
 - K. Review Under Executive Order 13211
 - L. Information Quality
 - M. Congressional Notification
- VII. Approval of the Office of the Secretary

I. Synopsis of the Final Rule

The Energy Policy and Conservation Act, Public Law 94–163, as amended (“EPCA”),¹ authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317, as codified) Title III, Part B of EPCA² established the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6291–6309) These products include gas-fired instantaneous water heaters, the subject of this document. (42 U.S.C. 6292(a)(4))

Pursuant to EPCA, DOE is required to review its existing energy conservation standards for covered consumer products no later than six years after issuance of any final rule establishing or amending a standard. (42 U.S.C. 6295(m)(1)) Pursuant to that statutory provision, DOE must publish either a notification of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking (“NOPR”) including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (*Id.*) 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 significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) DOE has conducted this review of the energy conservation standards for gas-fired instantaneous water heaters under EPCA’s six-year-lookback authority described herein. Additionally, for gas-fired instantaneous water heaters with 2

or more gallons of storage volume and gas-fired instantaneous water heaters with less than or equal to 50,000 British thermal units per hour (“Btu/h”) of input, DOE is following the provisions in EPCA to translate the current energy factor (“EF”)–based standards to the uniform energy factor (“UEF”) metric. (42 U.S.C. 6295(e)(5))

In accordance with these and other statutory provisions discussed in this document, DOE analyzed the benefits and burdens of four trial standard levels (“TSLs”) for gas-fired instantaneous water heaters with less than 2 gallons of effective storage volume and rated inputs greater than 50,000 Btu/h. The TSLs and their associated benefits and burdens are discussed in detail in sections V.A through V.C of this document. As discussed in section V.C of this document, DOE has determined that TSL 2 represents the maximum improvement in energy efficiency that is technologically feasible and economically justified. The adopted standards, which are expressed in UEF are shown in table I.1. These standards apply to products with effective storage volumes less than 2 gallons and input ratings greater than 50,000 Btu/h (as listed in table I.1) and manufactured in, or imported into, the United States starting on December 26, 2029.

For all other gas-fired instantaneous water heaters, DOE is adopting new standards that do not constitute an increase to stringency, but simply a change in rating metric to the UEF descriptor. These standards apply to all remaining products listed in table I.1 and manufactured in, or imported into, the United States starting on December 26, 2029.

TABLE I.1—ENERGY CONSERVATION STANDARDS FOR GAS-FIRED INSTANTANEOUS WATER HEATERS

Product class	Effective storage volume (V_{eff}) * and input rating	Draw pattern	UEF
Gas-fired Instantaneous Water Heater	<2 gallons (“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	$0.2534 - (0.0018 \times V_{\text{eff}})$
		Low	$0.5226 - (0.0022 \times V_{\text{eff}})$
		Medium	$0.5919 - (0.0020 \times V_{\text{eff}})$
		High	$0.6540 - (0.0017 \times V_{\text{eff}})$

* V_{eff} is the Effective Storage Volume (in gallons), as determined pursuant to 10 CFR 429.17.

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.

The following sections of this synopsis summarize the findings of the analysis carried out for gas-fired instantaneous water heaters with less than 2 gallons of effective storage volume and rated inputs greater than 50,000 Btu/h.

A. Benefits and Costs to Consumers³

The average life-cycle cost (“LCC”) savings are \$112, and the simple payback period (“PBP”),⁴ 8.9 years, is less than the 20-year average lifetime of a gas-fired instantaneous water heater (see section IV.F of this document).

DOE’s analysis of the impacts of the adopted standards on consumers is described in section IV.F of this document.

B. Impact on Manufacturers

The industry net present value (“INPV”) is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2024–2059). Using a real discount rate of 9.6 percent, DOE estimates that the INPV for manufacturers of gas-fired instantaneous water heaters in the case without amended standards is \$1,193.9 million in 2023\$. Under the adopted standards, DOE estimates the change in INPV to range from –2.8 percent to 3.4 percent, which is approximately –\$33.7 million to \$40.5 million. In order to bring products into compliance with amended standards, it is estimated that industry will incur total conversion costs of \$20.4 million.

DOE’s analysis of the impacts of the adopted standards on manufacturers is described in section IV.J of this document. The analytic results of the manufacturer impact analysis (“MIA”) are presented in section V.B.2 of this document.

C. National Benefits and Costs

DOE’s analyses indicate that the adopted energy conservation standards for gas-fired instantaneous water heaters would save a significant amount of energy. Relative to the case without amended standards, the lifetime energy savings for gas-fired instantaneous water

heaters purchased during the 30-year period that begins in the anticipated year of compliance with the amended standards (2030–2059), amount to 0.58 quadrillion British thermal units (“Btu”), or quads.⁵ This represents a savings of 1.9 percent relative to the energy use of these products in the case without amended standards (referred to as the “no-new-standards case”).

The cumulative net present value (“NPV”) of total consumer benefits of the standards for gas-fired instantaneous water heaters ranges from \$0.87 billion (at a 7-percent discount rate) to \$3.06 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 gas-fired instantaneous water heaters purchased during the period 2030–2059.

In addition, the adopted standards for gas-fired instantaneous water heaters are projected to yield significant environmental benefits. DOE estimates that the standards will result in cumulative emission reductions (over the same period as for energy savings) of 32 million metric tons (“Mt”) of carbon dioxide (“CO₂”), 0.12 thousand tons of sulfur dioxide (“SO₂”), 86 thousand tons of nitrogen oxides (“NO_x”), 398 thousand tons of methane (“CH₄”), 0.06 thousand tons of nitrous oxide (“N₂O”), and an increase of 0.0004 tons of mercury (“Hg”) due to a small increase in electricity use at the adopted standards.⁷

DOE estimates the value of climate benefits from a reduction in greenhouse gases (“GHG”) using different estimates of the social cost of CO₂ (“SC–CO₂”), the social cost of methane (“SC–CH₄”), and the social cost of nitrous oxide (“SC–N₂O”).⁸ Together these represent the social cost of GHG (“SC–GHG”). DOE used an updated set of SC–GHG estimates published in 2023 by the Environmental Protection Agency

(“EPA”) (“2023 SC–GHG”), as well as the interim SC–GHG values (in terms of benefit per ton of GHG avoided) developed by an Interagency Working Group on the Social Cost of Greenhouse Gases (“IWG”) in 2021 (“2021 Interim SC–GHG”), which DOE used in the notice of proposed rulemaking for this rule before the updated values were available.⁹ These values are discussed in section IV.L of this document. The climate benefits associated with the average SC–GHG at a 2-percent near-term Ramsey discount rate using the 2023 SC–GHG estimates are estimated to be \$7.1 billion, and the climate benefits associated with the average 2021 Interim SC–GHG estimates at a 3-percent discount rate are estimated to be \$1.7 billion. DOE notes, however, that the adopted standards would be economically justified even without inclusion of the estimated monetized benefits of reduced GHG emissions.

DOE estimated the monetary health benefits of SO₂ and NO_x emissions reductions using benefit per ton estimates from the EPA’s Benefits Mapping and Analysis Program,¹⁰ as discussed in section IV.L of this document. DOE did not monetize the change in mercury emissions because the quantity is very small. DOE estimated the present value of the health benefits would be \$0.9 billion using a 7-percent discount rate, and \$2.7 billion using a 3-percent discount rate.¹¹ DOE is currently only monetizing health benefits from changes in ambient fine particulate matter (“PM_{2.5}”) concentrations from two precursors (SO₂ and NO_x), and from changes in ambient ozone from one precursor (NO_x), 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.2 summarizes the monetized benefits and costs expected to result from the amended standards for gas-

³ All monetary values in this document are expressed in 2023 dollars unless indicated otherwise. For purposes of discounting future monetary values, the present year in the analysis was 2024.

⁴ The average LCC savings refer to consumers that are affected by a standard and are measured relative to the efficiency distribution in the no-new-standards case, which depicts the market in the compliance year in the absence of new or amended standards (see section IV.F.9 of this document). The simple PBP, which is designed to compare specific efficiency levels, is measured relative to the baseline product (see section IV.C of this document).

⁵ The quantity refers to full-fuel-cycle (“FFC”) energy savings. FFC energy savings includes the energy consumed in extracting, processing, and transporting primary fuels (i.e., coal, natural gas, petroleum fuels), and, thus, presents a more complete picture of the impacts of energy efficiency standards. For more information on the FFC metric, see section IV.H.2 of this document.

⁶ A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO₂ 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 reflects, to the extent possible, laws and regulations adopted through mid-November 2022, including the Inflation Reduction Act. See section IV.K of this document for further discussion of AEO2023 assumptions that affect air pollutant emissions.

⁸ Estimated climate-related benefits are provided in compliance with Executive Order 12866.

⁹ *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990* published in February 2021 by the IWG. (“February 2021 SC–GHG TSD”). www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocumentSocialCostofCarbonMethaneNitrousOxide.pdf; https://www.epa.gov/system/files/documents/2023-12/eo12866_oil-and-gas-nsp-eg-climate-review-2060-av16-final-rule-20231130.pdf; https://www.epa.gov/system/files/documents/2023-12/epa_scghg_2023_report_final.pdf (last accessed July 3, 2024).

¹⁰ U.S. EPA. Estimating the Benefit per Ton of Reducing Directly-Emitted PM_{2.5}, PM_{2.5} Precursors and Ozone Precursors from 21 Sectors. Available at: www.epa.gov/benmap/estimating-benefit-ton-reducing-pm25-precursors-21-sectors.

¹¹ DOE estimates the economic value of these emissions reductions resulting from the considered TSLs for the purpose of complying with the requirements of Executive Order 12866.

fired instantaneous 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.2—SUMMARY OF MONETIZED BENEFITS AND COSTS OF THE ADOPTED ENERGY CONSERVATION STANDARDS FOR GAS-FIRED INSTANTANEOUS WATER HEATERS AT TSL 2 SHIPPED DURING THE PERIOD 2030–2059

[$V_{\text{eff}} < 2$ gal, Rated Input $> 50,000$ Btu/h]

	Billion 2023\$
3% discount rate	
Consumer Operating Cost Savings	4.5
Climate Benefits * (2023 SC–GHG estimates)	7.1
Climate Benefits * (2021 interim SC–GHG estimates)	1.7
Health Benefits **	2.7
Total Benefits † (2023 SC–GHG estimates)	14.3
Total Benefits † (2021 interim SC–GHG estimates)	8.9
Consumer Incremental Product Costs ‡	1.5
Net Benefits † (2023 SC–GHG estimates)	12.8
Net Benefits † (2021 interim SC–GHG estimates)	7.4
Change in Producer Cashflow (INPV) **	(0.03)–0.04
7% discount rate	
Consumer Operating Cost Savings	1.7
Climate Benefits * (2023 SC–GHG estimates)	7.1
Climate Benefits * (2021 interim SC–GHG estimates)	1.7
Health Benefits **	0.9
Total Benefits † (2023 SC–GHG estimates)	9.6
Total Benefits † (2021 interim SC–GHG estimates)	4.2
Consumer Incremental Product Costs ‡	0.8
Net Benefits † (2023 SC–GHG estimates)	8.9
Net Benefits † (2021 interim SC–GHG estimates)	3.4
Change in Producer Cashflow (INPV) **	(0.03)–0.04

Note: These results include consumer, climate, and health benefits that accrue after 2030 from the products shipped during the period 2030–2059.

* Climate benefits are calculated using different estimates of the social cost of carbon (SC–CO₂), methane (SC–CH₄), and nitrous oxide (SC–N₂O). Climate benefits are estimated using two separate sets of estimates of the social cost for each greenhouse gas, an updated set published in 2023 by the Environmental Protection Agency (EPA) (“2023 SC–GHG”) and the interim set of estimates used in the NOPR which were published in 2021 by the Interagency Working Group on the SC–GHG (IWG) (“2021 Interim 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 2 percent near-term Ramsey discount rate are shown for the 2023 SC–GHG estimates, and the climate benefits associated with the average SC–GHG at a 3 percent discount rate are shown for the 2021 interim SC–GHG estimates.

** Health benefits are calculated using benefit-per-ton values for NO_x and SO₂. DOE is currently only monetizing (for SO₂ 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 5 of the EPA’s *Estimating the Benefit per Ton of Reducing PM_{2.5} Precursors from 21 Sectors* TSD provides a summary of the health impact endpoints quantified in the analysis. 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 2-percent near-term Ramsey discount rate for the 2023 estimate and the average SC–GHG with 3-percent discount rate for the 2021 interim SC–GHG 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 national impacts analysis 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 (*i.e.*, manufacturer impact analysis, or “MIA”). See section IV.J of this document. 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 INPV. The change in INPV 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 percent that is estimated in the MIA (see chapter 12 of the final rule technical support document (“TSD”) for a complete description of the industry weighted average cost of capital). For gas-fired instantaneous water heaters, the change in INPV ranges from –\$34 million to \$41 million. DOE accounts for that range of likely impacts in analyzing whether a TSL is economically justified. See section V.C of this document. DOE is presenting the range of impacts to the INPV under two manufacturer 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 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 of this document to provide additional context for assessing the estimated impacts of this final rule 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 INPV into the net benefit calculation (2023 SC–GHG estimates) for this final rule, the net benefits would be \$12.8 billion at 3-percent discount rate and \$8.9 billion at 7-percent discount rate. Parentheses indicate negative () values.

The benefits and costs of the adopted standards can also be expressed in terms of annualized values. The monetary values for the total annualized net benefits are: (1) the reduced consumer operating costs, minus (2) the increase in product purchase prices and installation costs, plus (3) the value of climate and health benefits of emission reductions, all annualized.¹²

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 gas-fired instantaneous water heaters shipped during the period 2030–2059. The benefits associated with reduced emissions achieved as a result of the adopted standards are also calculated based on the lifetime of gas-fired instantaneous water heaters shipped during the period 2030–2059. Total benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with a 2 percent near-term Ramsey discount rate for the 2023

SC–GHG estimates and the average SC–GHG with 3-percent discount rate for the 2021 interim SC–GHG estimates.¹³

Table I.3 presents the total estimated monetized benefits and costs associated with the adopted 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 SO₂ emissions, and the 2-percent near-term Ramsey discount rate case or the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated cost of the standards adopted in this rule is \$88 million per year in increased equipment costs, while the estimated annual benefits are \$187 million in reduced equipment operating costs, \$349 million in climate benefits (using the 2023 SC–GHG estimates) or \$98 million in climate benefits (using the 2021 interim SC–GHG estimates), and \$101 million in health benefits. In this case, the net

benefit would amount to \$549 million per year (using the 2023 SC–GHG estimates) or \$297 million per year (using the 2021 interim SC–GHG estimates).

Using a 3-percent discount rate for consumer benefits and costs and health benefits from reduced NO_x and SO₂ emissions, and the 2-percent near-term Ramsey discount rate case or the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated cost of the standards is \$87 million per year in increased equipment costs, while the estimated annual benefits are \$268 million in reduced operating costs, \$349 million in climate benefits (using the 2023 SC–GHG estimates) or \$98 million in climate benefits (using the 2021 interim SC–GHG estimates), and \$158 million in health benefits. In this case, the net benefit would amount to \$689 million per year (using the 2023 SC–GHG estimates) or \$437 million per year (using the 2021 interim SC–GHG estimates).

TABLE I.3—ANNUALIZED BENEFITS AND COSTS OF THE ADOPTED ENERGY CONSERVATION STANDARDS FOR GAS-FIRED INSTANTANEOUS WATER HEATERS AT TSL 2 SHIPPED DURING THE PERIOD 2030–2059

[V_{eff} <2 gal, rated input >50,000 Btu/h]

	Million 2023\$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	268	249	288
Climate Benefits * (2023 SC–GHG estimates)	349	344	355
Climate Benefits * (2021 interim SC–GHG estimates)	98	96	100
Health Benefits **	158	156	161
Total Benefits † (2023 SC–GHG estimates)	776	749	804
Total Benefits † (2021 interim SC–GHG estimates)	525	502	548
Consumer Incremental Product Costs ‡	87	86	89
Net Benefits † (2023 SC–GHG estimates)	689	663	715
Net Benefits † (2021 interim SC–GHG estimates)	437	416	459
Change in Producer Cashflow (INPV) §§	(3)–4	(3)–4	(3)–4
7% discount rate			
Consumer Operating Cost Savings	187	174	200
Climate Benefits * (2023 SC–GHG estimates)	349	344	355
Climate Benefits * (2021 interim SC–GHG estimates)	98	96	100
Health Benefits **	101	99	102
Total Benefits † (2023 SC–GHG estimates)	637	616	658
Total Benefits † (2021 interim SC–GHG estimates)	386	369	402
Consumer Incremental Product Costs ‡	88	87	90
Net Benefits † (2023 SC–GHG estimates)	549	530	568
Net Benefits † (2021 interim SC–GHG estimates)	297	283	312

¹² To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2024, 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., 2020 or 2030), and then

discounted the present value from each year to 2024. 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.

¹³ DOE notes that using consumption-based discount rates (e.g., 2 or 3 percent) is appropriate

when discounting the value of climate impacts. Combining climate effects discounted at an appropriate consumption-based discount rate with other costs and benefits discounted at a capital-based rate (i.e., 7 percent) is reasonable because of the different nature of the types of benefits being measured.

TABLE I.3—ANNUALIZED BENEFITS AND COSTS OF THE ADOPTED ENERGY CONSERVATION STANDARDS FOR GAS-FIRED INSTANTANEOUS WATER HEATERS AT TSL 2 SHIPPED DURING THE PERIOD 2030–2059—Continued

[V_{eff} <2 gal, rated input >50,000 Btu/h]

	Million 2023\$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
Change in Producer Cashflow (INPV) ‡‡	(3)–4	(3)–4	(3)–4

Note: These results include consumer, climate, and health benefits that accrue after 2059 from the products shipped during the period 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.H.3 of this document. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

* Climate benefits are calculated using different estimates of the global SC–GHG (see section IV.L of this document). Climate benefits are estimated using two separate sets of estimates of the social cost for each greenhouse gas, an updated set published in 2023 by the Environmental Protection Agency (EPA) (“2023 SC–GHG”) and the interim set of estimates used in the NOPR which were published in 2021 by the Interagency Working Group on the SC–GHG (IWG) (“2021 Interim 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 2 percent near-term Ramsey discount rate are shown for the 2023 SC–GHG estimates, and the climate benefits associated with the average SC–GHG at a 3 percent discount rate are shown for the 2021 interim SC–GHG estimates.

** Health benefits are calculated using benefit-per-ton values for NO_x and SO₂. DOE is currently only monetizing (for SO₂ 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 5 of the EPA’s *Estimating the Benefit per Ton of Reducing PM_{2.5} Precursors from 21 Sectors* TSD provides a summary of the health impact endpoints quantified in the analysis. 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 2-percent near-term Ramsey discount rate for the 2023 estimate and the average SC–GHG with 3-percent discount rate for the 2021 interim SC–GHG 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 national impacts analysis 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 (i.e., MIA). See section IV.J of this document. 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 INPV. The change in INPV is the present value of all changes in industry cash flow, including changes in production costs, capital expenditures, and manufacturer profit margins. The annualized change in INPV is calculated using the industry weighted average cost of capital value of 9.6 percent that is estimated in the MIA (see chapter 12 of the final rule TSD for a complete description of the industry weighted average cost of capital). For gas-fired instantaneous water heaters, the annualized change in INPV ranges from –\$3 million to \$4 million. DOE accounts for that range of likely impacts in analyzing whether a TSL is economically justified. See section V.C of this document. DOE is presenting the range of impacts to the INPV under two manufacturer 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 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 annualized change in INPV in the above table, drawing on the MIA explained further in section IV.J of this document to provide additional context for assessing the estimated impacts of this final rule 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 INPV into the annualized net benefit calculation (2023 SC–GHG estimates) for this final rule, the annualized net benefits would range from \$686 million to \$693 million at 3-percent discount rate and would range from \$546 million to \$553 million at 7-percent discount rate. Parentheses indicate negative () values.

DOE’s analysis of the national impacts of the adopted standards is described in sections IV.H, IV.K, and IV.L of this document.

D. Conclusion

DOE concludes that the standards adopted in this final rule represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. Specifically, with regards to technological feasibility products achieving these standard levels are already commercially available. As for economic justification, DOE’s analysis shows that the benefits of the standards exceed, to a great extent, the burdens of the standards.

Using a 7-percent discount rate for consumer benefits and costs and NO_x and SO₂ reduction benefits, and a 2-percent near-term Ramsey discount rate

case or the 3-percent discount rate case for GHG social costs, the estimated cost of the standards for gas-fired instantaneous water heaters is \$88 million per year in increased product costs, while the estimated annual benefits are \$187 million in reduced product operating costs, \$349 million in climate benefits (using the 2023 SC–GHG estimates) or \$98 million in climate benefits (using the 2021 interim SC–GHG estimates), and \$101 million in health benefits. The net benefit amounts to \$549 million per year (using the 2023 SC–GHG estimates) or \$297 million per year (using the 2021 interim SC–GHG estimates). DOE notes that the net benefits are substantial even in the absence of the climate benefits,¹⁴ and

¹⁴ The information on climate benefits is provided in compliance with Executive Order 12866.

DOE would adopt the same standards in the absence of such benefits.

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.¹⁵ 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 the impacts of products with relatively constant demand. Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis.

¹⁵ 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).

As previously mentioned, the standards are projected to result in estimated national energy savings (“NES”) of 0.58 quads full-fuel-cycle (“FFC”), the equivalent of the primary annual energy use of 4 million homes. Based on these findings, DOE has determined the energy savings from the standard levels adopted in this final rule are “significant” within the meaning of 42 U.S.C. 6295(o)(3)(B). A more detailed discussion of the basis for these conclusions is contained in the remainder of this document and the accompanying TSD.

II. Introduction

The following section briefly discusses the statutory authority underlying this final rule, as well as some of the relevant historical background related to the establishment of standards for gas-fired instantaneous water heaters, which, as discussed in section III.B of this document, are a subset of consumer water heaters. Gas-fired instantaneous water heaters are defined at 10 CFR 430.2 as a water heater that uses gas as the main energy source, has a nameplate input rating less than 200,000 Btu/h, and contains no more than one gallon of water per 4,000 Btu per hour of input.

A. Authority

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317, as codified) Title III, Part B of EPCA¹⁶ established the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6291–6309) These products include gas-fired instantaneous water heaters, the subject of this document. (42 U.S.C. 6292(a)(4))

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 in limited circumstances for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (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 product complies with the applicable energy conservation standards and as the basis for any representations regarding the energy use or energy efficiency of the product. (42 U.S.C. 6295(s) and 42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to evaluate whether a basic model complies with the applicable energy conservation standard(s). (42 U.S.C. 6295(s)) The DOE test procedures for gas-fired instantaneous water heaters appear at title 10 of the Code of Federal Regulations (“CFR”) part 430, subpart B, appendix E (“appendix E”).

EPCA prescribed energy conservation standards for gas-fired instantaneous water heaters (42 U.S.C. 6295(e)(1)) and directed DOE to conduct future rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(e)(4)) Not later than six years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination (“NOPD”) 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)) DOE must make the analysis on which a NOPD or NOPR is based publicly available and provide an opportunity for written comment. (42 U.S.C. 6295(m)(2)) Not later than two years after a NOPR is issued, DOE must publish a final rule amending the energy conservation standard for the product. (42 U.S.C. 6295(m)(3)(A))

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including gas-fired instantaneous 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 (“Secretary”) determines is

technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) 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))

Moreover, DOE may not prescribe a standard if: (1) for certain products, including gas-fired instantaneous water heaters, no test procedure has been established for the product; or (2) DOE determines by rule that the establishment of such standard will not result in significant conservation of energy (or, for certain products, water), or 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;

(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 considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

Further, EPCA, as codified, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

EPCA, as codified, also contains what is known as an “anti-backsliding”

¹⁶ As noted previously, for editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

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. A rule prescribing an energy conservation standard for a type (or class) of product must specify a different standard level for a type or class of products that has the same function or intended use if DOE determines that products within such group (A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a

performance-related feature justifies a different standard for a group of products, DOE considers such factors as the utility to the consumer of such a feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Finally, pursuant to the amendments to EPCA contained in the Energy Independence and Security Act of 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 is publishing this final rule pursuant to the six-year-lookback review requirement in EPCA described herein for gas-fired instantaneous water heaters with less than 2 gallons of effective storage volume and rated inputs greater than 50,000 Btu/h. (42 U.S.C. 6295(m)) DOE is also publishing this final rule pursuant to its authority to establish uniform efficiency

descriptors for covered water heaters (42 U.S.C. 6295(e)(5))

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 EF metric originally prescribed by EPCA with a requirement for compliance starting on April 16, 2015. 75 FR 20112 (Apr. 16, 2010) (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)).¹⁷ The Federal test procedure was revised to use a new metric, UEF, in a final rule published on July 11, 2014 (the “July 2014 UEF TP Final Rule”). 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”).

The resulting standards for gas-fired instantaneous water heaters set forth in DOE’s regulations at 10 CFR 430.32(d)(1) are shown in table II.1.

TABLE II.1—FEDERAL ENERGY EFFICIENCY STANDARDS FOR GAS-FIRED INSTANTANEOUS WATER HEATERS

Product class	Rated storage volume and input rating	Draw pattern *	Uniform energy factor
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

* 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.

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 that 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). The EF-based standards for gas-fired instantaneous water heaters which do not have UEF-based standards are set

¹⁷ The requirement for a consumer water heater test procedure using UEF 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).

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 GAS-FIRED CONSUMER WATER HEATERS

Product class	Energy factor *
Gas water heaters	0.62 – (0.0019 × V _r)

* V_r is the rated storage volume (in gallons), as determined pursuant to 10 CFR 429.17.

2. History of Standards Rulemaking for Gas-Fired Instantaneous Water Heaters

On May 21, 2020, DOE initiated the most recent rulemaking for consumer water heaters, including gas-fired instantaneous water heaters, 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.

On October 21, 2022, DOE received a set of recommendations on amended energy conservation standards for consumer water heaters from a coalition of seven public- and private-sector organizations, including two water heater manufacturers, three energy efficiency organizations, one environmental group, and one consumer organization—collectively the Joint Stakeholders—which, in part, addressed standards for gas-fired instantaneous water heaters. This coalition’s submission has been referred to as the “Joint Stakeholder Recommendation.”

(See Document No. 49 in Docket No. EERE–2017–BT–STD–0019.)

On July 28, 2023, DOE published in the **Federal Register** a notice of proposed rulemaking (“July 2023 NOPR”) and technical support document (“NOPR TSD”) with a 60-day comment period that proposed new and amended standards for consumer water heaters, including gas-fired instantaneous water heaters. 88 FR 49058 (Jul. 28, 2023). On September 13, 2023, DOE presented the proposed standards and accompanying analysis at a public meeting. The submissions DOE received in response to the July 2023 NOPR pertaining to gas-fired instantaneous water heaters are listed in table II.3.

TABLE II.3—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS SPECIFIC TO GAS-FIRED INSTANTANEOUS WATER HEATERS IN RESPONSE TO THE JULY 2023 NOPR

Commenter(s)	Abbreviation	Comment number in the docket	Commenter type
Individual	Hardy	0185	Individual.
NPGA, APGA, AGA, and Rinnai	NPGA, APGA, AGA, and Rinnai	0441	Trade Associations and Manufacturer.
Carolinas Natural Gas Coalition	CNGC	0648	Trade Association.
Jackson Energy Authority	JEA	0865	Utility.
Watertown Municipal Utilities	WMU	0872	Utility.
Philadelphia Gas Works	PGW	0886	Utility.
Southeast Gas	Southeast Gas	0887	Utility.
Consumer Energy Alliance	CEA	0914	Consumer Advocate.
American Society of Gas Engineers	ASGE	0976	Trade Association.
Chesapeake Utilities Corporation	CHPK	1008	Utility.
Georgia Office of the Attorney General	Attorney General of GA	1026	State Official/Agency.
Advanced Water Heating Initiative	AWHI	1036	Efficiency Organization.
Tennessee Attorney General's Office	Attorney General of TN	1149	State Official/Agency.
American Pipeline Contractors Association	APCA	1152	Trade Association.
Texas Public Policy Foundation	TPPF	1153	Academic Institute.
Midwest Energy Efficiency Alliance, Northeast Energy Efficiency Partnerships, Northwest Energy Efficiency Alliance, South-central Partnership for Energy Efficiency as a Resource, Southeast Energy Efficiency Alliance, Southwest Energy Efficiency Project	Joint Regional Advocacy Groups	1154	Efficiency Organizations.
American Council for an Energy-Efficient Economy, Natural Resources Defense Council, Appliance Standards Awareness Project, Northwest Energy Efficiency Alliance, Consumer Federation of America, Rheem Manufacturing	Joint Stakeholders	1156	Coalition.
Office of Governor Brian P. Kemp	Governor of GA	1157	State Official/Agency.
Bradford White Corporation	BWC	1164	Manufacturer.
Air-Conditioning, Heating, and Refrigeration Institute	AHRI	1167	Trade Association.
California Energy Commission	CEC	1173	State Official/Agency.
Pacific Gas and Electric Company; Southern California Edison; and San Diego Gas & Electric Company; collectively, the California Investor-owned Utilities	CA IOUs	1175	Utilities.
Huntsville Utilities	Huntsville Utilities	1176	Utility Association.
Rheem Manufacturing Company	Rheem	1177	Manufacturer.
AGA, APGA, NPGA, Spire	Gas Association Commenters	1181	Utility Association.
A.O. Smith Corporation	A.O. Smith	1182	Manufacturer.
Rinnai America Corporation	Rinnai	1186	Manufacturer.
Northwest Energy Efficiency Alliance	NEEA	1199	Efficiency Organization.
ONE Gas, Inc	ONE Gas	1200	Utility.
Noritz America Corporation	Noritz	1202	Efficiency Organization.

TABLE II.3—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS SPECIFIC TO GAS-FIRED INSTANTANEOUS WATER HEATERS IN RESPONSE TO THE JULY 2023 NOPR—Continued

Commenter(s)	Abbreviation	Comment number in the docket	Commenter type
Robert Bosch LLC	Bosch	1204	Manufacturer.
U.S. House of Representatives (Nine members, all from Georgia)	U.S. House of Representatives.	1205	Government Official/Agency.

Subsequent to the July 2023 NOPR, DOE determined it would continue to consider comments prior to finalizing standards for gas-fired instantaneous water heaters, although standards for all other consumer water heaters were finalized in a rule published on May 6, 2024 (“May 2024 Final Rule”). 89 FR 37778. Most recently, DOE published a notice of data availability in the **Federal Register** on July 23, 2024 (“July 2024 NODA”). 89 FR 59692. The purpose of the July 2024 NODA was to make

publicly available a full set of analytical results specific to gas-fired instantaneous water heaters, including updates as compared to the analysis conducted for the July 2023 NOPR after considering the comments received. DOE received comments in response to the July 2024 NODA from the interested parties listed in table II.4.

In response to the July 2024 NODA, a larger coalition of stakeholders co-signed a joint comment recommending standards for gas-fired instantaneous

water heaters. This coalition—consisting of AHRI (a trade association representing the views of multiple manufacturers), three energy efficiency organizations, one environmental group, and one consumer organization—submitted the previous Joint Stakeholder Recommendation for renewed consideration by DOE. Hence the submission by this larger, more recent coalition is still referred to as the Joint Stakeholder Recommendation throughout this final rule.

TABLE II.4—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE JULY 2024 NODA

Commenter(s)	Abbreviation	Comment number in the docket	Commenter type
Sophie Charlotte DuBard-Weis	DuBard-Weis	1430	Individual.
Lucy Anderson	Anderson	1431	Individual.
Anonymous	Anonymous	1432	Individual.
American Gas Association (AGA), American Public Gas Association (APGA), National Propane Gas Association (NPGA), and Rinnai America Corporation.	Joint Requesters	1433	Utility Associations; Manufacturer.
Northwest Energy Efficiency Alliance	NEEA	1434	Efficiency Organization.
Rinnai America Corporation	Rinnai	1435, 1443	Manufacturer.
Rheem Manufacturing Company	Rheem	1436	Manufacturer.
Air-Conditioning, Heating, and Refrigeration Institute	AHRI	1437	Trade Association.
AHRI, ACEEE, ASAP, CFA, NRDC, and NEEA	AHRI and the Joint Stakeholders ..	1438	Trade Association.
American Gas Association (AGA), American Public Gas Association (APGA), and National Propane Gas Association (NPGA).	AGA <i>et al</i>	1439	Utility Association.
A.O. Smith Corporation	A.O. Smith	1440	Manufacturer.
Bradford White Corporation	BWC	1441	Manufacturer.
Pacific Gas and Electric Company; Southern California Edison; and San Diego Gas & Electric Company; collectively, the California Investor-owned Utilities.	CA IOUs	1442	Utility.
ASAP, ACEEE, CFA, NCLC, NRDC, NBI, and NEEA	Joint Advocates	1444	Efficiency Organization.
U.S. House of Representatives (Three members, all from Georgia)	U.S. House of Representatives	1445	Government Official/Agency.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.¹⁸ To the extent that interested parties have provided written comments that are substantively consistent with any oral comments provided during the September 13, 2023, public meeting, DOE cites the written comments throughout this final rule. DOE did not identify any oral comments provided during the September 13, 2023, public meeting that

are not substantively addressed by written comments.

III. General Discussion

DOE developed this final rule after a review of the market for the subject gas-fired instantaneous water heaters. DOE also considered comments, data, and information from interested parties that represent a variety of interests. This final rule addresses issues raised by these commenters.

A. General Comments

This section summarizes general comments received from interested parties regarding rulemaking timing and process.

In response to the July 2024 NODA, the Joint Requesters recommended that DOE provide stakeholders with an additional 30 days (*i.e.*, for a total of 60

days) to comment. The Joint Requesters stated that the 30 days provided by DOE does not allow stakeholders to sufficiently analyze the NODA and the related documents, which appear to incorporate new data, use new methodologies, and reach different results from the July 2023 NOPR. The Joint Requesters further commented that their organizations had limited staff availability during the comment period. (Joint Requesters, No. 1433 at pp. 2–3)

DOE notes the limited scope of the NODA and reiterates that the July 2024 NODA updated only specific aspects of DOE’s analysis of potential amended energy conservation standards for gas-fired instantaneous water heaters. The analysis from the July 2023 NOPR was updated to reflect the latest available versions of the data sources used. Overall, the cost-benefit analysis

¹⁸ 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 at page of that document).

methodology remains largely unchanged between the July 2024 NODA and the July 2023 NOPR (*see* 89 FR 59692, 59693). Furthermore, this analysis has been subject to extensive stakeholder input and feedback throughout the course of this rulemaking. Commenters were provided a full 60-day comment period to review the July 2023 NOPR analysis, and the July 2024 NODA described in depth the specific areas where DOE's analysis was updated while providing the rationale for each update. As such, DOE believes a 30-day comment period was appropriate for stakeholders to review a limited set of revisions to a previously published analysis and provide meaningful comments on the notice. (*See* Document No. 1446 in Docket No. EERE-2017-BT-STD-0019.)

AGA *et al.* stated that due to the use of data designed for other natural gas appliances and not gas-fired instantaneous water heaters specifically, DOE should restart the rulemaking process for gas-fired instantaneous water heaters, or at a minimum issue a supplemental notice. (AGA *et al.*, No. 1439 at p. 1)

In response, DOE notes that it published the July 2024 NODA to inform stakeholders of newly available data and results with respect to potential amended standards for gas-fired instantaneous water heaters, a limited update to the July 2023 NOPR analysis.

1. General Support

In response to the July 2023 NOPR, DOE received 2,880¹⁹ general comments (those which provided general remarks on the impact of the rulemaking)²⁰ with a significant number of commenters expressing support of the proposed standards—including those proposed for gas-fired instantaneous water heaters—and acknowledging the significant energy savings that would result from the adoption of the proposed standards.²¹

AWHI expressed support for more stringent standards for gas-fired instantaneous water heaters. (AWHI, No. 1036 at pp. 3–4) The Joint Stakeholders stated that the proposed

standards for gas-fired instantaneous water heaters are consistent with their recommendations. (Joint Stakeholders, No. 1156 at p. 2) NEEA, the Joint Regional Advocacy Groups (citing the estimated FFC and monetary savings), and Bosch supported the proposed standards for gas-fired instantaneous water heaters. (NEEA, No. 1199 at p. 9; Joint Regional Advocacy Groups, No. 1154 at p. 1; Bosch, No. 1204 at p. 2) Bosch commented that condensing gas-fired instantaneous water heaters are readily available and widely accepted in the market, and can create significant energy savings and emissions reductions. Bosch stated that nearly every gas-fired instantaneous water heater manufacturer sells a condensing-level product and, therefore, the required technology is well-understood and minimal research and development efforts would be required to achieve the proposed efficiency levels. (Bosch, No. 1204 at p. 2)

CEC and A.O. Smith also supported DOE's proposed standards for gas-fired instantaneous water heaters because they would result in significant savings, lower monthly energy bills for homeowners, and also provide emissions benefits. CEC urged DOE to finalize the proposed standards as soon as possible. (CEC, No. 1173 at p. 12; A.O. Smith, No. 1182 at p. 14)

Two individual commenters expressed support for the proposed rulemaking on the basis that clean energy is necessary for securing a peaceful and prosperous future and for the economic benefits that will result from the proposed rulemaking. (DuBard-Weis, No. 1430 at p. 1; Anderson, No. 1431 at p. 1) An anonymous commenter also expressed support for the proposed rulemaking on the basis of reducing emissions related to water heaters for the benefit of the planet. (Anonymous, No. 1432 at p. 2)

2. Support for Updated Analysis and Standards at EL 2

In response to the July 2024 NODA, DOE received the following comments in support of the updated analytical results and potential amended standards at efficiency level ("EL") 2.

NEEA, AHRI, AHRI and the Joint Stakeholders, the Joint Advocates, Rheem, and BWC expressed support for the standards proposed at EL 2 for gas-fired instantaneous water heaters in the July 2023 NOPR, with NEEA, AHRI, AHRI and the Joint Stakeholders, the Joint Advocates, and BWC noting the significant national energy savings and LCC savings for consumers. NEEA, The Joint Advocates, and BWC stated that the proposed standard aligns with the

Joint Stakeholder Recommendations made in 2022. AHRI and the Joint Stakeholders expressed concern that DOE had not yet adopted these standards and commented that the proposed levels would, enable a broad set of consumer options while meeting EPCA's directives of achieving significant national energy savings as well as cost effectiveness and technological feasibility for consumers who install these products. The Joint Advocates supported DOE's proposal to adopt EL 2 for gas-fired instantaneous water heaters because EL 2 represents an intermediate condensing level and reflects the Joint Stakeholder recommendations. The Joint Advocates further commented that DOE's updated analysis in the NODA reinforces the economic and energy benefits of adopting EL 2 for gas-fired instantaneous water heaters and, while similar to those in the July 2023 NOPR, the updates in the July 2024 NODA improve the analysis. (NEEA, No. 1434 at p. 1; Rheem, No. 1436 at p. 1; AHRI, No. 1437 at p. 2; AHRI and the Joint Stakeholders, No. 1438 at p. 1; BWC, No. 1441 at p. 1; Joint Advocates, No. 1444, at pp. 1–2)

NEEA commented that the July 2024 NODA effectively updates the analysis for gas-fired instantaneous water heaters to thoroughly represent the market and better account for manufacturer impacts of updating standards for gas-fired instantaneous water heaters by updating from Energy Information Administration's Residential Energy Consumption Survey ("RECS") 2015 to RECS 2020 data, accounting for the use of concentric pipe venting for both condensing and non-condensing gas-fired instantaneous water heaters, and updating the analysis to include outdoor installations of gas-fired instantaneous water heaters that don't require venting or that require short through-the-wall vents. NEEA commented that according to DOE's analysis, impacts on manufacturers from a condensing-level standard would be modest and potentially beneficial to domestic production. NEEA recommended that DOE quickly issue a final rule for gas-fired instantaneous water heaters, as NEEA agreed with DOE that condensing-level standards at EL 2 would be cost effective and deliver significant energy savings while having minimal negative impacts. (NEEA, No. 1434 at pp. 1–3)

Rheem recommended that DOE amend standards for gas-fired instantaneous water heaters to EL 2, stating that DOE's analysis remains justified. (Rheem, No. 1436 at p. 1) BWC urged DOE to establish minimum energy

¹⁹ The number of comments reflects the number of individual party submissions. Specifically, form letters with multiple submissions count each submission individually.

²⁰ Commenters who are directly referenced in this final rule and appear in table II.3 are not counted in these statistics because these submitters typically expressed detailed views that could not be generalized as either clear support or clear opposition for all aspects of the proposal.

²¹ One comment in support of the proposed standards, including the proposal for gas-fired instantaneous water heaters, had 8,357 signatories.

conservation standards for gas-fired instantaneous water heaters at EL 2 as originally proposed in the July 2023 NOPR and in accordance with the Joint Stakeholder Recommendation. BWC stated that establishing standards consistent with the Joint Stakeholder Recommendation would result in national energy savings of 0.8 quads and provide individual consumers average savings of \$31 per year.²² (BWC, No. 1441 at p. 1)

3. General Opposition

In response to the July 2023 NOPR, DOE received comments from several stakeholders raising concern over the impact of the proposed standards.

An individual commenter requested careful consideration of the impacts of the proposed levels for gas-fired instantaneous water heaters on the economy. The individual commenter noted that they work at a propane company whose installation and servicing of tankless²³ water heaters is a large part of its income, asserting that the proposals, if adopted, could be detrimental to the economy. (Hardy, No. 185 at p. 1)

Commenters from the U.S. House of Representatives indicated that the popularity of non-condensing gas-fired instantaneous water heaters among homeowners and small business owners across the United States reflects the efficiency and affordability of the products. Additionally, the Commenters from the U.S. House of Representatives stated that restricting consumer access to gas-fired instantaneous water heaters by adopting higher standards would reduce consumer choice and increase product prices. (U.S. House of Representatives, No. 1205 at p. 1) Then, in response to the July 2024 NODA, the Commenters from the U.S. House of Representatives stated that gas-fired instantaneous water heaters are projected to reach 11 percent of the U.S. market by 2028 and that sales of non-condensing tankless water heaters from 2005 to 2022 have saved 339 million MMBtus (0.34 quads) and 37.7 billion pounds (17 million metric tons) of carbon emissions. Commenters from the U.S. House of Representatives also

stated that the July 2023 NOPR would eliminate the non-condensing gas-fired instantaneous water heaters while leaving costlier or higher emission profile products on the market. (U.S. House of Representatives, No. 1445 at p. 1)

Regarding stakeholders' comments that the standards proposed in the July 2023 NOPR would discourage adoption of gas-fired instantaneous water heaters, DOE notes that it expects the share of gas-fired instantaneous water heaters to continue to increase as a percentage of the overall U.S. market in both the no-new-standards case and standards cases. See section IV.F.10 for a discussion regarding why adoption of other types of water heaters in response to amended standards for gas-fired instantaneous water heaters is highly unlikely. Additionally, DOE notes that only one-third of gas-fired instantaneous water heaters shipped in 2024 were non-condensing models, with a market share that is projected to decrease even in the absence of amended standards. See section IV.G of this document and chapter 9 of the final rule TSD for additional information on DOE's shipments analysis.

In addition to emphasizing several of the points it made in response to the July 2023 NOPR, Rinnai claimed that, although the July 2024 NODA appears to make some adjustments for data provided by Rinnai as well as other inputs, methods and approaches, it does not sufficiently account for historic market data and trends, consumer decision making, product and installation costs, and concerns with modeling and methodology, nor does it suffice to meet statutory requirements relating to economic justification, significant energy savings, or product unavailability. Rinnai stated that the analysis in the July 2024 NODA does not change its conclusion that the proposed rule would limit the affordable, efficient options available to consumers, would impede a market-driven shift toward more efficient storage-type water heaters,²⁴ and would likely result in a net reduction in energy savings and an increase in carbon emissions. Rinnai therefore requested that DOE correct its claimed deficiencies and flaws in the July 2024 NODA, issue a supplemental notice of

proposed rulemaking to address these changes and allow thorough stakeholder input, and reconsider the July 2023 NOPR's proposed rule. Rinnai suggested that DOE should either maintain the existing standard for gas-fired instantaneous water heaters, or alternatively promulgate separate standards for condensing and non-condensing gas-fired instantaneous water heaters. (Rinnai, No. 1443 at pp. 2–3)

Rinnai raised concern with the condensing-level standards supported by the Joint Stakeholders, asserting that such standards would not adequately consider the gas-fired instantaneous water heater market and industry as a whole. Specifically, Rinnai expressed that it does not believe that non-condensing gas-fired instantaneous water heaters are “on the way out” of the market. According to Rinnai, the July 2024 NODA showed a projected 30 percent of gas-fired instantaneous water heater sales in 2030 would be non-condensing models, consistent with current trends. Rinnai stated that it would suffer the direct impacts of this rule, being not only one of the leading manufacturers of gas-fired instantaneous water heaters in general but also the market leader in sales of non-condensing models, producing approximately 60 percent of the market share of non-condensing models. (Rinnai, No. 1443 at pp. 23–24) Rinnai argued that DOE's consumer water heater rulemaking, and in particular its actions with regard to gas-fired instantaneous water heaters, depend heavily on DOE's interpretation of several statutory provisions in EPCA. According to Rinnai, DOE's interpretations of statutory provisions are not entitled to deference—for example, DOE's interpretation of the unavailability provision, section 6295(o)(4), the “significant conservation of energy” provision, section 6295(o)(3), the economic justification provision, section 6295(o)(2)(B), and the separate standards provision, section 6295(q). Rinnai expressed its concern that DOE's consumer water heater rulemaking, in conjunction with its rulemaking proceedings on furnaces and boilers, represent a significant overhaul of the appliance manufacturing industry. Rinnai commented that, in line with the outcome of *West Virginia v. EPA*,²⁵

²² BWC cited analytical results provided in the original Joint Stakeholder Recommendation (Document No. 49 in this docket), which relied on DOE's results from the March 2022 Preliminary Analysis (see Joint Stakeholder, No. 49 at p. 5). DOE's most up-to-date analysis provided in this final rule indicates a potential for 0.58 quads of national energy savings, with an average consumer LCC savings of \$112.

²³ “Tankless” models are instantaneous water heaters with very little storage volume. These designs comprise the majority of consumer gas-fired instantaneous water heaters on the market today.

²⁴ The commenter used the phrase “tank water heaters” but did not clarify how amended standards for gas-fired instantaneous water heaters would impede a market transition towards more efficient types of storage water heaters; however, they later reiterate the concern regarding a shift towards gas-fired storage water heaters, which, in general, tend to have lower UEF ratings today compared to gas-fired instantaneous water heaters.

²⁵ In *West Virginia v. EPA*, 597 U.S. 697 (2022), the Court expounded on the major questions doctrine, and held that agencies could not adopt rules with, as Rinnai put it, “significant economic, industry and consumer choice impacts” without having clear congressional authorization to do so. (Rinnai, No. 1443 at p. 24)

EPCA was not intended to allow DOE to favor one fuel or type of appliance over another or to reshape the appliance industry. (Rinnai, No. 1443 at pp. 23–24)

DOE's rulemaking to amend energy conservation standards for gas-fired instantaneous water heaters does not disallow the production, import, or sale of water heaters using any specific fuel type. Moreover, gas-fired instantaneous water heaters will not be made unavailable as a result of this rulemaking. Stakeholders have not indicated that raising standards for gas-fired instantaneous water heaters would push consumers towards electric or oil-fired water heaters—and such a case would be highly improbable based on DOE's own analysis of consumer purchasing decisions. Instead, stakeholders such as Rinnai and the Gas Association Commenters appear to indicate that more-stringent standards for gas-fired instantaneous water heaters may impact shipments of other gas-fired water heaters, and these comments are discussed further in section IV.F.10 of this document. As such, there is no evidence to support Rinnai's suggestion that DOE's action "favors" one fuel type over another. Furthermore, since the statutory consumer water heater standards were established by EPCA at 42 U.S.C. 6295(e)(1), DOE has maintained separate product classes (*i.e.*, separate standards) for gas-fired, oil-fired, and electric water heaters. See 10 CFR 430.32(d)(1)–(2). These separate product classes are consistent with the statutory provisions at 42 U.S.C. 6295(q).

DOE has statutory authority to routinely evaluate and address minimum efficiency levels for gas-fired instantaneous water heaters (and all other consumer water heaters). See section II.A of this document. As a general matter, energy conservation standards save energy by removing the least-efficient technologies and designs from the market. Discussed further in section IV.A.1 of this document, non-condensing gas-fired instantaneous water heaters use only one heat exchanger that operates at a higher temperature, whereas condensing gas-fired instantaneous water heaters make use of corrosion-resistant condensing heat exchangers that can extract far more energy from the flue gases exhausted by combustion—causing the exhaust flue gases to condense into liquid (hence, the term "condensing"). Because of this, condensing gas-fired instantaneous water heaters are a step up in efficiency from non-condensing products. The energy-saving purposes of EPCA would be frustrated if DOE were

required to set standards that maintain less-energy-efficient covered products and equipment in the market based simply on the fact that they use a specific type of less-efficient design.

DOE has evaluated the statutory criteria—technological feasibility, significant energy savings, and economic justification—and considered the application of the statutory "unavailability provision" (*see* 42 U.S.C. 6295(o)(4)) to determine the product class structure for gas-fired instantaneous water heaters; *see* section IV.A.1 of this document for further details. DOE has not sought to "reshape the appliance industry," but rather to set standards in accordance with the statutory requirements of EPCA. Analytical results from multiple rulemakings indicate that certain segments of the space and water heating industries have made significant progress in transitioning the market towards more-efficient condensing products, and the analysis herein for gas-fired instantaneous water heaters also reflects this trend. As such, DOE is not setting condensing-level standards simply to increase the usage of condensing technology. Rather, DOE has found that condensing-level standards are justified for gas-fired instantaneous water heaters based on extensive analysis and review.

4. Comments on Higher Standards Than Proposed in the NOPR

EL 3 corresponds to the efficiency that would meet the current ENERGY STAR Specification version 5.0, and as such is an efficiency level that many manufacturers currently target. In the July 2023 NOPR, DOE tentatively determined that the additional benefits and savings from amended standards at EL 3 could be considered significant, but there was uncertainty as to whether manufacturing capacity of EL 3 models could be scaled up to meet national demand for gas-fired instantaneous water heaters. 88 FR 49058, 49161. While the July 2023 NOPR proposed standards at EL 2, DOE requested 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. *Id.*

In response, Bosch stated that EL 3 would be significantly more difficult to reach compared to EL 2, adding that though EL 3 is feasible with current technology, the technology comes with increased complexity. Specifically, Bosch stated that the most significant

challenge in raising the efficiency of a gas-fired instantaneous water heater from a UEF of 0.93 to 0.95 for the high draw pattern is the need for significant burner modulation. Bosch recommended DOE retain the EL 2 proposal for gas-fired instantaneous water heaters. (Bosch, No. 1204 at pp. 4–5) Noritz stated that EL 3 is significantly more difficult to reach than EL 2, due to complexity related to the software, controls, fan, and gas valve, as well as higher material costs due to increased heat exchanger surface area. (Noritz, No. 1202 at p. 3) BWC recommended against adopting standards for gas-fired instantaneous water heaters at EL 3 because this would be inconsistent with the Joint Stakeholder Recommendation, and the proposed standards at EL 2 already amount to substantial increase in efficiency. (BWC, No. 1164 at p. 16) Rheem stated that it does not support EL 3 for gas-fired instantaneous water heaters as the costs to the manufacturer outweigh the benefit of the slight increase in UEF. Rheem further stated that EL 3 requires completely different condensing technology than EL 2 and will have significantly more impact on existing manufacturing facilities. (Rheem, No. 1177 at p. 13)

AHRI stated that gas-fired instantaneous water heaters would experience more difficulty achieving EL 3 compared to EL 2 due to increasing complexity, driven by designs incorporating full burner modulation. AHRI further stated that this would require substantial research and development and more expensive components. (AHRI, No. 1167 at pp. 12–13)

CEC stated that if DOE received data in response to the request for information in the July 2023 NOPR, DOE should consider finalizing a standard consistent with EL 3 for gas-fired instantaneous water heaters. (CEC, No. 1173 at p. 12)

In response to the July 2023 NOPR, the CA IOUs encouraged DOE to set more stringent standards for gas-fired instantaneous water heaters, recommending that DOE establish the standards proposed at TSL 6 in the July 2023 NOPR, equivalent to max-tech (*i.e.*, EL 4). According to the CA IOUs, more stringent standards for all gas-fired consumer water heater sub-classes, specifically at condensing efficiencies, would result in significant savings of natural gas in California and across the United States. Regarding statements from some stakeholders that significant installation barriers are associated with gas condensing water heaters, the CA IOUs referred DOE to a report docketed

in 2019 titled “Investigation of Installation Barriers and Costs for Condensing Gas Appliances.”²⁶ Key findings from this report indicate that these challenges impact less than 5 percent of condensing gas retrofit installations for residential and commercial applications, and that condensate management and chimney relining were minor concerns for installing gas condensing products. (CA IOUs, No. 1175 at p. 2) In response to the July 2024 NODA, the CA IOUs reiterated that more-stringent efficiency standards for gas-fired instantaneous water heaters would conserve natural gas, reduce emissions, and lower utility payments for Californians. The CA IOUs stated that while a standard based on EL 2 would generate between \$0.13 billion (\$2022, at a 7-percent discount rate) and \$0.47 billion (\$2022, at a 3-percent discount rate) in consumer benefits for all Californians over 30 years, a standard based on EL 3 would generate between \$0.21 billion (\$2022, at a 7-percent discount rate) and \$0.75 billion (\$2022, at a 3-percent discount rate) in consumer benefits for all Californians over the same time period. The CA IOUs stated that adoption of EL 3 would increase consumer benefits by 60 percent relative to EL 2 and reiterated that EL 3 has the shortest simple payback period of any gas-fired instantaneous water heater efficiency level. The CA IOUs urged DOE to adopt a standard for gas-fired instantaneous water heaters based on EL 3. (CA IOUs, No. 1442 at pp. 1–2)

In this final rule analysis, DOE finds that although EL 3 would present many consumer benefits, the average estimated simple payback period for EL 3 is 8.3 years, whereas for EL 2 it is 8.9 years, which is not strikingly different in the context of the product’s lifespan, which is estimated to be about 20 years. DOE acknowledges that setting standards at EL 3 for gas-fired instantaneous water heaters would require notably higher levels of investment compared to EL 2 for gas-fired instantaneous water heaters. In this final rule, DOE is adopting TSL 2, which corresponds to EL 2 for gas-fired instantaneous water heaters. DOE notes that industry would need to significantly scale up production of models that meet EL 3 given the lower quantity of shipments of these models today. Approximately 60 percent of gas-fired instantaneous water heater shipments currently meet the adopted

level (*i.e.*, EL 2).²⁷ However, only 15 percent of gas-fired instantaneous water heater shipments currently meet EL 3. To meet EL 3, DOE expects manufacturers would implement a more efficient heat exchanger design (*e.g.*, replacing a tube condensing heat exchanger with a flat plate condensing heat exchanger) and increase the condensing heat exchanger area relative to EL 2. DOE understands that implementing the larger, improved condensing heat exchanger technology could increase the complexity of the manufacturing process compared to the tube design condensing heat exchanger technology analyzed at EL 1 and EL 2. Given the low shipments volumes and increased complexity of EL 3 models, DOE expects most manufacturers would need to add new production lines to maintain existing capacity at TSL 3. DOE does not expect most manufacturers would need to add new production lines or incur notable capital investments to meet TSL 2. DOE estimates that industry conversion costs at EL 2 would reach approximately \$20 million whereas industry conversion costs would triple at EL 3 (approximately \$60 million). *See* section V.B.2.a of this document for the estimated industry conversion costs at each TSL. *See* section V.C.1 of this document for the benefits and burdens of the TSLs considered in this rulemaking.

B. Scope of Coverage

Gas-fired instantaneous water heaters are a subset of consumer water heaters. Generally, DOE defines a “water heater,” consistent with EPCA’s definition at 42 U.S.C. 6291(27) and codified at 10 CFR 430.2, as a product which utilizes oil, gas, or electricity to heat potable water for use outside the heater upon demand. An instantaneous-type water heater is one that heats water but contains no more than one gallon of water per 4,000 Btu per hour of input, and consumer gas-fired instantaneous water heaters are additionally defined as having an input rating less than 200,000 Btu per hour. 10 CFR 430.2; (42 U.S.C. 6291(27)).

This rulemaking does not cover gas-fired circulating water heaters, which must be used in combination with recirculation pump and a storage tank or recirculation loop, and therefore constitute storage-type water heaters. 10 CFR 430.2.

As stated in section I of this document, 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 final rule, DOE is solely considering “gas-fired instantaneous water heaters,” including those for which there are no current UEF-based standards codified at 10 CFR 430.32(d)(1).

See section IV.A.1 of this document for discussion of the product classes analyzed in this final rule.

C. Test Procedure

EPCA sets forth generally applicable criteria and procedures for DOE’s adoption and amendment of test procedures. (42 U.S.C. 6293) Manufacturers of covered products must use these test procedures as the basis for certifying to DOE that their product complies with the applicable energy conservation standards and as the basis for any representations regarding the energy use or energy efficiency of the product. (42 U.S.C. 6295(s) and 42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to evaluate whether a basic model complies with the applicable energy conservation standard(s). 10 CFR 429.110(e). The current test procedure for consumer and residential-duty commercial water heaters is codified at 10 CFR part 430, subpart B, appendix E. Appendix E includes provisions for determining UEF, the metric on which current standards are based. 10 CFR 430.32(d)(1).

DOE most recently amended the test procedure for these products at appendix E 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 that final rule, DOE established effective storage volume (“ V_{eff} ”) as a metric to address how much hot water could be immediately delivered by the system, taking into account the temperature of the stored water and, in the case of circulating water heaters, the volume of the paired storage tank. 88 FR 40406. The amended test procedure established by the June 2023 TP Final Rule is mandatory for gas-fired instantaneous water heater testing starting December 18, 2023, 180 days after publication. *Id.*

In response to the July 2023 NOPR, BWC reiterated its comments in response to the March 2022 Preliminary Analysis asserting that there is evidence to suggest that gas-fired instantaneous water heaters may gain an unfair advantage in the current test procedure

²⁶ EERE–2018–BT–ST–0018–0062, February 28, 2019. Available at: www.regulations.gov/comment/EERE-2018-BT-STD-0018-0062 (last accessed: Oct. 1, 2024).

²⁷ The term “current shipments” refers to no-new-standards shipments estimated to occur in 2024 (the reference year).

as compared to gas-fired storage water heaters. The commenter provided DOE with a study published by the Davis Energy Group, Inc. and requested that DOE elaborate on its disagreement with the outcome of that study. In particular, BWC pointed out that while gas-fired instantaneous water heaters are not subjected to standby losses like their storage-type counterparts, the number, timing, and frequency of draws required for these products causes the heat exchanger to be raised to temperature for each draw; and this, according to Davis Energy Group, Inc., can cause a bias toward higher efficiency ratings for gas-fired instantaneous water heaters. BWC requested further discussion on this topic to ensure that both types of gas-fired products are treated fairly. (BWC, No. 1164 at pp. 9–10)

In response, DOE notes that the current test procedure for consumer water heaters is designed to represent generally how consumer water heaters are used in-field. As such, if one type of water heater generally receives higher efficiency ratings than another, it would be the result of that water heater type having a more efficient design for actual consumer usage patterns than the other. This difference would therefore not be a bias, but a reflection of actual differences in operating efficiency being captured by the test result. The Davis Energy Group, Inc. study cited by BWC shows the efficiency of the gas-fired instantaneous water heater that was tested was more affected by the time between water draws than that of the gas-fired storage water heater that was tested. That is, the efficiency of the gas-fired instantaneous water heater degraded more when the time between water draws increased than did the gas-fired storage water heater. However, for these findings to have any significance, DOE would also need evidence to show that the water draw sequencing of the current test procedure at appendix E is unrepresentative. The draw sequence was developed as a representative test method in the 2014 test procedure rulemaking that established the UEF test method, and it considered factors such as standby loss periods, test stand capabilities, and water heater recovery rates (*see* 79 FR 40542). In the absence of sufficient data provided by BWC or the Davis Energy Group, Inc. report demonstrating that the current test procedure is unrepresentative, DOE cannot conclude that the prescribed test method results in an unfair advantage for gas-fired instantaneous water heaters over gas-fired storage water heaters. In this standards analysis, DOE has relied on an efficiency-level approach to

identify potential standards based on UEF ratings that are demonstrated (certified) for gas-fired instantaneous water heaters on the basis of testing under the DOE test procedure. Therefore, hypothetically, even if these products do benefit from factors in the test procedure that allow them to have higher UEF ratings, all gas-fired instantaneous water heaters would benefit equally, and the increase in UEF is reflected in product ratings and the efficiency levels selected for the analysis. By basing its analysis around commercially available products and their certified ratings in the product classes separately, DOE is ensuring that the standards it is setting for gas-fired instantaneous water heaters are reflective of these products' performance under the appendix E test procedure. DOE used a similar approach for all other types of consumer water heaters (*e.g.*, gas-fired storage water heaters) when it finalized amended standards in a May 6, 2024 final rule pertaining to those products. 89 FR 37778.

D. Technological Feasibility

1. General

As discussed, 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))

To determine whether potential amended standards would be technologically feasible, DOE first develops a list of all known technologies and design options that could improve the efficiency of the products or equipment that are the subject of the rulemaking. DOE considers technologies incorporated in commercially available products or in working prototypes to be "technologically feasible." 10 CFR part 430, subpart C, appendix A, sections 6(a)(3)(iii)(A) and 7(b)(1). Section IV.A.2 of this document discusses the technology options identified by DOE for this analysis. For further details on the technology assessment conducted for this final rule, *see* chapter 3 of the final rule technical support document ("TSD").

After DOE has determined which, if any, technologies and design options are technologically feasible, it further evaluates each technology and design option in light of the following additional screening criteria: (1) practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; (3)

adverse impacts on health or safety; and (4) unique-pathway proprietary technologies. 10 CFR part 430, subpart C, appendix A, sections 6(a)(3)(iii)(B) through (E) and 7(b)(2) through (5). Those technology options that are "screened out" based on these criteria are not considered further. Those technology and design options that are not screened out are considered as the basis for higher efficiency levels that DOE could consider for potential amended standards. Section IV.B of this document discusses the results of this screening analysis conducted for this final rule. For further details on the screening analysis conducted for this final rule, *see* chapter 4 of the final rule TSD.

2. Maximum Technologically Feasible Levels

EPCA requires that for any proposed rule that prescribes an amended or new energy conservation standard, or prescribes no amendment or no new standard for a type (or class) of covered product, DOE must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for each type (or class) of covered products. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE identifies the maximum efficiency level currently available on the market. DOE also defines a "max-tech" efficiency level, representing the maximum theoretical efficiency that can be achieved through the application of all available technology options retained from the screening analysis.²⁸ In many cases, the max-tech efficiency level is not commercially available because it is not currently economically feasible.

The max-tech levels that DOE determined for this analysis are described in section IV.C.1.a of this document and in chapter 5 of the final rule TSD.

E. Energy Savings

1. Determination of Savings

For each TSL, DOE projected energy savings from application of the TSL to gas-fired instantaneous water heaters purchased during the 30-year period that begins in the first year of compliance with the amended standards (2030–2059).²⁹ The savings are measured over the entire lifetime of products purchased during the 30-year

²⁸ In applying these design options, DOE would only include those that are compatible with each other that when combined, would represent the theoretical maximum possible efficiency.

²⁹ DOE also presents a sensitivity analysis that considers impacts for products shipped in a 9-year period.

analysis period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for a product would likely evolve in the absence of amended energy conservation standards.

DOE used its national impact analysis (“NIA”) spreadsheet models to estimate NES from potential amended standards for gas-fired instantaneous 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 NES 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.³⁰ 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.2 of this document.

2. Significance of Savings

To adopt any new or amended standards for a covered product, DOE must determine that such action would result in significant energy savings. (42 U.S.C. 6295(o)(3)(B))

The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.³¹ 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 the impacts of

products with relatively constant demand. Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis, taking into account the significance of cumulative FFC national energy savings, the cumulative FFC emissions reductions, and the need to confront the global climate crisis, among other factors.

As stated, the standard levels adopted in this final rule are projected to result in NES of 0.58 quad, the equivalent of the primary annual energy use of about 4 million homes. Based on the amount of FFC savings, the corresponding reduction in emissions, and the need to confront the global climate crisis, DOE has determined the energy savings from the standard levels adopted in this final rule are “significant” within the meaning of 42 U.S.C. 6295(o)(3)(B).

F. Economic Justification

1. Specific Criteria

As noted previously, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(I)(VII)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of potential new or amended standards on manufacturers, DOE conducts a manufacturer impact analysis (“MIA”), as discussed in section IV.J of this document. First, DOE 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 NPV of the consumer costs and benefits expected to result from particular standards. DOE also evaluates the impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a standard.

b. Savings in Operating Costs Compared To Increase in Price (LCC and PBP)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered 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 cost (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

³⁰ 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).

³¹ 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).

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 IV.H, DOE uses the NIA spreadsheet models to project NES.

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 adopted in this document would not reduce the utility or performance of the gas-fired instantaneous water heaters under consideration in this rulemaking.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) It also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(ii)) To assist the Department of Justice (“DOJ”) in making such a determination, DOE transmitted copies of its proposed rule and the NOPR TSD to the Attorney General for review, with a request that the DOJ provide its determination on this issue. In its assessment letter responding to DOE, DOJ concluded that the proposed energy conservation standards for gas-fired instantaneous water heaters are unlikely to substantially lessen competition. DOE is publishing the Attorney General’s assessment at the end of this final rule.

In response to the July 2023 NOPR, Rinnai asserted that eliminating non-condensing gas-fired instantaneous water heaters from the market would create detrimental effects on competition by limiting consumer

choice, raising prices on more efficient products, eliminating consumers’ option to make like-for-like product replacements, all of which would place Rinnai at a disadvantage as a smaller competitor in a concentrated water heater market. (Rinnai, No. 1186 at p. 7) In response to the July 2024 NODA, Rinnai commented that the consumer water heater market is already a highly concentrated market with three dominant players, and that moving to a standard for gas-fired instantaneous water heaters that requires condensing technology would impede competition. (Rinnai, No. 1443 at p. 22)

DOE recognizes the importance of competition in the marketplace. For this final rule, DOE reviewed its Compliance Certification Database,³² Air-Conditioning, Heating, and Refrigeration Institute’s Directory of Certified Product Performance,³³ California Energy Commission’s Modernized Appliance Efficiency Database System,³⁴ and the ENERGY STAR Product Finder dataset³⁵ to ensure an up-to-date assessment of gas-fired instantaneous water heater manufacturers operating in the United States. Through its review, DOE identified 12 OEMs of gas-fired instantaneous water heaters subject to more stringent standards under this rulemaking. All 12 OEMs already manufacture condensing gas-fired instantaneous water heaters. Of these 12 manufacturers, 10 manufacturers, including Rinnai, manufacture products that meet the standards adopted in this final rule. Collectively, these 10 OEMs offer 71 basic models (accounting for 51 percent of model listings and 60 percent of shipments in 2024) that meet the adopted level (TSL 2). Thus, a variety of companies already participate in the condensing gas-fired instantaneous water heater market. Comparatively, only eight OEMs currently manufacture non-condensing gas-fired instantaneous water heaters. See chapter 3 of the final rule TSD for a complete list of manufacturers of gas-fired instantaneous water heaters. Based on Rinnai’s comments in response to the July 2023

³² U.S. Department of Energy’s Compliance Certification Database is available at regulations.doe.gov/certification-data (last accessed July 19, 2024).

³³ Air-Conditioning, Heating and Refrigeration Institute’s Directory of Certified Product Performance is available at <https://ahridirectory.org/search/searchhome?Returnurl=%2f> (last accessed July 23, 2024).

³⁴ California Energy Commission’s Modernized Appliance Efficiency Database System is available at cacertappliances.energy.ca.gov/Pages/Search/AdvancedSearch.aspx (last accessed July 19, 2024).

³⁵ ENERGY STAR Product Finder is available at www.energystar.gov/productfinder (last accessed July 22, 2024).

NOPR, DOE understands that Rinnai’s market share of non-condensing gas-fired instantaneous water heaters is 60 percent and their market share of condensing gas-fired instantaneous water heater sales is 20 percent. (Rinnai No. 1186 at p. 1) Given that all 12 manufacturers already offer condensing gas-fired instantaneous water heater products, DOE does not anticipate lessening of competition in the gas-fired instantaneous water heater market; which is estimated to represent 14 percent of the total consumer water heater market in 2030. As previously discussed, this conclusion is also supported by the DOJ’s assessment letter.

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 adopted standards are likely to provide improvements to the security and reliability of the Nation’s energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the Nation’s electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the Nation’s needed power generation capacity, as discussed in section IV.M of this document.

DOE maintains that environmental and public health benefits associated with the more efficient use of energy are important to take into account when considering the need for national energy conservation. The adopted standards are likely to result in environmental benefits in the form of reduced emissions of air pollutants and 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.B.6 of this document. DOE also estimates the economic value of emissions reductions resulting from the considered TSLs, as discussed in section IV.L of this document.

g. Other Factors

In determining whether an energy conservation standard is economically justified, DOE may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 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 effect potential amended energy conservation standards would have on the PBP for consumers. These analyses include, but are not limited to, the 3-year PBP contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the Nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE’s evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section IV.F of this final rule.

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this rulemaking with regard to gas-fired instantaneous water heaters. Separate subsections address each component of DOE’s analyses.

DOE used several analytical tools to estimate the impact of the standards considered in this document. The first tool is a spreadsheet that calculates the LCC savings and PBP of potential amended or new energy conservation standards. The NIA uses a second spreadsheet set that provides shipments projections and calculates NES and NPV of total consumer costs and savings expected to result from potential energy conservation standards. DOE uses the third spreadsheet tool, the Government Regulatory Impact Model (“GRIM”), to assess manufacturer impacts of potential standards. These three spreadsheet tools are available on the DOE website for this rulemaking: www.regulations.gov/docket/EERE-2017-BT-STD-0019.

Additionally, DOE used output from the latest version of the Energy Information Administration’s (“EIA’s”) *Annual Energy Outlook* (“AEO”) for the emissions and utility impact analyses.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly-available information. The subjects addressed in the market and technology assessment for this rulemaking include: (1) a determination of the scope of the rulemaking and product classes, (2) manufacturers and industry structure, (3) existing efficiency programs, (4) shipments information, (5) market and industry trends, and (6) technologies or design options that could improve the energy efficiency of gas-fired instantaneous water heaters. The key findings of DOE’s market assessment are summarized in the following sections. See chapter 3 of the final rule TSD for further discussion of the market and technology assessment.

1. Product Classes

When evaluating and establishing or amending energy conservation standards, DOE establishes separate standards for a group of covered products (*i.e.*, establish a separate product class) based on the type of energy used, or if DOE determines that a product’s capacity or other performance-related feature justifies a different standard. (42 U.S.C. 6295(q)) In making a determination whether a performance-related feature justifies a different standard, DOE considers 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 for consumer water heaters, expressed in 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. Gas-fired instantaneous water heaters were, at the time, required to comply with the same EF standards as gas-fired storage water

heaters because the standards were not differentiated by storage versus instantaneous water heaters.

DOE subsequently amended these EF standards twice, most recently in the April 2010 Final Rule, with which compliance was required starting on April 16, 2015. 75 FR 20112. By the April 2010 Final Rule, DOE had further divided gas-fired consumer water heaters into product classes based on demand type (storage, instantaneous), storage volume, and input rate. While the April 2010 Final Rule had separate standards for gas-fired instantaneous water heaters and gas-fired storage water heaters, DOE did not adopt standards for gas-fired instantaneous water heaters with less than 50,000 Btu/h of input because, at that time, there were no such low-input gas-fired instantaneous water heaters available on the market. *Id.* at 75 FR 20127.

Most recently, the December 2016 Conversion Factor Final Rule, published and effective on December 29, 2016, translated the EF-based standards to UEF-based standards. 81 FR 96204. In doing so, separate product classes were created for each of the four draw patterns (very small, low, medium, and high) in the UEF test procedure. However, due to concerns that the UEF test procedure would not apply to gas-fired instantaneous water heaters 2 gallons or larger at the time, DOE determined that the translated UEF-based standards would apply only to gas-fired instantaneous water heaters with less than 2 gallons of storage volume. *Id.* at 81 FR 96205. As a result, UEF-based standards were established only for gas-fired instantaneous water heaters with less than 2 gallons of storage volume and more than 50,000 Btu/h of input. *Id.* at 81 FR 96205. As discussed in the December 2016 Conversion Factor Final Rule, the standards established in EPCA do not define a minimum fuel input rate or maximum storage volume for gas-fired instantaneous water heaters; therefore, the original standards established by EPCA in terms of EF remained applicable to all gas-fired instantaneous water heaters without UEF-based standards. *Id.* at 81 FR 96209–96211. The four 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—GAS-FIRED INSTANTANEOUS WATER HEATER PRODUCT CLASSES WITH CURRENT UEF-BASED STANDARDS

Product type	Rated storage volume and input rating	Draw patterns
Instantaneous Gas-Fired Water Heater	<2 gal and >50,000 Btu/h	Very Small. Low. Medium. High.

TABLE IV.2—GAS-FIRED INSTANTANEOUS WATER HEATER PRODUCT CLASSES WITHOUT CURRENT UEF-BASED STANDARDS

Product class	Rated storage volume and input rating (if applicable)
Gas-fired Instantaneous	<2 gal and ≤50,000 Btu/h. ≥2 gal.

In response to the July 2024 NODA, A.O. Smith noted that the conversion factor rulemaking did not establish a product class for gas-fired instantaneous water heaters ≥2 gallons and ≤200,000 Btu/h. A.O. Smith noted that, while the intent of the December 2016 Conversion Factor Final Rule was to satisfy the requirements of AEMTCA, DOE is not statutorily required under EPCA to establish standards in terms of UEF for the entirety of this product class because some products meet the criteria for exclusion on account of being commercial equipment. (A.O. Smith, No. 1440 at p. 3) A.O. Smith claimed that the hot water delivery capacity, as a function of input capacity and storage volume, of a subset of products in the ≥2 gallon, ≤200,000 Btu/h proposed product class for gas-fired instantaneous water heaters includes equipment that would not be used or installed residentially and would only be suitable for commercial applications. A.O. Smith noted that equipment meeting the capacity ranges of the proposed product class already exist on the market and are exclusively used in commercial applications. (A.O. Smith, No. 1440 at pp. 3–4) A.O. Smith recommended that DOE re-evaluate the gas-instantaneous water heater product class structure and avoid prescribing a UEF test metric and standard for these water heaters where the UEF metric is inappropriate. A.O. Smith noted that EPCA’s definition for commercial gas-fired instantaneous water heaters does not include a minimum input or volume limit and claimed that it does not prevent DOE from specifying a reasonable storage volume threshold for gas-fired instantaneous water heaters above which the product would be rated to commercial metrics and considered as commercial equipment. (A.O. Smith, No. 1440 at p. 4)

As stated earlier, in the December 2016 Conversion Factor Final Rule, DOE

determined that the translated UEF-based standards would apply only to gas-fired instantaneous water heaters with less than 2 gallons of storage volume due to concerns at the time that the UEF test procedure would not apply to gas-fired instantaneous water heaters 2 gallons or larger. 81 FR 96204, 96205. However, after conducting the market assessment for this rulemaking, DOE is now aware of multiple gas-fired instantaneous water heaters with 2 or more gallons of storage volume presently on the market. These products are specifically marketed for residential applications in publicly available product listings and literature.^{36 37} DOE is not aware of, nor has A.O. Smith provided, evidence suggesting that products in this product class are designed or marketed exclusively for commercial applications. As such, products in this size range have demonstrated residential use and therefore do not meet the requirement for exclusion from the UEF descriptor as specified at 42 U.S.C. 6295(e)(5)(F)(i).

In response to the July 2023 NOPR, some stakeholders provided comments specific to the proposed standards for gas-fired instantaneous water heaters in reference to the “unavailability provision” found in EPCA, 42 U.S.C. 6295(o)(4). DOE indicated that these comments would not be addressed in the May 2024 Final Rule. 89 FR 37778, 37814. After further consideration of

³⁶ American Water Heaters. See the ProLine® XE Polaris® PG10–34–150–2NV 34-gallon “Commercial-Grade Residential Gas Water Heater” with 150,000 Btu input rate. Information available online at www.americanwaterheater.com/media/28107/nrgss03316.pdf (Last accessed Aug. 29, 2024).

³⁷ HTP. See the “High Efficiency Crossover Floor Water Heater,” with information provided to compare against typical residential 50-gallon gas-fired storage water heaters and tankless 199,000 Btu/h gas-fired instantaneous water heaters. Information available online at www.htpproducts.com/literature/mkltit-117.pdf (Last accessed Aug. 27, 2024).

these comments DOE is addressing them in this final rule. Relatedly, DOE received a multitude of comments throughout this rulemaking pertaining to a potential product class structure that differentiates between non-condensing and condensing products.

Per 42 U.S.C. 6295(o)(4), which outlines certain criteria for prescribing new or amended standards, the Secretary may not prescribe an amended or new standard under this section if the Secretary finds (and publishes such finding) that 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 at the time of the Secretary’s finding. The failure of some types (or classes) to meet this criterion shall not affect the Secretary’s determination of whether to prescribe a standard for other types (or classes).

Briefly, condensing and non-condensing products differ in how efficiently they make use of flue gas heat. A baseline gas-fired instantaneous water heater relies on a single heat exchanger, which extracts heat energy from the flue gases and transfers it to the water being delivered to the consumer. However, these flue gases contain more heat energy than the baseline heat exchanger is able to extract and, as a result, much of the heat in the flue gases is lost as they are exhausted outdoors. Enhancements to the heat exchanger—including the use of a secondary heat exchanger—enable high-efficiency gas-fired instantaneous water heaters to extract much more of the energy available in the flue gases. When enough energy is extracted by the heat exchangers, the flue gases cool to the point where they begin to condense,

forming liquid condensate. This results in a significant rise in efficiency. *See* chapter 3 of the final rule TSD for further discussion of condensing heat exchangers.

As noted in the comments submitted by NPGA, APGA, AGA, and Rinnai in response to the July 2023 NOPR, the UEF requirements for gas-fired instantaneous water heaters as proposed in the July 2023 NOPR would require condensing technology. (NPGA, APGA, AGA, and Rinnai, No. 441 at pp. 2–3) Rinnai contended that the proposed rule exceeds DOE's authority because it is in conflict with statutory provisions in EPCA, most notably the unavailability provision. Rinnai added that if the proposed rule were adopted, it would eliminate non-condensing tankless water heaters, one of its product offerings. (Rinnai, No. 1186 at p. 2) Rinnai further argued that DOE may not make non-condensing gas-fired instantaneous water heaters unavailable pursuant to the section 6295(o)(4) of EPCA (the "unavailability provision"). Rinnai cited to DOE's interpretation of the unavailability provision in a recent rulemaking for residential furnaces and commercial water heaters and suggested that DOE's interpretation of the provision is unduly narrow and not supported by the provision's plain language.³⁸ (Rinnai, No. 1186 at p. 9) Rinnai noted that there is no reference to "consumer utility" in the unavailability provision detailed in section 6295(o)(4) of EPCA. Rinnai stated that, rather than relying on the plain language of section 6295(o)(4) itself, DOE's interpretation of the unavailability provision in section 6295(o)(4) of EPCA relies on reading section 6295(q) as a redundant companion provision to section 6295(o)(4) and suggested there is no basis to do so. Rinnai added that this misinterpretation constitutes an evasion of the limits placed on DOE's authority by section 6295(o)(4) of EPCA. (Rinnai, No. 1186 at p. 10)

Rinnai stated that even if DOE's interpretation of the unavailability provision in section 6295(o)(4) of EPCA is taken as correct, non-condensing gas-

fired instantaneous water heaters still provide utility because the consumer's operation of, or interaction with, the appliance necessarily depends on whether or not the appliance can be installed. Rinnai added that installation costs should be considered under the unavailability provision in section 6295(o)(4) of EPCA, not just as part of determining whether or not a standard is economically justified. (Rinnai, No. 1186 at pp. 10–11) Similarly, ONE Gas claimed that DOE's proposed standards for gas-fired instantaneous water heaters violate section 6295(o)(4) of EPCA because the unavailability provision is not only limited to product classes and types, but also certain performance characteristics including, features, reliability, sizes, capacities, and volumes within those product classes and types. ONE Gas asserted that DOE's association of customer utility with understanding of, and interaction with, the covered appliance is incorrect and is an overreach in interpretation of section 6295 of EPCA. (ONE Gas, No. 1200 at pp. 4–5)

In response to the July 2024 NODA, Rinnai reiterated its position that non-condensing gas-fired instantaneous water heaters have useful and valuable features, including the ability to have like-for-like replacements, compatibility for easier and wider applications of installations, compatibility with non-condensing venting, smaller space requirements, and greater efficiency at lower cost than gas-fired storage water heaters. Rinnai claimed that there is no sound statutory basis for DOE's refusal to recognize that non-condensing gas-fired instantaneous water heaters have distinct features and characteristics from those of condensing gas-fired instantaneous water heaters that provide utility to consumers. Rinnai stated that DOE could instead establish separate standards for condensing and non-condensing gas-fired instantaneous water heaters to recognize the different functions, capabilities, and installation requirements while preserving consumer choice, and therefore retain the increased energy efficiency standard for condensing gas-fired instantaneous water heaters. Rinnai requested that DOE run an analysis of this proposal with product substitution and other factors taken properly into account. (Rinnai, No. 1443 at pp. 4–5)

Regarding Rinnai's request for further analysis on product substitution, see section IV.F.10 of this document for further details.

Regarding Rinnai's assertion that DOE's interpretation of the unavailability provision requires a redundant reading of 42 U.S.C. 6295(q)

to 42 U.S.C. 6295(o)(4), DOE notes that while these provisions are related, they are not redundant. EPCA provides DOE authority to establish product classes with different standard levels under 42 U.S.C. 6295(q). Under this authority, DOE has to determine if a performance-related feature justifies a different standard, *i.e.*, is worth preserving in the market, by considering, among other things, utility to the consumer. In contrast, for the performance characteristics, features, sizes, capacities, and volumes protected under the unavailability provision, Congress has already made the determination that they should be preserved in the market. DOE uses its authority under the product class provision at 42 U.S.C. 6295(q) to then ensure that these performance characteristics, features, sizes, capacities, and volumes are preserved in the market. Without the product class authority, DOE would have to set one standard for a covered product that preserves every aspect of a covered product protected under the unavailability provision. For example, larger capacity gas-fired storage water heaters are generally less-efficient than smaller capacity units because standby losses are higher for larger capacity storage tanks. As a result, the lower efficiency of the largest capacity models could limit DOE's ability to set standards under 42 U.S.C. 6295(o)(4). But 42 U.S.C. 6295(q) lets DOE set a more-stringent standard for smaller capacity gas-fired storage water heaters that saves more energy and a less-stringent standard for larger capacity gas-fired storage water heaters that helps preserve their presence in the market. Finally, it is important to note that the product class provision is not just limited to implementing the unavailability provision. As the product class provision contemplates that the utility of some performance-related features to the consumer may not justify preservation in the market under a separate product class, it is clear that Congress intended this provision to apply to a larger set of performance-related features than would be protected under the unavailability provision.

As for Rinnai's statement that there is no reference to "consumer utility" in the unavailability provision detailed in section 6295(o)(4) of EPCA, Rinnai's own comment also cited a House of Representatives report that stated the purpose of the unavailability provision is to ensure that an amended standard does not deprive consumers of product choices and characteristics, features, sizes, etc., and that significant energy savings can be achieved without

³⁸ DOE finds the better reading of the term "features" in the unavailability provision (*i.e.*, those features that cannot be eliminated by the establishment of a new or amended energy conservation standard) to be those features that provide a consumer unique utility during the operation of the appliance in performance of its major function(s). Stated another way, the "features" provision and the related utility of such features pertain to those aspects of the appliance with which the consumer interacts during the operation of the product (*i.e.*, when the product is providing its "useful output") and the utility derived from those features during normal operation. 86 FR 73947, 73955.

sacrificing the utility of an appliance to a consumer. (Rinnai, No. 1186 at pp. 10). Performance characteristics, features, sizes, capacities, and volumes all offer some utility or benefit to the consumer. To the extent that Rinnai is suggesting that the protection of the unavailability provision in EPCA should be extended to aspects of a covered product that offer no utility to a consumer during operation, like the less-efficient heat exchanger design of a non-condensing gas-fired water heater, or whether the venting material is plastic or stainless steel, DOE strongly disagrees. Any interpretation of the unavailability provision not based on the assumption that Congress was concerned with preserving the utility of covered products, results in a regulatory framework where DOE is forced to create so many product classes that achieving any significant amount of energy savings is all but impossible.

DOE also disagrees with Rinnai's contention that the specific provisions of the unavailability provision—performance characteristics (including reliability), features, sizes, capacities, and volumes—should be read to also include, among other things, “installation costs” and “greater efficiency at lower cost than gas-fired storage water heaters.” Extending the unavailability provision to installation costs and efficiency is demonstrably an impossibly broad interpretation of what DOE is expected to preserve in the market under the unavailability provision. Efficiency is certainly a performance characteristic of a water heater as it measures how well a water heater performs its intended function. However, it would be nonsensical for efficiency to be a performance characteristic under the unavailability provision as the express purpose of the statute is to improve the energy efficiency of covered products and equipment, *i.e.*, eliminate less-efficient products and equipment from the market. Furthermore, cost is certainly a feature of a product. Arguably, it is one of the most important features of a product to a consumer. But again, the energy-saving purposes of EPCA would be frustrated if DOE were required to set standards under the unavailability provision that maintain less-energy-efficient covered products based solely on the fact that they cost less to install. Instead, EPCA expressly contemplates increases in the installed cost of a covered product or equipment in the economic justification analysis where DOE is directed to consider, among other things, the savings in operating costs compared to any increase in the

initial and maintenance costs of a covered product. (42 U.S.C. 6295(o)(2)(B)(i)(II)). At bottom, Rinnai's argument is that DOE may not eliminate one water-heating option (non-condensing gas instantaneous water heaters) if that option is cheaper to install than another, different option (condensing gas-fired instantaneous water heaters). But, Congress made it clear that kind of comparative assessment is to be done as part of the economic analysis and has no role under the unavailability provision. As discussed at length elsewhere in this document, DOE's economic analysis considers the extent to which its standards for gas-fired instantaneous water heaters will affect the market.

Additionally, in determining whether a standard is economically justified under EPCA, DOE is directed, among other things, to consider any lessening of the utility or performance of the covered product likely to result from the standard. Thus, extending the unavailability provision to preserve any performance characteristic or feature would frustrate EPCA's purpose and statutory scheme. Simply put, EPCA requires DOE to adopt standards set at the maximum improvement in energy efficiency determined to be technologically feasible and economically justified. EPCA anticipates that new or amended energy conservation standards will result in the unavailability of certain inefficient technologies. An overly broad reading of the unavailability provision to include attributes of the covered product not addressed by the text of that provision (*i.e.*, efficiency, costs, installation costs, *etc.*) would be at odds with the statute's energy-saving purposes. Similarly, DOE disagrees with reading other qualifiers into the unavailability provisions, including “like-for-like replacements, compatibility for easier and wider applications of installations, compatibility with non-condensing venting, smaller space requirements.” As discussed further below, an existing non-condensing gas-fired instantaneous water heater can always be replaced with a condensing gas-fired instantaneous water heater in the same place (*i.e.*, it is always technically feasible).

As discussed previously, DOE's interpretation of the unavailability provision does not require a redundant reading of 42 U.S.C. 6295(q). Instead, DOE interprets these two provisions as complementing one another. EPCA provides DOE some discretionary authority to establish product classes with different standard levels under 42 U.S.C. 6295(q). Under this authority,

DOE has to determine if a performance-related feature justifies a different standard by considering, among other things, utility to the consumer. And based on DOE's own research as well as information presented in stakeholder comments, differences in cost or complexity of installation between different methods of venting (*e.g.*, a condensing water heater versus a non-condensing water heater) do not make specific methods of venting a performance-related feature under 42 U.S.C. 6295(q)(1)(B), so as to justify separating the products into different product classes. In reaching this determination, DOE considered Category III venting (for non-condensing designs) and Category IV venting (for condensing designs), which are associated but external to the covered product, and concluded that condensing gas-fired instantaneous water heaters can be installed in the same locations where non-condensing gas-fired water heaters are currently installed. As stated throughout this rulemaking, installation costs and considerations are very relevant to the establishment of energy conservation standards, and are accounted for in the LCC analysis to determine the economic justification of standards.

Unlike specific methods of venting, a covered product's capacity is addressed under the unavailability provision in 42 U.S.C. 6295(o)(4), and described under the product class provision in 42 U.S.C. 6295(q)(1)(B). DOE notes that a water heater's capacity provides utility to a consumer during use (unlike the type of venting or installation costs). For example, water heaters with higher capacities enable consumers to run multiple applications requiring hot water at the same time. Further, DOE is required to preserve the utility offered by larger capacity water heaters in the market under the unavailability provision in 42 U.S.C. 6295(o)(4). Unlike capacity, a lower installation cost has no effect on the performance of a water heater and offers no utility to a consumer during use. In addition to capacity, DOE has also established product classes for water heaters based on: volumes (*e.g.*, a division at 2 gallons), input rating (*e.g.*, a division at 50,000 Btu/h), delivery capacities (*e.g.*, divisions for the very small, low, medium, and high usage patterns), and demand type (*e.g.*, storage versus instantaneous); in addition to distinguishing by context and applications (*e.g.*, consumer product versus commercial equipment) as well as fuel types (*e.g.*, gas-fired, oil-fired, or

electric) as required under 42 U.S.C. 6295(q)(1)(A).

APCA opposed DOE's proposed standards for gas-fired instantaneous water heaters because these standards would require condensing operation. (APCA, No. 1152 at p. 1) The Governor of Georgia commented that the proposed standards would limit consumer choice by reducing the availability of many non-condensing tankless water heaters currently on the market, negatively impact consumers through increased product costs, and contradict EPCA requirements. (Governor of Georgia, No. 1157 at pp. 1–3)

ONE Gas indicated that non-condensing/positive vent pressure gas-fired instantaneous water heaters peak at approximately 0.82 UEF and that UEF ratings from 0.89 to 0.93 would be technologically infeasible for non-condensing products. (ONE Gas, No. 1200 at pp. 2–3) Huntsville Utilities expressed opposition to the proposed standards for gas-fired water heaters, adding that it is especially concerned with the proposed standards for gas-fired instantaneous water heaters that require an efficiency level over 91 percent, effectively eliminating the non-condensing option for this product class. (Huntsville Utilities, No. 1176 at p. 1) JEA, WMU, PGW, Southeast Gas, CEA, ASGE and ONE Gas stated that the proposed standard for gas-fired water heaters would effectively eliminate the option of a non-condensing instantaneous water heater and requested that DOE reassess the negative impacts on public gas utility customers and manufacturers of water heaters that would result from the proposed standard for gas-fired water heaters. (JEA, No. 865 at pp. 1–2; WMU, No. 872 at pp. 1–2; PGW, No. 886 at pp. 1–2; Southeast Gas, No. 887 at pp. 1–2; CEA, No. 914 at pp. 1–2; ASGE, No. 976 at pp. 1–2; ONE Gas, No. 1200 at p. 2)

The Gas Association Commenters expressed that the transition to condensing-level efficiencies for gas-fired instantaneous water heaters would result in the unavailability of products with what it considered to be performance characteristics and features provided by non-condensing products. This group of commenters cited comments submitted by Rinnai, stating that non-condensing gas-fired instantaneous water heaters can be installed and used in cases where condensing products cannot be (*e.g.*, in high-rise buildings, historically protected buildings, or any other building with complications to venting capabilities). According to EPCA, the Gas Association Commenters stated, DOE should decline to adopt the

proposed standard for gas-fired instantaneous water heaters on the grounds that it would result in the unavailability of products with “performance characteristics” and “features” currently available to consumers in the United States. (Gas Association Commenters, No. 1181 at p. 7)

In response to these comments, DOE acknowledges that the standards for gas-fired instantaneous water heaters cannot be achieved by non-condensing designs. Nevertheless, in response to comments from ONE Gas suggesting that the amended standards are technologically infeasible, condensing-level standards are still technologically feasible because condensing designs are widely available on the market. DOE has determined that non-condensing technology does not provide any inherent performance benefit to consumers beyond what is provided by condensing designs. Instead, as discussed previously in this section of this document, DOE has determined that non-condensing technology does not constitute a performance-related feature for which a separate product class must be established under EPCA, nor does non-condensing technology warrant preservation under the unavailability provision. Condensing gas-fired instantaneous water heaters can be installed in the same locations where non-condensing gas-fired water heaters are currently installed with proper consideration for the venting requirements of condensing water heaters. As discussed in section IV.F.2 of this document, the venting requirements of each type of water heater are considered in the analysis of installation costs. Moreover, DOE has not identified, nor have commenters provided, any specific examples of buildings that currently use gas-fired water heaters that cannot be retrofitted to accommodate a condensing gas-fired water heater in place of an existing non-condensing gas-fired water heater. DOE research indicates that historically protected buildings can be renovated with appropriate permitting from local jurisdictions.³⁹ In the case of buildings preserved under the U.S. General Services Administration's stewardship program, HVAC renovations have

³⁹ For example, the Historic Beacon Hill District in Boston, Massachusetts has an architectural commission to review proposed alterations to exterior architectural features within the district that are open to view from a public way. Guidelines for this district are provided by the City of Boston, available at: www.cityofboston.gov/images_documents/Beacon%20Hill%20Architectural%20Commission%20Guidelines_tcm3-17489.pdf (last accessed August 6, 2024).

increased energy and water efficiency.⁴⁰ When a chimney is not used to vent the flue gases (such as when sidewall venting is used), venting terminations on the exterior of a building are visually unobtrusive—far less prominent than outdoor units for air-conditioning systems that are often installed in privately-owned homes in historic districts. With respect to high-rise buildings, DOE has found that these buildings are uncommonly outfitted with consumer gas-fired instantaneous water heaters at present because these types of buildings more commonly rely on central domestic hot water production (*i.e.*, commercial water heaters). This is because if consumer gas-fired instantaneous water heaters are centrally located in a multi-family building, they could require multiple long vents for flue gases and for combustion air, which can be generally prohibitive for both non-condensing and condensing products alike. However, even if gas-fired instantaneous water heaters are located in some high-rise buildings, they can be located near exterior walls, and therefore each unit can have separate venting. If high-rise buildings rely on non-condensing gas-fired instantaneous water heaters that are installed in each individual dwelling rather than in a central location, the building would already have venting in place (which would need to be modified to accommodate a condensing product, resulting in added installation cost, just as any other case). In general, as any gas-fired instantaneous water heater would already require venting to the outside, the existing non-condensing venting can always be converted to condensing venting. These installation costs and considerations have been included in the quantitative factors of the analysis. See section IV.F.2 for details on how they are accounted for in the installation cost analysis and the development of LCC estimates. In summary, DOE has not found any cases where complications in venting cannot be overcome. As a result, DOE finds that interested persons have not established by a preponderance of the evidence that the standard is likely to result in the unavailability of gas-fired instantaneous water heaters in certain applications, *e.g.*, high-rise buildings, historically protected buildings, or any other building with complications to venting capabilities. So, any argument that non-condensing gas-fired instantaneous

⁴⁰ See, for example, the 2023 report by The Center for Historic Buildings, available at: www.gsa.gov/system/files/Stewardship2023_0.pdf (last accessed August 8, 2024).

water heaters should be preserved in the market under 42 U.S.C. 6295(o)(4) must be based on a performance characteristic (e.g., reliability), feature, size, capacity, or volume that is unique to non-condensing gas-fired instantaneous water heaters.

First, regarding reliability, as discussed in the March 2022 preliminary analysis and the July 2023 NOPR, standards adopted at EL 2 would result in a transition towards condensing technology for gas-fired instantaneous water heaters (for those with less than 2 gallons of storage volume and more than 50,000 Btu/h of rated input) but would not result in the unavailability of reliably-performing products. (See chapter 2 of the preliminary analysis TSD; 88 FR 49058, 49079). Condensing gas-fired instantaneous water heaters have been on the market for many years. DOE has noted clusters of models at condensing efficiency levels as far back as the April 2010 Final Rule. (See table IV.11 at 75 FR 20112, 20145, which includes condensing technology at efficiency level 7). Over time, condensing models have only grown in popularity. Today, about two-thirds of gas-fired instantaneous water heater shipments are condensing products. Given this substantial market penetration, and the fact that a significant portion of these shipments are installed in replacement applications where the upfront cost is likely higher than for non-condensing products, and that DOE does not expect that consumers on a large scale would trade off efficiency for reliability, DOE concludes that condensing gas-fired instantaneous water heaters are likely to be just as reliable as non-condensing models—otherwise, they would not comprise more than half of nationwide shipments. See chapter 9 of the final rule TSD for more details on product shipments.

Regarding sizes, capacities and volumes, gas-fired instantaneous water heaters are typically described in terms of capacity, *i.e.*, Btu/hr. Based on DOE's market assessment, gas-fired instantaneous water heaters that meet the adopted EL 2 efficiency are available over the full range of capacities up to the maximum input that is allowable by statute (200,000 Btu/h), and models on the market also offer modulating burners to meet reduced demands. Therefore, no sizes, capacities or volumes⁴¹ will be made unavailable as

a result of DOE not separating product classes for non-condensing and condensing gas-fired instantaneous water heaters in this rule. As a result, DOE finds that interested persons have not established by a preponderance of the evidence that the standard is likely to result in the unavailability of any sizes, capacities, or volumes of gas-fired instantaneous water heaters that are substantially the same as those generally available in the market.

DOE has found no sound statutory basis for interpreting “size” to refer to the physical dimensions or total installation footprint of a covered product. As technology advances, many products get smaller. Computers used to be the size of rooms and now they can fit in a pocket. Similarly, televisions, which are covered products under 42 U.S.C. 6292(a)(12) and are typically referred to by screen size, have undergone significant technological advances over the past two decades as the market has shifted from cathode-ray-tube (CRT) televisions and rear-projection televisions to liquid-crystal-display (LCD) televisions. LCD televisions are a fraction of the physical size of a CRT television or rear-projection television for the same screen size. It would make little sense for the unavailability provision to require DOE to preserve CRT and rear-projection televisions in the market because they take up more space than an LCD television with the same screen size. As such, DOE views size, capacities, and volumes as product-specific terms that all refer to the same aspect of a covered product.

Nonetheless, even if a smaller installation footprint is considered a performance characteristic or feature, interested persons have not established by a preponderance of the evidence that the standard is likely to result in the unavailability of gas-fired instantaneous water heaters with smaller installation footprints. Gas-fired instantaneous water heaters that only just meet the current standards (“baseline” models) are designed with a combustion blower to help exhaust the flue gases and improve heat exchange. These designs use “category III”⁴² venting, which is a

nor does it substantially affect the model's ability to deliver hot water on-demand.

⁴² In 2021, the National Fire Protection Association (NFPA) and American National Standards Institute (ANSI) published the NFPA 54/ANSI Z223.1, “National Fuel Gas Code.” (NFPA 54–2021). Chapter 3 of NFPA 54–2021 divides the “vented appliance” definition into four categories according to whether the appliance operates with positive or nonpositive static pressure in the vent and whether there is excessive condensate formation in the vent. NFPA 54–2021 can be found online at: [www.nfpa.org/codes-and-standards/nfpa-](http://www.nfpa.org/codes-and-standards/nfpa-54-standard-development/54)

type of vent made for pressurized flue gases (such as those generated by a baseline gas-fired instantaneous water heater with a combustion blower). While category III venting is for non-condensing appliances, it is similar to category IV venting (used for condensing appliances) because both types handle pressurized flue gases from appliances with blowers. Condensing gas-fired instantaneous water heaters also use combustion blowers. The primary difference in the venting for these designs is the material that the vent is made of: category III vents handle higher temperatures and are therefore made of metal, whereas category IV vents have to be able to withstand corrosion from condensate but can be made of less expensive plastics due to the lower temperatures produced by condensing appliances (condensing appliances do not exhaust as much heat as non-condensing appliances do because condensing appliances are more effective at transferring the heat to the water). In a replacement scenario, the existing category III venting must be removed and replaced with category IV venting, however the new venting can utilize the existing vent run because both venting types operate with positive static pressure and can be configured horizontally or vertically. As a result, the installation footprint can be maintained when switching from a non-condensing to a condensing gas-fired instantaneous water heater. As discussed previously, the replacement of the venting will incur additional labor and material costs, but it is technically feasible. See section IV.F.2 for further details on installation costs. See chapter 3 of the TSD for more details on venting types and baseline components and operation.

For these reasons, DOE has concluded that interested persons have not established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States of gas-fired instantaneous water heaters with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. Additionally, DOE has determined that separate product classes for inefficient non-condensing technology and designs are not justified under 42 U.S.C. 6295(q)(1)(B).

Lastly, DOE notes that the condensing-level standards adopted by this final rule do not apply to *all* gas-

⁴¹ Consumer gas-fired instantaneous water heaters often have little to no storage volume (*i.e.*, can have 0 gallons of rated storage volume), however. These models are also referred to as “tankless.” Hence volume of the gas-fired instantaneous water heater is not typically a consideration for most consumers,

54-standard-development/54. (Last accessed December 4, 2024).

fired instantaneous water heaters, but only those with less than 2 gallons of storage volume and more than 50,000 Btu/h of rated input. While these products comprise the vast majority of gas-fired instantaneous water heaters, it is not the entirety. Further discussion of condensing standards for other gas-fired instantaneous water heaters is presented in section IV.C.2.b of this document.

2. Technology Options

In the July 2023 NOPR market analysis and technology assessment, DOE identified several technology options initially determined to improve the efficiency of gas-fired instantaneous

water heaters, as measured by the DOE test procedure. The technology options DOE identified are listed in table IV.3. These technology options pertain to gas-fired instantaneous water heaters with less than 2 gallons of stored volume and over 50,000 Btu/h of rated input. Technology options for other types of gas-fired instantaneous water heaters are largely similar; however, additional options may be used to complement the applications of those products. For example, gas-fired instantaneous water heaters with substantial storage volume may employ thicker insulation to improve UEF ratings by reducing standby losses. As discussed in section

IV.C of this document, the engineering analysis for products with 2 or more gallons of storage volume and for products with less than 50,000 Btu/h of rated input consists of a “crosswalk,” *i.e.*, a translation of existing standards from one metric (EF) to another (UEF). Because a crosswalk maintains the same stringency of standards, DOE has not completed an assessment of the market for technology options used to improve UEF in models subject to the translated standards. DOE will continue to monitor the market and assess the designs of these models as more information pertaining to UEF ratings becomes available.

TABLE IV.3—POTENTIAL TECHNOLOGIES FOR INCREASING GAS-FIRED INSTANTANEOUS WATER HEATER EFFICIENCY

Technology option		
Electronic ignition	Intermittent pilot ignition. Intermittent direct ignition. Hot surface ignition.	
Improved burners	Condensing pulse combustion. Power burner. Reduced burner size (burner derating).	
	Modulating burners	Step modulating burners. Fully modulating burners.
Heat exchanger improvements	Increased heat exchanger surface area. Flue baffle. Condensing technology.	
Improved venting	Direct venting. Concentric direct venting.	
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 result in the unavailability of any covered product

type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

(4) *Safety of technologies.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.

(5) *Unique-pathway proprietary technologies.* If a technology has proprietary protection and represents a unique pathway to achieving a given efficiency level, it will not be considered further, due to the potential for monopolistic concerns.

10 CFR part 430, subpart C, appendix A, sections 6(a)(3)(iii) and 7(b).

In sum, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed five criteria, it will be excluded from further consideration in the engineering analysis. The reasons

for eliminating any technology are discussed in the following sections.

The subsequent sections include DOE’s evaluation of each technology option against the screening analysis criteria, and whether DOE determined that a technology option should be excluded (“screened out”) based on the screening criteria.

1. Screened-Out Technologies

In the July 2023 NOPR, DOE screened out the following technology options pertaining to gas-fired instantaneous water heaters based on the previously described criteria: condensing pulse combustion and reduced burner size. 88 FR 49058, 49083. DOE did not modify its screening analysis in the July 2024 NODA or in this final rule analysis.

Regarding condensing pulse combustion, DOE has determined it is not technologically feasible for the broader market and not likely to be practicable to manufacture, install, and service this technology on the scale necessary to serve the relevant market at the time of the effective date of this standard. Although condensing pulse

combustion technology shows promising results in increasing efficiency, it has not yet been demonstrated in any commercially-available consumer gas-fired instantaneous water heaters. Similar efficiencies are achievable with other technologies that have already been introduced on the market such that it is unlikely for manufacturing with

condensing pulse combustion technology to be scaled up in the future. DOE screened out reduced burner size due to adverse impacts to consumer utility (because reducing the burner size reduces the amount of heat the water heater can provide). Further details of the screening analysis are provided in chapter 4 of the final rule TSD.

2. Remaining Technologies
Through a review of each technology, DOE tentatively concludes that all of the other identified technologies listed in section IV.B.2 met all five screening criteria to be examined further as design options in DOE’s final rule analysis. In summary, DOE did not screen out the following technology options:

TABLE IV.4—REMAINING TECHNOLOGY OPTIONS

Technology option	
Electronic ignition	Intermittent pilot ignition. Intermittent direct ignition. Hot surface ignition.
Burner improvements	Power burner.
	Modulating burners Step modulating burners. Fully modulating burners.
Heat exchanger improvements	Increased heat exchanger surface area. Flue baffle.
Improved venting	Condensing technology. Direct venting.
Improved controls	Concentric direct venting. Modulating controls.

DOE determined that these technology options are technologically feasible because they are being used or have previously been used in commercially available products or working prototypes. DOE also finds that all of the remaining technology options meet the other screening criteria (*i.e.*, practicable to manufacture, install, and service; do not result in adverse impacts on consumer utility, product availability, health, or safety; and do not utilize unique-pathway proprietary technologies). For additional details, *see* chapter 4 of the final rule TSD.

C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of the product. 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/ equipment at efficiency levels above the baseline. The output of the engineering analysis is a set of cost-efficiency “curves” that are used in downstream analyses (*i.e.*, the LCC and PBP analyses and the NIA).
As discussed in section IV.A.1 of this document, certain classes of gas-fired instantaneous water heaters currently have UEF-based standards, while for others EPCA’s EF-based standards apply. For this rulemaking, 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 but did not analyze higher efficiency levels because, as discussed in section IV.C.2.b of this document, DOE does not currently have sufficient information to determine which higher efficiencies may be economically justified and result in significant national energy savings.
DOE has analyzed standards with respect to the effective storage volume

metric (as proposed in the July 2023 NOPR) to allow consistency between standards in different product classes. As outlined in the July 2023 NOPR, there are two types of water heaters that can cause the system to store more energy than would be otherwise determined by the rated storage volume: (1) water heaters capable of operating with an elevated tank temperature, and (2) circulating water heaters.⁴³ 88 FR 49058, 49086. For water heaters that are not capable of storing water at elevated tank temperatures, including “tankless” models (*e.g.*, products with current UEF-based standards), the effective storage volume is equivalent to the rated storage volume. However, some gas-fired instantaneous water heaters can include smaller tanks (*i.e.*, the product class for models with at least 2 gallons of storage volume), therefore the effective storage volume metric was determined to be useful for gas-fired instantaneous water heaters as well.
The product classes analyzed in this final rule and the respective analytical approaches utilized are listed in table IV.5.

⁴³ As discussed in section III.B of this document, circulating gas-fired water heaters are storage-type

water heaters that are outside the scope of this final rule.

TABLE IV.5—ANALYSIS APPROACH BY PRODUCT CLASS

Product category analyzed in this final rule	Distinguishing characteristics (effective storage volume and input rating)	Analysis
Gas-fired Instantaneous Water Heater	<2 gal and ≤50,000 Btu/h <2 gal and >50,000 Btu/h; All Draw Patterns .. ≥2 gal and ≤200,000 Btu/h	Converting EF-based standards to UEF-based standards. Amending UEF-based standards. Converting EF-based standards to UEF-based standards.

1. Products With Current UEF-Based Standards

DOE typically uses one of two approaches to develop energy efficiency levels for the engineering analysis: (1) relying on observed efficiency levels in the market (*i.e.*, the efficiency-level approach), or (2) determining the incremental efficiency improvements associated with incorporating specific design options to a baseline model (*i.e.*, the design-option approach). Using the efficiency-level approach, the efficiency levels established for the analysis are determined based on the market distribution of existing products (in other words, based on the range of efficiencies and efficiency level “clusters” that already exist on the market). Using the design option approach, the efficiency levels established for the analysis are determined through detailed engineering calculations and/or computer simulations of the efficiency improvements from implementing specific design options that have been identified in the technology assessment. DOE may also rely on a combination of these two approaches. For example, the efficiency-level approach (based on actual products on the market) may be extended using the design option

approach to interpolate to define “gap fill” levels (to bridge large gaps between other identified efficiency levels) and/or to extrapolate to the “max-tech” level (particularly in cases where the “max-tech” level exceeds the maximum efficiency level currently available on the market).

In the July 2023 NOPR, 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 to determine which efficiency levels were most representative of the current distribution of gas-fired instantaneous 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. DOE requested comments from stakeholders concerning these efficiency levels, which, in this final rule, are consistent with those analyzed in the July 2024 NODA.

a. Efficiency Levels

For each product class, DOE generally selects a baseline model as a reference

point for each class, and measures anticipated changes resulting from potential energy conservation standards against the baseline model. The baseline model in each product class represents the characteristics of a product typical of that class (*e.g.*, capacity, physical size). Generally, a baseline model is one that just meets current energy conservation standards, or, if no standards are in place, the baseline is typically the most common or least efficient unit on the market. 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 this final rule, DOE has analyzed the same efficiency levels as were considered in the July 2023 NOPR and the July 2024 NODA. These efficiency levels are presented in table IV.6. For each draw pattern, EL 2 corresponded with the levels proposed in the Joint Stakeholder Recommendation (“JSR”) as discussed in section II.B.2 of this document. *See* chapter 5 of the final rule TSD for further details regarding the efficiency level analysis.

TABLE IV.6—EFFICIENCY LEVELS FOR PRODUCTS WITH $V_{\text{eff}} < 2$ 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.

In response to the July 2023 NOPR, ONE Gas stated that as efficiencies of non-condensing instantaneous gas water heaters have increased since their introduction, replacements would accrue efficiency gains and emissions reductions over the products when first introduced in the 2000s and now at the

end of their predicted lives (20 years according to the Department’s analysis). (ONE Gas, No. 1200 at p. 4)

DOE agrees that efficiencies of gas-fired instantaneous water heaters have increased over time. In the present rulemaking, DOE considered the baseline efficiency of gas-fired

instantaneous water heaters to be equivalent to the current standards. This efficiency was required as a result of the April 2010 Final Rule, which set standards at a level that typically corresponds to electronic ignition, larger non-condensing heat exchangers, and power venting. As shown in chapter 3

of the final rule TSD, models are now able to achieve significantly higher efficiencies (e.g., condensing levels).

With respect to efficiency level 2, Rinnai stated that DOE's proposed standard is not technically achievable by non-condensing gas-fired instantaneous water heaters, and, accordingly, will make them obsolete. Rinnai noted that it had previously submitted comments on the July 2023 NOPR, stating that the proposed rule would eliminate one of Rinnai's two residential water heater product offerings and significantly impact Rinnai's tankless water heater sales and manufacturing facility. (Rinnai, No. 1443 at pp. 1–2)

DOE has concluded that the efficiency levels analyzed in this rulemaking are technologically feasible for gas-fired instantaneous water heaters through the use of condensing heat exchangers, which are widely used in the market today. DOE understands Rinnai's concern regarding the elimination of less-efficient models impacting the manufacturer, and therefore these topics are addressed more in detail in section IV.J.3 of this document, which discusses MIA comments. After consideration of feedback from commenters, DOE is maintaining the efficiency levels provided in the July 2024 NODA.

b. Design Options

Based on its teardown analyses and feedback provided by manufacturers in confidential interviews, DOE 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 (most likely to prove cost-effective) for the market in general in a standards-case scenario. Further details are provided in chapter 5 of the final rule TSD.

DOE has found that gas-fired instantaneous water heaters are often differentiated based on heat exchanger and burner designs. Step-modulating burners feature a manifold with multiple solenoids regulating the gas flow into the burner. Sections of the burner can be shut off or opened up as demand for hot water varies. Each additional open solenoid means another “step up” in heat input. By contrast, fully modulating burners make use of the full combustion chamber and heat exchanger surface area, modulating the input rate in tandem with the

combustion blower. Such systems tend to be more complex than step-modulating gas-fired instantaneous water heaters. In the March 2022 Preliminary Analysis, DOE observed some manufacturers using fully modulating burners in lieu of step-modulating burners at the max-tech efficiency level. In the July 2023 NOPR, DOE analyzed an additional efficiency level, EL 3, that was close to the max-tech level, EL 4, and used generally similar design options. However, in the July 2024 NODA, upon further review DOE found products that meet EL 3 but not EL 4 using step modulation. Thus, DOE tentatively determined that fully modulating burners are more likely to be implemented in only EL 4 designs. In the July 2024 NODA, based on additional data collected in its analyses, DOE also surmised that EL 4 efficiencies could still be met without the use of fully modulating burners—i.e., relying mainly on improvements to the condensing heat exchanger. DOE stated that this result is consistent with the conclusion in the July 2023 NOPR because the pathway relying on heat exchanger improvements could be more cost-effective for manufacturers to mass-produce designs at a scale necessary to meet national demand, therefore the Department expects that such designs may be more common if standards were to be set at EL 4 than in the current market. As such, DOE analyzed EL 4 to be achievable using either step modulating or fully modulating burners, and the manufacturer production cost for EL 4 estimated in the July 2024 NODA reflected an average of these design pathways. 89 FR 59692, 59693–59694. Due to the uncertainty regarding which design pathway would be more prevalent in the case of standards set at the max-tech efficiency level, DOE raised the issue to seek additional information from interested parties on this topic.

In response to the July 2024 NODA, AHRI disagreed with DOE's assessment that EL 3 and EL 4 can be achieved using step modulating burners. AHRI stated that fully modulating burners are required to achieve EL 3 and EL 4. AHRI claimed that fully modulating burners provide the precise control necessary to optimize combustion efficiency, minimize energy waste, and consistently achieve the higher performance levels associated with EL 3 and EL 4. AHRI claimed that this is supported by current market data, which shows that the vast majority of gas-fired instantaneous water heaters achieving high efficiency levels, particularly those with a UEF above

0.93, rely on fully modulating burners. AHRI claimed DOE's findings are not supported by the existing market landscape. AHRI urged DOE to consider performing a detailed review of the efficiency gains that can be realistically expected from step modulating versus fully modulating burners, as well as a comprehensive assessment of market data in order to support the claim that step-modulating burners can be used to achieve EL 3 and EL 4. (AHRI, No. 1437 at pp. 1–2)

Rinnai requested that DOE analyze and validate the assumptions regarding the feasibility of achieving EL 3 or EL 4 using step modulating burners, a change made in the July 2024 NODA. According to Rinnai, fully modulating burners consistently achieve EL 3 and EL 4, which the July 2024 NODA now contradicts. (Rinnai, No. 1443 at p. 23)

Rheem disagreed with the design options for EL 3 and EL 4 as described in the July 2024 NODA, claiming that step modulation was not reflected in the MPCs. Rheem indicated that there are currently no models utilizing step modulating burners on the market that meet EL 4. In addition, Rheem stated that, while there are step modulating designs currently on the market that meet EL 3, some are complex down-fired designs that were not reflected in the technology options discussed in the NOPR TSD. Finally, Rheem questioned whether traditional step modulating designs can meet EL 3 at all input rates. (Rheem, No. 1436 at p. 2)

A.O. Smith stated that DOE's engineering analysis should reflect the technologies and design pathways currently available on the market and avoid making speculative assumptions regarding cost and performance of theoretical designs which have not been fully vetted or proven to be market ready and emphasized that the use of theoretical design pathways is more prone to inaccurate or incomplete cost estimates. (A.O. Smith, No. 1440 at pp. 5–6)

BWC agreed that designs utilizing step modulating burners can achieve EL 4, but stated that manufacturers do not widely design their products in this way due to their increased complexity, which correlates with reduced product lifetimes. Additionally, the manufacturer stressed that added product complexity would entail more specialized manufacturing processes, leading to additional costs passed on to consumers. (BWC, No. 1441 at pp. 1–2) BWC further stated that for products achieving EL 4 efficiencies with the use of step modulating burners the increased complexity of step modulating burners would make

products more difficult to efficiently mass produce, requiring the development of more specialized manufacturing processes. BWC stated that this would lead to increased production costs that may be passed on to consumers. (BWC No. 1441 at p. 2)

To clarify, DOE bases its assignment of design options not only on publicly available product literature, but also on its independent analysis of teardown samples. DOE combines this information to determine what the most cost-effective pathway to increasing efficiency may be.

With respect to burner configuration (*i.e.*, up-fired vs. down-fired), DOE notes that it has not found evidence to suggest that the configuration itself leads to improvements in UEF. Although the topic was discussed, burner configuration was not attributed as a design option to improve the efficiency of commercial gas-fired instantaneous water heaters in DOE's recent rulemaking pertaining to standards for that equipment.⁴⁴ Traditional designs of consumer gas-fired instantaneous water heaters utilize an "up-fired" approach where the burner is located at the bottom and directs the flame upwards through a heat exchanger above it. This configuration is the natural choice for product lines that used buoyancy to vent the flue gases away because the hot flue gases can rise through the heat exchanger and exit through the vent. However, baseline models today utilize power burners with blowers to expel the flue gases without the need for buoyancy to move these gases out. Because of this, designs are no longer limited to up-fired configurations. Down-fired configurations—where the burner and blower are located above the heat exchanger—may be preferred by some manufacturers due to this design's natural ability to manage condensate in condensing models. In a down-fired configuration, gravity allows the condensate to collect at a receiver near the secondary (condensing) heat exchanger because, in this configuration, the condensing heat exchanger is towards the bottom of the water heater. Teardown samples show that both firing configurations are used in condensing models today. As such, DOE finds that the burner configuration is likely the manufacturer's preference rather than an inherent benefit to efficiency. See chapters 3 and 5 of the final rule TSD for more details.

Where DOE has found a correlation between down-fired configurations and UEF is in the implementation of fully modulating burners. Down-fired configurations tend to have higher UEF ratings because fully modulating burners are typically always down-fired. This may be because, as discussed further in the following paragraphs, fully modulating burners require different manufacturing equipment and production lines. For example, if a manufacturer is designing a new production line for models with fully modulating burners, there may be an opportunity to implement a down-fired design for the condensate. However, the research and teardown analyses conducted by DOE did not yield evidence to suggest that the down-fired configuration causes an increase in UEF without the implementation of a fully modulating burner. Hence DOE maintains that the pathway to increasing efficiencies up to the max-tech level includes incorporating fully modulating burner designs, which happen to be down-fired. For condensing efficiency levels below the max-tech level, DOE's teardown analyses indicate that there would not be a significant difference in MPC between a down-fired design and an up-fired design, all else the same. Therefore, DOE has not directly analyzed the incorporation of down-fired burners as a design option in this engineering analysis except where fully modulating burners are used.

With respect to the burner modulation type, DOE agrees that fully modulating burners are capable of achieving higher efficiencies, including those from EL 1 through EL 4. However, in its teardowns, DOE identified samples of gas-fired instantaneous water heaters currently on the market meeting the efficiencies as high as EL 3 using step-modulating burners. Additionally, the comments from Rheem implicitly provide that fully modulating designs are associated with higher costs compared to step-modulating designs, which may be a reason step-modulating burners are still commonly used at higher efficiencies. DOE's teardown analyses verify this understanding—fully modulating burners use more advanced components that cause MPCs to rise commensurately. Responding to the comments from BWC, DOE understands that a production line built to manufacture step-modulating burners would have additional equipment that a fully modulating burner production line would not require. For example, manufacturers typically need additional metal presses and/or dies to stamp the

compartments of a step-modulated burner and combustion chamber. Each manufacturer has the ability to choose which type of burner to implement in its designs, taking into consideration the pros and cons of each approach (*e.g.*, step-modulating burners may cost less overall, but have a trade-off in that they require more equipment to manufacture). The availability of step-modulating burners at various efficiency levels strongly suggests that manufacturers do opt to use this pathway despite the added complexity of the production line.

As stated earlier, DOE aims to identify the most cost-effective and likely pathway to achieving higher efficiency levels. The cost-efficiency curves serve as estimates for what the overall market—not just one manufacturer—would experience in a scenario where standards are set to that efficiency levels. In the July 2024 NODA, DOE tentatively determined that the continued use of step-modulating burners, along with heat exchanger improvements, would be the most cost-effective pathway to achieve EL 3. Then, to reach EL 4, fully modulating burners may have similar cost-effectiveness such that manufacturers could opt to use either a step-modulating burner with an even larger heat exchanger or a fully modulating burner at this level.

DOE once again reviewed its teardowns and online product literature to assess how different manufacturers implement step-modulating and fully modulating burner designs, as suggested by AHRI. To Rheem's point, DOE once again found that step-modulating designs on the market today can achieve EL 3 and can span the full range of capacities (up to 200,000 Btu/h), as described in chapter 5 of the final rule TSD. While there may be some cases of product lines not reaching EL 3 across the full span of capacities, DOE believes these discrepancies in efficiency can be addressed by improving the heat exchanger (and the added costs of doing so are included in DOE's estimates of MPCs). Considering this, the Department has confirmed that the design option pathway to EL 3 could be more cost-effective using step-modulating burners.

DOE also found that, although step-modulating designs would be capable of meeting EL 4 (as BWC indicated), more manufacturers use fully-modulating burners at EL 4. To determine whether step-modulating burners would be appropriate to consider for EL 4, DOE evaluated the comments from manufacturers regarding manufacturing complexity. Currently, approximately only 8 percent of shipments currently

⁴⁴ See chapter 5 of the TSD to the October 2023 commercial water heater standards final rule, available online at: www.regulations.gov/document/EERE-2021-BT-STD-0027-0038.

meet EL 4. In a standards-case-scenario, manufacturers would have to significantly ramp up production capacity such that 100 percent of models sold in the U.S. would meet that efficiency level. The comments from multiple manufacturers serve as a strong

indication that, in a standards-case-scenario where production capacity for these high-efficiency models would have to be multiplied, it is more realistic to expect designs to use fully modulating burners to simplify the production process. Hence, DOE agrees

with commenters indicating that fully modulating burners are more appropriate for EL 4.
As a result, the design options analyzed in this final rule are listed in table IV.7.

TABLE IV.7—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	Step modulating burner; Condensing tube heat exchanger.
2	Step modulating burner; Larger condensing heat exchanger.
3	Step modulating burner; Larger, flat plate condensing heat exchanger.
4	Fully modulating burner; 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 (e.g., for tightly integrated products such as fluorescent lamps, which are infeasible to disassemble and for which parts diagrams are unavailable), cost-prohibitive, or otherwise impractical (e.g., large commercial boilers), DOE conducts price surveys using publicly available pricing data published on major online retailer websites and/or by soliciting prices from distributors and other commercial channels.

In the present case, DOE conducted the analysis using a combination of the physical and catalog teardown approaches to develop estimates of the manufacturer production cost (“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 at various efficiency levels spanning the full range of efficiencies

from the baseline to max-tech. 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 conducted during this rulemaking.

To perform this analysis, DOE selects representative capacities for each product class. These capacities reflect the most common or average size of a gas-fired instantaneous water heater in that product class, and this step is important because the MPC is dependent upon the size of the water heater—water heaters with higher input rates cost more to manufacture. In the July 2023 NOPR and July 2024 NODA, DOE analyzed input rates of 120,000 Btu/h and 199,000 Btu/h as representative capacities for the medium and high draw patterns, respectively. DOE has determined that these capacities remain representative in this final rule. Based on the results of the market assessment, DOE has determined that there are very few models in the low draw pattern, with only one manufacturer making these products. There are no very small draw pattern gas-fired instantaneous water heaters greater than 50,000 Btu/h in input rating. DOE’s teardown analyses have shown that the design option pathways and manufacturer production cost versus efficiency curves are generally similar for all tankless gas-fired instantaneous water heaters, such that the results from a direct analysis of the medium and high draw patterns would be representative for the very small and low draw patterns as well. Thus, the very small and low draw patterns were not directly analyzed product classes in this final rule.

Rheem stated that the incremental MPCs from EL 2 to EL 3 and from EL 3 to EL 4 are too low, and do not

adequately capture the higher costs associated with the new step modulation or fully modulating burner systems. Furthermore, Rheem reiterated its comment in response to the July 2023 NOPR that the incremental retail cost between step modulating and fully modulating gas-fired instantaneous water heater designs is 50 percent lower than expected. (Rheem, No. 1436 at pp. 2–3)

As described in section IV.C.1.b, DOE determined that the burner design options for EL 3 and EL 4 would be step-modulating burners and fully modulating burners, respectively. The July 2024 NODA assumed that only a fraction of the market would switch to fully modulating burners at EL 4, and, therefore, the incremental cost increase reflected an average of some manufacturers retaining the step-modulating burner (no additional burner cost) and some manufacturers switching to fully modulating burners (significant additional burner cost). As a result, the incremental MPC between EL 3 and EL 4 in the July 2024 NODA averaged out to be lower than the estimated total cost of switching to a fully modulating burner. In this final rule analysis, DOE assumes that all models at EL 4 would utilize fully modulating burners. Hence, the MPCs at EL 4 are increased to reflect this change in design pathway, and this would in turn increase the incremental retail cost between EL 3 and EL 4.

See chapter 5 of the final rule TSD for additional details.

d. Shipping Costs and Manufacturer Selling Price

As discussed in the July 2024 NODA, DOE similarly maintained the methodology for shipping costs from the July 2023 NOPR (see 88 FR 49058, 49095–49096). DOE updated the cost per trailer using the most recent data available. 89 FR 59692. Because many

gas-fired instantaneous water heaters sold in the United States are manufactured overseas, these shipping costs include the cost of shipping products from overseas to the United States, and then from the coast to the middle of the country.

A.O. Smith stated that DOE does not account for the increase in downstream shipping costs at EL 3 and EL 4 that would result from incorporating larger heat exchangers into consumer gas fired instantaneous water heaters. (A.O. Smith, No. 1440 at pp. 5–6)

DOE agrees that larger heat exchangers would increase the product footprint. In some cases, this causes fewer units to fit in a container or trailer, thereby increasing the per-unit outbound shipping cost to manufacturers. To determine how many units would fit, DOE assumed standard trailer dimensions and a nearly full truckload configuration (see chapter 5 of the final rule TSD for details). In DOE's shipping cost calculation, the maximum units that can fit is based not only on the size of each unit, but also the possible orientations that boxes can be loaded in with. Per DOE's analysis, the same number of units could fit in one

load whether the model is an EL 3 design or a slightly larger EL 4 design. As a result, the shipping costs are estimated to be the same at these two efficiency levels.

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-K⁴⁵ reports filed by publicly traded manufacturers that produce gas-fired instantaneous water heaters, the manufacturer markups from the April 2010 Final Rule, and feedback from confidential manufacturer interviews. 75 FR 20112. See section IV.J.2.d of this document and chapter 12 of the final rule TSD for additional detail on the manufacturer markup.

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, 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. As discussed in section IV.C.1.c of this document, the very small and low draw patterns were not directly analyzed due to the low number of basic models identified in these draw patterns during the market and technology assessment. However, as shown in section IV.C.1.a of this document, higher efficiency levels of the very small and low draw pattern product classes continue to be assessed. Further evaluation of the economic justification of potential amended standards for gas-fired instantaneous water heaters (all models with $V_{eff} < 2$ gal and rated input $> 50,000$ Btu/h) is based on the understanding that the medium and high draw pattern results are representative of the overall market given the very low shipments of very small and low draw pattern models. The results of the engineering analysis, in 2023 dollars, are summarized in table IV.8.

TABLE IV.8—ENGINEERING ANALYSIS RESULTS FOR GAS-FIRED INSTANTANEOUS: $V_{eff} < 2$ GAL, RATED INPUT $> 50,000$ Btu/h

EL	UEF				MPC (2023\$)		MSP (2023\$)		Shipping (2023\$)	
	Very small	Low	Medium 120,000 Btu/h	High 199,000 Btu/h						
0 (Baseline)	N/A	N/A	0.81	0.81	Med: 310.51 327.89.	High:	Med: 450.24 475.44.	High:	Med: 4.52 7.63.	High:
1	N/A	N/A	0.87	0.89	Med: 441.74 461.02.	High:	Med: 640.52 668.48.	High:	Med: 7.07 9.49.	High:
2 (JSR)	N/A	N/A	0.91	0.93	Med: 445.63 466.00.	High:	Med: 646.16 675.71.	High:	Med: 10.17 11.45.	High:
3 (E*)	N/A	N/A	0.92	0.95	Med: 451.39 473.22.	High:	Med: 654.52 686.17.	High:	Med: 10.17 11.45.	High:
4 (Max tech)	N/A	N/A	0.93	0.96	Med: 490.04 514.99.	High:	Med: 710.56 746.74.	High:	Med: 10.17 11.45.	High:

2. Products 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.

For the July 2023 NOPR, DOE applied a similar methodology to translate from minimum efficiency levels denominated in EF to those in UEF for classes of covered consumer water heaters that do not yet have UEF-based standards. 88 FR 49058, 49098. The translated standards for gas-fired instantaneous water heaters are shown in table IV.9. These efficiencies all correspond to non-condensing operation.

⁴⁵ U.S. Securities and Exchange Commission. Company Filings. Available at www.sec.gov/search-filings (last accessed August 7, 2024).

TABLE IV.9—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
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	$0.2534-(0.0018 \times V_{\text{eff}})$
			Low	$0.5226-(0.0022 \times V_{\text{eff}})$
			Medium	$0.5919-(0.0020 \times V_{\text{eff}})$
			High	$0.6540-(0.0017 \times V_{\text{eff}})$

In the July 2023 NOPR, DOE proposed to adopt these translated standards and reiterated that the stringency of the standards is not increasing as a result of the conversion. 88 FR 49058, 49098–49100.

a. Crosswalk to Equivalent-Stringency UEF-Based Standards

In the July 2023 NOPR, DOE requested feedback regarding the appropriateness of the proposed converted UEF-based standards and whether products on the market can meet or exceed the proposed levels. 88 FR 49058, 49100.

The Gas Association Commenters stated that DOE did not justify the proposed new standards for gas-fired instantaneous water heaters that are <2 gallons and <50,000 Btu/h or greater than or equal to 2 gallons. In its comments, the Gas Association Commenters interpreted the economic analysis performed for gas-fired instantaneous water heaters that are <2 gallons and >50,000 Btu/h as being treated as representative for all gas-fired instantaneous water heater standards being proposed in the July 2023 NOPR. These commenters noted that DOE tentatively concluded these product classes are different enough to warrant separate standards, but that there was no economic justification provided for the two product categories remaining at non-condensing efficiency levels. Citing the statutory requirement for any new or amended energy conservation standards to be technologically feasible and economically justified, the Gas Association Commenters recommended that DOE modify its approach. (Gas Association Commenters, No. 1181 at p. 8)

EPCA directed DOE to establish a uniform efficiency descriptor to be used to regulate all covered water heaters, with certain exceptions for water heaters used only in commercial applications. (42 U.S.C. 6295(e)(5)) Therefore, DOE has conducted this analysis in satisfaction of its statutory

obligation to delineate standards for all consumer water heaters, including gas-fired instantaneous water heaters, in terms of UEF. Because the statute requires that the UEF-based standards for these product classes reflect the same stringency as the statutory EF-based standards that are currently applicable—*i.e.*, these are not standards that would require higher efficiency to comply—it is not necessary for DOE to conduct an assessment of energy savings or economic justification prior to proposing such standards. (42 U.S.C. 6295(e)(5)(E)(iii)) For example, the translated UEF standards can be met by non-condensing models and products with standing pilot lights as well. The Department believes that the Gas Association Commenters may have misinterpreted the analysis for product classes with current UEF-based standards as also applying to these product classes which have EF-based standards. To reiterate, these standards are not being established pursuant to EPCA provisions at 42 U.S.C. 6295(o)(A), but instead in accordance with those at 42 U.S.C. 6295(e)(5). Additionally, the statutory EF-based standards are provided within EPCA and do not require separate justification to adopt these stringencies. 89 FR 37778, 37845.

b. Consideration of More Stringent Standards

In the July 2023 NOPR, DOE also requested information and data regarding the UEF of products within these product classes if they are found to generally exceed the proposed levels. 88 FR 49058, 49100.

Some commenters identified a need to consider more stringent standards for gas-fired instantaneous water heaters with less than 50,000 Btu/h of input, discussed as follows.

A.O. Smith indicated that simultaneous establishment of baseline UEF levels for converted product classes while increasing the standard levels for existing product classes creates a

scenario where new products may emerge, and shipments may shift from product classes with more stringent standards to very similar products in new product classes with less stringent standards. (A.O. Smith, No. 1182 at p. 14) A.O. Smith identified that product classes for <2 gallon and <50,000 Btu/h gas-fired instantaneous water heaters and ≥2 gallon and ≤200,000 Btu/h gas-fired instantaneous water heaters with non-condensing standard levels are likely to incentivize circumvention of the <2 gallon and >50,000 Btu/h condensing standards. (A.O. Smith, No. 1182 at p. 14)

Bosch noted that there are still pathways for non-condensing gas-fired instantaneous water heaters to stay in the market, which could be realized by creating model lines that are either below 50,000 Btu/h in input or above 2 gallons in storage capacity. To remedy this, Bosch recommended DOE require condensing technology for all gas-fired instantaneous water heaters. (Bosch, No. 1204 at pp. 2–3)

By contrast, the CA IOUs stated that the proposed product sub-class with a rated volume of <2 gallons and an input rating of ≤50,000 Btu/h is appropriate for point-of-use applications and that this subclass will not account for a significant amount of gas fired instantaneous water heater shipments. (CA IOUs, No. 1442 at pp. 2–3) Rheem suggested that DOE consider increasing the standards for gas-fired instantaneous water heaters <2 gallons and less than or equal to 50,000 Btu/h of input to an efficiency that corresponds to removal of standing pilot lights, but not an efficiency that utilizes condensing technology. Rheem stated that gas-fired instantaneous water heaters under 50,000 Btu/h exist and have residential applications (*i.e.*, they are not exclusively marketed for recreational vehicles or as portable equipment). However, the commenter also wrote that these products are not a direct replacement for the condensing gas-fired instantaneous water heaters that

would be required for input rates greater than 50,000 Btu/h, and thus generally supported the translated standards for these products. (Rheem, No. 1177 at p. 12)

DOE agrees that there may be a market for gas-fired instantaneous water heaters with less than 50,000 Btu/h of input based on the designs it has reviewed. Gas-fired instantaneous water heaters with less than 50,000 Btu/h of heat input are typically used in “point-of-use” applications (e.g., affixed to a showerhead) because the heat input is generally not high enough to serve an entire house. Hence, DOE expects that shipments of these “point-of-use” tankless gas-fired instantaneous water heaters would not easily replace shipments of “whole-home” tankless gas-fired instantaneous water heaters with input rates higher than 50,000 Btu/h.

While DOE acknowledges that removing standing pilot lights would result in additional energy savings, DOE does not currently possess data supporting more stringent standards than those being established as part of this rulemaking. However, DOE may analyze the benefits and burdens of higher standards for these products at a later time. Further, after the compliance date of this final rule, the availability of UEF certification data for these products may inform a future analysis of more stringent standards in a future rulemaking.

In addition to Bosch and A.O. Smith, several other commenters raised concerns regarding non-condensing standards for larger gas-fired instantaneous water heaters—those with 2 or more gallons of storage volume.

Rheem commented that gas-fired instantaneous water heaters greater than or equal to 2 gallons of rated storage volume do not currently exist on the market because there is no need for them. (Rheem, No. 1177 at p. 13) Rheem stated that the ≥ 2 gallons and $\leq 200,000$ Btu/h product category could be used to circumvent the condensing-level standards for < 2 gallon and $> 50,000$ Btu/h gas-fired instantaneous water heaters and recommended aligning the standards to the condensing levels (e.g., change the intercepts in the standards equations for the > 2 gallon classes to match the amended standards for the < 2 gallon classes). (Rheem, No. 1177 at p. 13) Rheem reiterated these comments in response to the July 2024 NODA. (Rheem, No. 1436 at p. 3)

In response to the July 2024 NODA, the CA IOUs stated that manufacturers could produce gas fired instantaneous water heaters with a rated volume of ≥ 2 gallons and an input rating of $\leq 200,000$

Btu/h that do not meet condensing standards. The CA IOUs expressed concern that this would allow manufacturers to avoid meeting condensing standards for all consumer gas fired instantaneous water heater offerings. The CA IOUs expressed concern that, because of the low cost to manufacturers of increasing the rated volume of existing non-condensing gas fired instantaneous water heaters to 2 gallons or higher, DOE's proposal could allow non-condensing products to remain in the market at lower prices than condensing products. The CA IOUs urged DOE to modify its proposed subclass definitions if it can do so in a timely manner and to immediately begin a new rulemaking to address its concerns should modifying product subclasses present a significant delay to a final rule being issued for gas fired instantaneous water heaters (CA IOUs, No. 1442 at pp. 3–4). Specifically, the CA IOUs recommended that DOE expand the existing subclass to include all gas fired instantaneous water heaters with a volume less than 20 gallons and an input rating $> 50,000$ Btu/h and $\leq 200,000$ Btu/h. (CA IOUs, No. 1442 at pp. 3–4)

A.O. Smith claimed that, because some products ≥ 2 gallons and $\leq 200,000$ Btu/h are used only in commercial applications, condensing-level standards are justified for these products, citing the conclusions of DOE's rulemaking for commercial water heaters. (A.O. Smith, No. 1440 at p. 4) A.O. Smith emphasized the importance of establishing condensing-level standards for all gas-fired instantaneous water heaters, noting that finalizing the proposed standard for this product class leaves open the opportunity for the entry of new products intended to circumvent both consumer condensing standards and commercial condensing standards effective in October 2026. (A.O. Smith, No. 1440 at p. 4) A.O. Smith stated that in this rulemaking, in contrast with the conversion factor rulemaking, DOE is evaluating whether more stringent standards for gas-fired instantaneous water heaters would be technologically feasible, economically justified, and result in significant energy savings and that in this context, DOE must consider the factors outlined in EPCA at 42 U.S.C. 6295(q) for establishing product classes and adjust the gas-instantaneous product classes accordingly. (A.O. Smith, No. 1440 at p. 4)

A.O. Smith recommended that DOE expand the analyzed product class from < 2 gallons and $> 50,000$ Btu/h to < 5 gallons and $> 50,000$ Btu/h to ensure that condensing standards are not

circumvented through minor design changes. (A.O. Smith, No. 1440 at p. 4) A.O. Smith claimed that a gas-fired instantaneous water heater with a 5-gallon storage volume would have negligible standby losses and a consistent UEF standard value could apply to the entire zero-to-five-gallon range. A.O. Smith noted that EPCA only established standby loss standards for commercial gas-fired instantaneous water heaters with a rated storage volume greater than 10 gallons, stating that this indicates that standby losses are not expected to be significant enough to warrant separate standards and separate product classes until 10 gallons of storage volume for commercial gas-fired instantaneous water heaters. A.O. Smith stated that this suggests that DOE expanding the storage capacity range up to 5 gallons for the gas-fired instantaneous consumer water heater product class under consideration for amended standards is appropriate. (A.O. Smith, No. 1440 at pp. 4–5)

In response to A.O. Smith, DOE notes that the most recent commercial water heaters rulemaking, which published in the **Federal Register** a final rule on October 6, 2023 (the “October 2023 Commercial Water Heaters Final Rule”), analyzed gas-fired instantaneous water heaters that are considered covered commercial equipment under EPCA. 88 FR 69686, 69706. Specifically, these commercial gas-fired instantaneous water heaters are defined at 10 CFR 431.102 as having a rated input above 200,000 Btu/h. *Id.* While the October 2023 Commercial Water Heaters Final Rule established condensing-level standards for commercial gas-fired instantaneous water heaters, the conclusions of that rulemaking would not necessarily apply to gas-fired instantaneous water heaters ≥ 2 gallons and $\leq 200,000$ Btu/h because these are consumer water heaters and were not analyzed in that rulemaking.

Further, DOE understands that the recommendations to expand the applicability of the condensing-level standards to products with 2 or more gallons of storage may be based on an assumption that such a stringency increase would have minimal impact to the market. However, contrary to the comments from Rheem, Bosch, and A.O. Smith, DOE has identified several consumer gas-fired instantaneous water heaters on the market with 2 or more gallons, as discussed in section IV.A.1 of this document. Some of these models use non-condensing operation and would not comply with condensing-level standards at efficiency level 2. DOE does not currently possess data

supporting more stringent standards for these products or how more stringent standards would affect the market share or consumers of these products. Lastly, DOE believes the size of larger, non-condensing gas-fired instantaneous water heaters may be a barrier for many consumers choosing between products with 2 or more gallons of storage and products with less than 2 gallons of storage. Many consumers who use gas-fired instantaneous water heaters with less than 2 gallons of storage do so because of how little space these units take up. As of this final rule, all of the gas-fired instantaneous water heaters certified to DOE have rated storage volumes of either 0 or 1 gallon—hence, the term “tankless” is often used to describe these products. A 2-gallon gas-fired instantaneous water heater would be much larger than a model with 0 or 1 gallon of storage. DOE compared the sizes of large (*i.e.*, stored volume ≥ 2 gallons) gas-fired instantaneous water heaters to the average sizes determined in the engineering analysis for products less than 2 gallons. For instance, based on product literature published by one manufacturer of large gas-fired instantaneous water heaters, its 2.3-gallon model and 3.5-gallon model are over twice as deep and significantly taller compared to a typical model on the market today.⁴⁶ Thus, it is unclear to what extent consumers would choose to install a gas-fired instantaneous water heater with stored volume ≥ 2 gallons over one with < 2 gallons.

In light of these considerations, DOE is maintaining the proposed separation of product classes for products without current UEF-based standards in this final rule as proposed in the July 2023 NOPR. DOE will continue to monitor the market for these products and may address consider potential more-stringent standards for larger gas-fired instantaneous water heaters in a future rulemaking.

D. Markups Analysis

The markups analysis develops appropriate markups (*e.g.*, retailer markups, distributor markups, contractor markups) in the distribution chain and sales taxes to convert the MSP estimates derived in the engineering analysis to consumer prices, which are then used in the LCC and PBP analysis. At each step in the distribution channel, companies mark up the price

of the product to cover business costs and profit margin.

As part of the analysis, DOE identifies key market participants and distribution channels. For consumer gas-fired instantaneous 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 final rule TSD for a more detailed discussion about parties in the distribution chain.

For this final rule, DOE characterized how consumer gas-fired instantaneous water heater products pass from the manufacturer to residential and commercial consumers⁴⁷ by gathering data from several sources, including consultant reports (available in appendix 6A of the final rule TSD), the 2023 BRG report,⁴⁸ and the 2022 Clear Seas Research Water Heater contractor survey⁴⁹ to determine the distribution channels and fraction of shipments going through each distribution channel. The distribution channels for replacement or new owners of consumer water heaters in residential applications (not including mobile homes) are characterized as follows:⁵⁰

Manufacturer → Wholesaler → Plumbing Contractor → Consumer
 Manufacturer → Retailer → Consumer
 Manufacturer → Retailer → Plumbing Contractor → Consumer

For mobile home replacement or new owner applications, the same distribution channels are applicable for consumer gas-fired instantaneous water heaters.⁵¹

⁴⁷ DOE estimates that 6 percent of gas-fired instantaneous water heaters will be shipped to commercial applications in 2030.

⁴⁸ BRG Building Solutions, The North American Heating & Cooling Product Markets (2023 Edition). Available at www.brgbuildingsolutions.com/reports-insights (last accessed August 29, 2024).

⁴⁹ Clear Seas Research, 2022 Mechanical System—Water Heater. Available at clearseasresearch.com/reports/industries/mechanical-systems/ (last accessed August 29, 2024).

⁵⁰ Based on available data, DOE assumed that for replacement or new owners in residential applications consumer gas-fired instantaneous water heaters go through the wholesaler/contractor 55 percent of the time, directly form the retailer 40 percent of the time, and through the retailer/contractor 5 percent of the time.

⁵¹ Based on available data, DOE assumed that consumer gas-fired instantaneous water heaters in mobile homes go through the wholesaler/contractor 55 percent of the time, directly form the retailer 40 percent of the time, and through the retailer/contractor 5 percent of the time. The data indicate that gas-fired instantaneous water heaters are almost never sold directly through a mobile home retailer.

For consumer gas-fired instantaneous 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 gas-fired instantaneous water heaters in new construction⁵² in residential applications (not including mobile homes) are characterized as follows:⁵³

Manufacturer → Wholesaler → Plumbing Contractor → Builder → Consumer
 Manufacturer → Wholesaler → Builder → Consumer
 Manufacturer → Wholesaler (National Account) → Consumer

DOE developed baseline and incremental markups for each actor in the distribution chain. Baseline markups are applied to the price of products with baseline efficiency, while incremental markups are applied to the difference in price between baseline and higher-efficiency models (the incremental cost increase). The incremental markup is typically less than the baseline markup and is designed to maintain similar per-unit operating profit before and after new or amended standards.⁵⁴

To estimate average baseline and incremental markups, DOE relied on several sources, including: (1) form 10-K⁵⁵ 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

⁵² DOE estimates that in the residential market 48 percent of gas-fired instantaneous water heaters will be shipped to new construction applications in 2030.

⁵³ DOE’s analysis indicates that many builders are large enough to have a master plumber and not hire a separate contractor, and assigned approximately 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 wholesaler to builders channel and the rest go through national account distribution channel.

⁵⁴ 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.

⁵⁵ U.S. Securities and Exchange Commission. Company Filings. Available at www.sec.gov/search-filings (last accessed August 29, 2024).

⁴⁶ For example, DOE reviewed the product dimensions of the HTP Crossover series, a product line of larger gas-fired instantaneous water heaters intended for residential wall-hung installations. Product dimensions can be found online at: www.htproducts.com/literature/mktlit-118.pdf. (Last accessed on August 28, 2024).

miscellaneous store retailers (NAICS 453) (for online retailers);⁵⁶ (3) U.S. Census Bureau 2017 Economic Census data⁵⁷ on the residential and commercial building construction industry (for builder, plumbing contractor, mobile home manufacturer); and (4) the U.S. Census Bureau 2017 Annual Wholesale Trade Report data⁵⁸ (for wholesalers). DOE assumes that the markups for national accounts 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 industry⁵⁹ to disaggregate the mechanical contractor markups into replacement and new construction markets for consumer gas-fired instantaneous water heaters used in commercial applications.

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of consumer gas-fired instantaneous 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 gas-fired instantaneous water heater efficiency. The energy use analysis estimates the range of energy use of consumer gas-fired instantaneous 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.

⁵⁶ U.S. Census Bureau, *2017 Annual Retail Trade Report*, available at www.census.gov/programs-surveys/arts.html (last accessed August 29, 2024). Note that the 2017 Annual Retail Trade Report was the latest version of the report that includes detailed operating expenses data at the time of the analysis.

⁵⁷ U.S. Census Bureau, *2017 Economic Census Data*, available at www.census.gov/programs-surveys/economic-census.html (last accessed August 29, 2024). Note that the 2017 Economic Census Data is the latest version of this data.

⁵⁸ U.S. Census Bureau, *2017 Annual Wholesale Trade Report*, available at www.census.gov/wholesale/index.html (last accessed August 29, 2024). Note that the 2017 AWTR Census Data is the latest version of the report that includes detailed operating expenses data.

⁵⁹ Air Conditioning Contractors of America ("ACCA"), *Financial Analysis for the HVACR Contracting Industry* (2005), available at www.acca.org/store#/storefront (last accessed August 29, 2024). 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.

DOE estimated the annual energy consumption of consumer gas-fired instantaneous 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 gas-fired instantaneous water heater.

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") in the July 2023 NOPR, which was the most recent such survey that was then fully available.⁶⁰ DOE selected the household sample based on the reported variables from RECS on water heating equipment type. The RECS data provide information on the vintage of the home, as well as water heating energy use in each household. These data reflect how water heaters are actually used by consumers. 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 that were built after 2000.

For this final rule, DOE incorporated RECS 2020 as the basis of the building sample development and updated the analyses accordingly.⁶¹ Incorporating RECS 2020 improves the representativeness of the residential building sample as RECS 2020 brings a threefold increase in sample size compared to RECS 2015.⁶² A larger sample size generally results in smaller standard errors, especially for estimates of smaller subpopulations. In this final rule, DOE maintains the same methodology in residential sample

⁶⁰ Energy Information Administration ("EIA"), *2015 Residential Energy Consumption Survey ("RECS")*, available at www.eia.gov/consumption/residential/ (last accessed August 29, 2024).

⁶¹ Energy Information Administration ("EIA"), *2020 Residential Energy Consumption Survey ("RECS")*, available at www.eia.gov/consumption/residential/ (last accessed August 29, 2024).

⁶² According to published data and EIA website, RECS 2020 is based upon responses collected from in total 18,496 households which is three times greater than 5,686 respondents in RECS 2015.

development as the July 2023 NOPR, using the updated RECS.

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.⁶³ DOE has maintained its sample development methodology used in July 2023 NOPR for consumer gas-fired instantaneous water heaters used in commercial applications.

AGA *et al.* supported DOE's incorporation of EIA's 2020 RECS data in the July 2024 NODA. (AGA *et al.*, No. 1439 at p. 10)

2. Hot Water Use Determination

Based on the reported water heating energy use from RECS and CBECS, DOE estimated the hot water use for each sampled household and building. Then, in order to disaggregate the selected sampled gas-fired instantaneous water heaters into draw patterns, DOE used model data from DOE's public CCD⁶⁴ and AHRI certification directory⁶⁵ together with other publicly available data from manufacturers' catalogs of consumer water heaters. DOE also used a combination of confidential data provided by AHRI from 2004–2007⁶⁶ and shipments data from BRG Building Solutions 2023 report from 2007 to 2022.⁶⁷

Responding to the July 2023 NOPR, AHRI recommended DOE explain its inputs in the energy use calculations. AHRI commented that DOE's use of nesting of various assumptions for residential water heaters leads to unlikely results that DOE does not, or cannot, explain. AHRI raised concerns on two oddities in the energy use calculations for gas-fired instantaneous water heaters. First, the water

⁶³ 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 August 29, 2024).

⁶⁴ U.S. Department of Energy's Compliance Certification Database is available at regulations.doe.gov/certification-data (last accessed August 29, 2024).

⁶⁵ Air Conditioning Heating and Refrigeration Institute. *Consumer's Directory of Certified Efficiency Ratings for Heating and Water Heating Equipment*, December 1, 2023. (Available at www.ahridirectory.org) (last accessed August 29, 2024).

⁶⁶ AHRI. *Confidential Instantaneous Gas-fired Water Heater Shipments Data from 2004–2007* to LBNL, December 1, 2023

⁶⁷ BRG Building Solutions. *The North American Heating & Cooling Product Markets (2023 Edition)*, 2023.

consumption for residential use as computed for the median RECS building is 41 gallons per day and the 95th highest use (95th percentile) is 3.5 times as much (141 gallons per day) and the remaining 5 percent of RECS buildings use between 141 and 997 gallons per day, or up to 24 times as much water per day, an unlikely amount for a residential household. AHRI stated that this high usage rate for these 5 percent heavy users raises the average consumption to 61 gallons per day, or 50 percent more than the typical or median user. AHRI commented that presence and magnitude of these outlier 5 percent, heavy users raise serious questions about the accuracy and reliability of either (or both) the data that DOE used and/or the methodology it used to compute water consumption. Second, even assuming some market inefficiencies, AHRI claimed that there still should be a general trend towards RECS buildings with greater water use selecting more efficient water heaters absent standards. DOE contends that at least some purchasers make economically efficient choices. In that circumstance, the data should show a trend toward the highest-consuming RECS buildings appearing in the higher ELs absent standards. AHRI commented that this is not the case in the actual DOE data. Instead, if anything, the highest-consuming RECS buildings are assumed to purchase baseline water heaters. (AHRI, No. 1167 at p. 19) AHRI asked for an explanation of these outlier data points and asked how DOE validated its methodology to assure that these are accurate representations of real life. AHRI also asked why DOE has not accepted the suggestion by AHRI and others to use median, not the mean values for consumption and LCC savings to avoid the effects of these outliers and to alleviate, at least in part, the deficiencies of its base case efficiency assignment issue. (AHRI, No. 1167 at p. 20)

Gas Association Commenters argued that water consumption should be based on household size and that there are problems with water consumption calculations, particularly for gas-fired instantaneous water heaters. Gas Association Commenters argue that for gas-fired instantaneous water heaters, DOE models incorrect tankless water heater results (greater outliers than there are for storage unit equivalents) in regard to household size. Gas Association Commenters argue the model results in unrealistic outliers for smaller households reaching consumption levels equivalent to space heating. Gas Association Commenters

argue that a potential reason for this failure is how the model calculates daily water usage. For example, Gas Association Commenters argued that in DOE's model, some single person households use 200–350 gallons a day which is far from reasonable (4–7 baths of water a day every day of the year). Gas Association Commenters argued that Draw Pattern ID is based on randomly assigned distribution. Gas Association Commenters state that DOE assumes that households will always use more water if they use an instantaneous unit. Gas Association Commenters argue that while for small storage units, there is a 5 percent chance of a large draw pattern but there is a 75 percent chance for instantaneous. Gas Association Commenters argued that if consumption behavior was more consistent between the gas storage water heaters and gas-fired instantaneous water heaters, LCC savings would be lower. Gas Association Commenters argues that a better solution would be to use the test procedure for water heaters as a basis for modeling energy usage rather than assuming draw rates based on the size of the original equipment in RECS. Gas Association Commenters suggested that alternately, gas-fired instantaneous water heaters could just have the same assumptions about water usage as their gas storage water heaters counterparts. (Gas Association Commenters, No. 1181 at pp. 25–31) Similarly, in response to the July 2024 NODA, Rinnai stated that the energy use estimates in the energy conservation standard should use the same standardized draw patterns outlined in the UEF test method rather than relying on RECS, which the commenters characterized as unreliable. Rinnai recommended that the Department use the hot water draw patterns from the UEF test method as the basis for comparing efficiency proposals and reserve the RECS hot water consumption data for estimating national energy savings potential and other downstream impacts. (Rinnai, No. 1443 at p. 20)

In response, DOE notes that RECS and CBECS data provide the information on the household size and water heating energy use in buildings. RECS and CBECS are the most comprehensive, nationally-representative, and robust data source on actual household and commercial building energy consumption available to DOE. In general, DOE has found that the weighted average energy use for water heating correlates with the size of the household, *i.e.*, the reported number of people in that household. Greater

energy expenditure on water heating largely falls into the bins of households of larger sizes (4 people and above). The hot water use derived based on the water heating energy use follows similar pattern (see chapter 7 of the final rule TSD for the calculation of hot water use). In terms of AHRI and Gas Association Commenters' concern over the heavy users of hot water in the sample, when reporting the distribution of the derived hot water use, DOE takes into account both consumer water heaters used in residential as well as commercial applications. In the final rule analysis, DOE estimated that close to 40 percent of the top 5 percent of water-consuming sample buildings/households are commercial applications which generally have higher upper bound of hot water use. These outlier data points therefore represent either data directly reported from RECS or CBECS for larger households or commercial applications using consumer water heaters, both of which represent real-world usage. In addition, DOE evaluates each sampled building/household individually by calculating its hot water use and the corresponding cost efficiency thereafter such that the average LCC savings as reported is a good representation of the aggregated national values. Nevertheless, the LCC spreadsheet includes a calculation of median LCC savings, as well as LCC savings at various percentiles. These results are publicly available. Even if DOE were to rely on the median LCC savings instead of the mean LCC savings, DOE's conclusion of economic justification would remain the same.⁶⁸

For this final rule, DOE incorporated the latest RECS 2020 data for its analyses. With the increased sample size and the most recent timeline of the fielding of the survey, RECS 2020 provides a large sample pool with current national representation of housing characteristics and energy consumption. Specifically, for gas-fired instantaneous water heaters, which historically have had a lower market share relative to the gas storage type, RECS 2020 reports over 800 sample households utilizing a gas-fired instantaneous water heater. As discussed previously, the weighted average of the energy use on water heating and the derived hot water use generally correlates with the size of the household with deviations that represent the real world complexities of the use of a hot water heater in households of different types. With the update to RECS 2020, for example, the

⁶⁸ See LCC analytical tool spreadsheet for gas-fired instantaneous water heater final rule.

estimate for the hot water use in a single-person household is now between 7 and 91 gallons for gas-fired instantaneous water heaters, with a weighted average of 32 gallons. The average hot water use across all household sizes is 73 gallons, relatively stable compared to 71 gallons DOE estimated with RECS 2015 in the July 2023 NOPR. DOE continues to rely on RECS as the basis of its analyses for its incomparable scope of coverage on housing characteristics and energy consumption. RECS 2020 is a reflection of the real-world usage in the national water heater market. In terms of the assignment of draw pattern for gas-fired instantaneous water heaters, DOE derived the distribution of different draw patterns based on market research of the number of models in each bin that are available on the market. The breakdown can be found in chapter 7 of the final rule TSD.

3. 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. 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. The current version of WHAM is most appropriate for calculating the energy use of electric resistance storage water heaters. To account for the characteristics of consumer gas-fired instantaneous water heaters, energy use must be calculated using modified versions of the WHAM equation. For gas-fired instantaneous water heaters, the water heater operating conditions are indicated by the daily hot water draw volume, inlet water temperature, and thermostat setting. To describe energy efficiency characteristics of water heaters, WHAM also uses parameters in the DOE test procedure including recovery efficiency (“*RE*”) and rated input power (“*P_{ON}*”). These modified versions are further discussed in chapter 7 and appendix 7B of the final rule TSD.

The daily hot water draw volume is estimated based on the gas-fired instantaneous water heater energy use from RECS 2020 and CBECS 2018. The inlet water temperature is based on weather station temperature data and RECS 2020 ground water temperature data for each household. The consumer gas-fired instantaneous water heater thermostat setting is based on multiple

sources including contractor survey data and field data.

AGA *et al.* stated that electricity consumption should be slightly higher for all units installed in unconditioned spaces in the winter that are exposed to freezing temperatures because of freeze protection. (AGA *et al.*, No. 1439 at p. 7) Similarly, Rinnai noted that the absence of freeze protection in the model doesn’t adequately account for seasonal variation in electricity use and higher consumption for all units in unconditioned spaces during winter. (Rinnai, No. 1443 at p.18) In response, DOE acknowledges that freeze protection is an integrated feature in many tankless water heaters. A freeze protection electric heater will activate to protect the internal of the water heater from freezing when it reaches certain ambient temperatures. Power consumption varies slightly by models but generally is up to 200 Watts during freeze protection mode. DOE’s energy use analysis is aimed to evaluate the electricity and fuel consumption associated with water heating, where the electricity use covers the burner operating mode and standby mode, and then compare the energy consumed by models at various analyzed efficiency levels. Taking into consideration the electricity consumption associated with freeze protection mode not only will have trivial impact to the total annual electricity use results, given the negligible fraction of time the water heater being in such mode throughout the year, but also will be inconsequential to the electricity use differential between different efficiency levels. Therefore, for this final rule DOE maintained its energy use analysis method without taking into account electricity use from freeze protection operation.

Gas Association Commenters commented that there is a bug in the LCC tool that causes it to use only a single year of weather data rather than 10-year average, which they believe impacts gas-fired instantaneous water heater results. (Gas Association Commenters, No. 1181 at p. 34) In response, DOE notes that the analysis uses the NOAA’s 30 year average weather data for the outside air temperature.

Chapter 7 of the final rule TSD provides details on DOE’s energy use analysis for consumer gas-fired instantaneous water heaters.

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 gas-fired instantaneous 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, shipping costs, 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 gas-fired instantaneous 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, DOE calculated the LCC and PBP for a nationally representative set of housing units and commercial buildings. As stated previously, DOE developed household samples from the RECS 2020 and CBECS 2018. For each sample household and commercial building, DOE determined the energy consumption for the consumer gas-fired instantaneous 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 gas-fired instantaneous water heaters.

Inputs to the LCC calculation include the installed cost to the consumer, operating expenses, the lifetime of the product, and a discount rate. Inputs to the calculation of total installed cost include the cost of the product—which includes MPCs, manufacturer markups, retailer and distributor markups,

shipping costs, 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. Inputs to the PBP calculation include the installed cost to the consumer and first year operating expenses. DOE created distributions of values for product lifetime, discount rates, and sales taxes, with probabilities attached to each value, to account for their uncertainty and variability.

The computer model DOE uses to calculate the LCC relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations sample input values from constrained probability distributions based on available data and consumer water heater user samples. For this rulemaking, the Monte Carlo approach is implemented in MS Excel together with the Crystal Ball™ add-on.⁶⁹ The model calculated the LCC for products at each efficiency level for 10,000 gas-

fired instantaneous 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 (as shown in chapter 8 of the final rule TSD). In performing an iteration of the Monte Carlo simulation for a given consumer, product efficiency is chosen based on its probability. At the high end of the range, if the chosen product efficiency is greater than or equal to the efficiency of the standard level under consideration, the LCC calculation reveals that the hypothetical consumer represented by that data point is not impacted by the standard level because that consumer is already purchasing a more-efficient product. At the low end of the range, if the chosen product efficiency is less than the efficiency of the standard level under consideration, the LCC calculation reveals that the hypothetical consumer represented by that data point is impacted by the standard level. By accounting for

consumers who are already projected to purchase more-efficient products, DOE avoids overstating the potential benefits from increasing product efficiency.

DOE calculated the LCC and PBP for consumers of consumer gas-fired instantaneous water heaters as if each were to purchase a new product in the first year of required compliance with new or amended standards. New and amended standards 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(m)(4)(A)(ii)) Therefore, DOE used 2030 as the first full year of compliance with any amended standards for consumer gas-fired instantaneous water heaters.

Table IV.10 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the final rule TSD and its appendices.

TABLE IV.10—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *

Inputs	Source/method
Product Cost	Derived by multiplying MPCs by manufacturer and distribution chain markups and sales tax, as appropriate. Used historical data to derive a price scaling index to project future product costs.
Installation Costs	Determined with labor and material cost data from RSMeans.
Annual Energy Use	Including fuel use and electricity use.
Energy Prices	Variability: Based on the RECS 2020 and CBECS 2018. Natural Gas: Based on EIA's Natural Gas Navigator data for 2022. Electricity: Based on EIA's Form 861 data for 2022. Propane: 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 and electricity prices.
Energy Price Trends	Based on AEO2023 price projections.
Repair and Maintenance Costs	Based on RSMeans 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.
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. 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 final rule TSD.

1. Product Cost

To calculate consumer product costs, DOE multiplied the total manufacturer price, which is MSPs developed in the engineering analysis plus shipping cost, 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 total manufacturer price associated with higher-efficiency products.

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

⁶⁹ 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 August 29, 2024).

downward over time according to “learning” or “experience” curves.⁷⁰

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 1967–1973 and 1977–2022 for all other consumer water heaters from the U.S. Bureau of Labor Statistics’ (“BLS”).⁷¹ 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 1967 to 2002, the deflated price index for consumer gas-fired instantaneous 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. Given the uncertainty regarding the magnitude and direction of potential future price trends, DOE decided to use constant prices as the default price assumption to project future consumer gas-fired instantaneous

water heater prices. Thus, projected prices for the LCC and PBP analysis are equal to the 2023 values for each efficiency level in each product class. However, DOE performed a sensitivity analysis utilizing both a decreasing and an increasing price trend (see appendix 8C). The relative comparison of potential standard levels remains the same regardless of which price trend is utilized and the conclusions of the analysis do not change.

BWC requested that DOE detail its methods in utilizing price learning curves for condensing gas products, as was indicated in section IV(F)(1) of the July 2023 NOPR, so that stakeholders may review them. BWC suggested the additional components required to manufacture higher efficiency products required by this proposal, in addition to their more complex manufacturing processes, will continue to compel higher product costs than is currently expected of non-condensing gas water heaters common in the market today, economies of scale notwithstanding. (BWC No. 1164 at p. 17) The available data only allow estimation of price trends for water heaters as a group, not for different efficiency levels of water heaters. DOE agrees that the product costs of condensing gas products will continue to be higher than non-condensing gas water heaters. However, it is reasonable to expect that factors affecting water heaters as a whole, such as growing experience in production or changes in commodity prices, will affect all water heaters. Thus, for this final rule, DOE maintained that same methodology as the July 2023 NOPR and assumed the same price trend assumptions would apply to all gas-fired instantaneous water heater efficiency levels. To assess the impact of alternative price learning assumptions, DOE analyzed scenarios using low- and high-price trends in the LCC. From this sensitivity analysis, DOE finds that LCC savings for alternative price trends are similar to the reference case results and DOE would arrive at the same policy conclusion. See appendix 8C for details.

Responding to the July 2023 NOPR, Ecotemp stated that non-condensing tankless water heaters typically cost half the price of comparable condensing tankless water heaters. (Ecotemp, No. 1092 at p. 1) Rinnai argued that the marginal price for non-condensing to condensing gas-fired instantaneous water heater prices are too low and should be \$450 rather than the \$310 calculated by DOE. (Rinnai, No. 1186 at p. 24) Rinnai claimed DOE’s installed cost differential of \$200 between non-condensing and condensing is too low and based on data collected from

installers and distributors the value is closer to \$665. (Rinnai, No. 1443 at p. 19)

To investigate stakeholder concerns, DOE reviewed present-day retail prices for non-condensing and condensing models for this final rule. Overall, DOE determined that comparable non-condensing and condensing gas-fired instantaneous water heater models can retail for similar prices, with condensing models priced competitively at 1.2–1.3 times the retail price of non-condensing models. In this final rule LCC analysis, DOE estimates average retail prices of gas-fired instantaneous water heaters at condensing efficiency levels are 1.30–1.42 times that of the baseline non-condensing gas-fired instantaneous water heater corresponding to incremental retail price of \$294 to \$414. DOE notes that gas-fired instantaneous water heaters are marked up differently per distribution channels, as discussed in section IV.D, and that the incremental in retail prices between any given condensing and non-condensing models can be higher or lower than the reported values above. DOE’s analysis calculated weighted averages taking into account both the markup associated with individual distribution channels and the probability of water heaters sold to customers through each channel. In response to Rinnai’s comment on installed cost, which is the sum of retail price and installation cost, DOE estimated that the differential between non-condensing and condensing slightly lowered to between \$217 and \$337. This is due to average installation cost for condensing gas-fired instantaneous water heaters being slightly lower than that for non-condensing baseline. See section IV.F.2 for more details in the calculation of installation cost.

Rheem believes that incremental retail costs between step and fully modulating designs is about 50 percent too low. (Rheem, No. 1436 at p. 3; Rheem, No. 1177 at p.12)

In response, DOE revised the manufacturer production cost for EL 4 for the final rule such that retail price estimates for max-tech designs, which incorporate fully modulating burners, have increased in this final rule analysis. The incremental retail price between step modulating burner and fully modulating burner gas-fired instantaneous water heaters, taking EL 2 and EL 4 as an example, is \$106, increasing from \$56 (in 2022\$) in the July 2024 NODA (see section IV.C.1.c for more details).

⁷⁰ 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.

⁷¹ Series ID PCU 33522033522083; see www.bls.gov/ppi/.

2. Installation Cost

The installation cost is the cost to the consumer of installing the consumer gas-fired instantaneous 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 consumers 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 2020 and CBECS 2018. For this final rule, DOE used 2023 RSMeans data for the installation cost estimates, including labor costs.^{72 73 74 75} 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 2020 data and CBECS 2018 data.

AHRI stated that replacement costs are not uniform across the country and vary by regional labor rates, building codes, and availability of skilled installers. AHRI believes that this variability should be factored in each state when assessing economic impacts. (AHRI, No. 1437 at p. 3) In response, as stated above, DOE has accounted for the regional difference in labor rates by incorporating regional labor cost factors derived from RSMeans. DOE believes that, therefore, variability in state level labor costs is factored in in its analysis.

a. Basic Installation Costs

First, DOE estimated basic installation costs that are applicable to all consumer gas-fired instantaneous 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.

AGA *et al.* stated that DOE's final Furnaces rule and pending Boilers rule show that market shares for condensing and non-condensing units vary significantly across different climates, which they believed is likely true for gas-fired instantaneous water heaters suggesting that different climates and household characteristics could heavily influence not only the type of products installed but also the required venting parts to ensure safe and effective operation. (AGA *et al.*, No. 1439 at p. 7) In response to AGA *et al.*'s comment, it is true that space heating products typically have some regionalities, which is mainly driven by the varying heating needs across different climate zones. For water heating equipment like gas-fired instantaneous water heater, however, DOE has not found, nor have stakeholders pointed to, any data showing that there would be a similar level of impact of the climate on market adoption. In terms of the required venting parts, DOE calculated the costs for venting based on the vent material suggested by manufacturers and code.

b. Venting Costs

After accounting for the basic costs for removing the old water heater and setting up the new, DOE considered the installation costs associated with venting. Non-condensing gas-fired instantaneous water heaters are Category III appliances that operate under positive pressure. They require stainless steel vent material. Condensing gas-fired instantaneous water heaters are Category IV appliance that can be vented through a PVC, CPVC, or polypropylene vent material. In its analysis, DOE accounted for the cost for setting up the vent pipes, vent elbows, and terminations of the appropriate material and the air intake pipe for those that are direct vented (*i.e.* combustion air is brought in from outdoors).

DOE received comments after the publication of July 2023 NOPR and July 2024 NODA regarding the use of concentric vent, vent length, and outdoor installations.

In response to July 2023 NOPR, Rinnai stated the Department's estimated venting costs of \$499 for non-condensing gas-fired instantaneous water heater and \$263 for condensing gas-fired instantaneous water heater overstate the cost differential, if any even exists. (Rinnai, No. 1186 at p. 24) Rinnai stated that most non-condensing gas-fired instantaneous water heaters

require 3" diameter venting and not 4" diameter venting as is used in the analysis, leading to 25 percent reduction in the cost of venting materials. Rinnai stated that more than 75 percent of non-condensing models do not use stainless steel venting and instead use concentric and aluminum venting. Rinnai stated that 20ft of venting and associated fittings used in the LCC analysis needs to be subjected to additional sensitivity analysis, including the variation in installed vent lengths, materials used, concentric versus single wall vents, and product installation location. Rinnai stated that tankless water heaters are installed typically on an outside wall, which would require far less than 20 feet of venting, and for outdoor installations, no venting would be required. (Rinnai, No. 1186 at p. 24)

In response to July 2024 NODA, Rinnai claimed that the analysis overlooks that gas-fired instantaneous water heater installation uses a different pipe installation from furnaces that is cheaper and significantly shorter than vertical venting. Rinnai stated that they account for half of sales for non-condensing gas-fired instantaneous water heater units and those units use aluminum/plastic concentric venting and have on average 1–2 feet of venting because they are mostly installed outside or on outside walls (*e.g.*, garages). Rinnai claimed that DOE's estimate for venting components is overestimated compared to costs found on retailer websites (\$131 vs \$85). (Rinnai, No. 1443 at pp. 14–15) BWC disagreed with DOE considering a 1 ft. minimum vent length as part of their analysis for this July 2024 NODA. They commented that while it may be true that some manufacturers of gas-fired instantaneous water heaters indicate this vent length is possible in their literature, according to their experience this is rarely. (BWC, No. 1441 at p. 3)

Rinnai claimed DOE's model makes unjustified assumptions on the gas-fired instantaneous water heater installation location. Rinnai claimed that the July 2024 NODA only estimates 12 percent of gas-fired instantaneous water heaters installed outdoors which is much lower than the value inferred from RECS 2020 which reports half of households install their water heater in an "outdoor closet, crawlspace, or outdoor". Rinnai stated their data indicate 23 percent of gas-fired instantaneous water heaters are installed outdoors. Rinnai further stated that their data show that an additional 55 percent of gas-fired instantaneous water heater installations are likely to be located close to outside walls in order to minimize venting. (Rinnai, No. 1443 at p.18)

⁷² RSMeans Company Inc., *RSMeans Mechanical Cost Data*. Kingston, MA (2023) (Available at: www.rsmeans.com/products/books/2022-cost-data-books) (Last accessed August 29, 2024).

⁷³ 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 August 29, 2024).

⁷⁴ RSMeans Company Inc., *RSMeans Plumbing Cost Data*. Kingston, MA (2023) (Available at: www.rsmeans.com/products/books/2022-cost-data-books) (Last accessed August 29, 2024).

⁷⁵ RSMeans Company Inc., *RSMeans Electrical Cost Data*. Kingston, MA (2023) (Available at: www.rsmeans.com/products/books/2022-cost-data-books) (Last accessed August 29, 2024).

Rheem believed that only 20 percent of condensing units would be installed with concentric venting due to lower relative costs of plastic venting and wall/roof penetrations. Rheem estimated that up to 50 percent of non-condensing units are installed outdoors in new construction where non-condensing is more common. Rheem estimated that about 40 percent of outdoor installations use recess boxes or pipe covers (split evenly between the two). Rheem estimated that 7 percent of condensing units are installed outdoors and expects that number to rise if energy conservation standards are amended. (Rheem, No. 1436 at p. 2–3)

A.O. Smith and BWC commented that they found DOE's estimate of 50 percent of condensing gas-fired instantaneous water heaters using concentric vent to be high. BWC did not provide a percentage that they believe is reasonable. A.O. Smith commented that they would estimate only 20 percent of condensing gas-fired instantaneous water heaters use a concentric pipe. (A.O. Smith, No. 1440 at p. 6; BWC, No. 1441 at p. 3)

BWC stated that DOE underestimated the installed costs for gas-fired instantaneous water heaters in the July 2024 NODA when assuming half of these products installed outdoors, in outdoor closets, or crawlspaces, would not require venting. BWC countered that the need for venting in these install locations is not uncommon, particularly in crawlspaces, which are often located within the building envelope. BWC added that some outdoor units require use of a special vent kit, or a box that would protect product controls from inclement weather, both of which would add to the installed cost of the product. (BWC, No. 1441 at p. 3)

In response, for the July 2024 NODA, DOE made further improvements to its methodology used in the July 2023 NOPR to account for the venting costs for gas-fired instantaneous water heaters. First, DOE took into account the use of a concentric pipe (a pipe used for both air intake and venting) for some installations in its analysis, which was not previously included in the NOPR analysis. There are two main vent configurations for gas-fired instantaneous water heaters—(1) single pipe for venting with room air intake or two pipes with one for outdoor air intake and one for venting; (2) concentric pipe for both air intake and venting. DOE estimated that 90 percent of the non-condensing and 50 percent of the condensing gas-fired instantaneous water heaters that would be direct vented would use concentric pipes for the benefit of only having to make one

wall penetration. Among all installations, these updates result in approximately 22 percent of condensing gas-fired instantaneous water heaters and 41 percent of non-condensing gas-fired instantaneous water heaters being installed with a concentric vent. In terms of its impact to the total installation costs, because a single concentric pipe is cheaper to install than two separate pipes (one for air intake and one for venting) this installation scenario reduced overall installation costs, particularly for non-condensing gas-fired instantaneous water heaters. Additionally, because metal venting for non-condensing water heaters is more expensive per foot than plastic venting for condensing water heaters, updates to the analysis that decrease the length of total venting required for some installations will lower the LCC savings when replacing a non-condensing gas-fired instantaneous water heater with a condensing gas-fired instantaneous water heater for these installations. For this final rule, DOE maintained the methodology used in July 2024 NODA.

Second, DOE adjusted its methodology of estimating the minimum length of the vent run in the July 2024 NODA. In the July 2023 NOPR, DOE calculated the minimum vent length based on housing configuration and installation location and estimated that the shortest route to vent a gas-fired instantaneous water heater is 3 ft. DOE conducted further research of product literature and concluded that for many installations a shorter vent run could be achieved, primarily by venting through a side wall. Therefore, DOE recalibrated its methodology and estimated that the minimum vent length can be as low as 1 ft for a certain subset of installations.

Lastly, in the July 2023 NOPR, DOE did not account for the outdoor installation of gas-fired tankless water heaters. In the July 2024 NODA, DOE utilized the location information from RECS 2020 and assumed that half of the residential households that report their water heaters being installed in an “outdoor closet, crawlspace, or outdoor” would actually install the tankless water heater on the outside of a wall without venting. Therefore, DOE estimated that among the entire sample, about 12 percent of gas-fired instantaneous water heaters are installed outdoors. For the outdoor installations, DOE assumed no venting costs but a cost for an outdoor installation conversion kit or box needed to protect the water heater from weather impacts. As with lowering the minimum vent length above, this update

to the analysis reduces LCC savings when replacing a non-condensing gas-fired instantaneous water heater with a condensing gas-fired instantaneous water heater for these installations.

Rinnai asserted that the vent cost distributions used in the July 2024 NODA are skewed with the average vent cost for non-condensing units being higher than the average for condensing units. Additionally, Rinnai noted that for EL 0, the vent cost distribution has a border spread of higher costs relative to EL1–3 which have a gradual taper with more concentration in lower cost brackets. Rinnai claimed that, on average, the two types of venting installations are not significantly different, though noted that there is a small increase for non-condensing units due to the venting materials used. (Rinnai, No. 1443 at pp.15–16) Rinnai pointed to a particular simulation case in which the venting cost for EL 0 is \$841 and the venting cost at higher ELs is \$83 and noted that this variation is not supported by typical data and affect the accuracy of the July 2024 NODA's economic assessments. (Rinnai, No. 1443 at p. 16)

In response, the difference between the venting costs for non-condensing and condensing gas-fired instantaneous water heaters depends largely on the vent configuration (type of vent pipe and vent length). As indicated by Rinnai, the non-condensing units generally have higher installation cost because of the more expensive vent material required. For this final rule, after accounting for concentric pipes, shorter vent lengths, and outdoor installations, as elaborated above, DOE noted a decrease in the differential in installation cost between non-condensing and condensing. The installation cost for non-condensing gas-fired instantaneous water heaters is 7 percent higher than the condensing, instead of 10 percent higher compared to the July 2023 NOPR. For this final rule analysis, DOE estimated an average installation cost of \$1,102 for non-condensing units and \$1,025 for condensing units. Further details regarding installation cost methodology can be found in chapter 8 and appendix 8D of the final rule TSD.

PHCC commented that DOE did not mention additional installation costs for vertical vents. PHCC commented that in most vertical instances, the installation will require walls to be opened for vent removal, new vents and supports installed, and the finished surfaces replaced and it appears that DOE did not consider these costs. (PHCC, No. 1151 at p. 3) In response, DOE determined that for a fraction of

replacement installations of gas tankless water heater in an indoor closet, the household may opt to conceal the vent pipe that passes through the living space. For the length of the concealing needed, DOE determined that for most household configurations, when concealing is needed, typically the horizontal vent is more likely to pass through living space. Vertical run is more likely to be installed by the plumber where it is enclosed and outside of living space.

In response to July 2024 NODA, AGA *et al.* and Rinnai claimed that DOE had applied the same installation cost and venting assumptions from gas furnaces to gas-fired instantaneous water heaters which led to overestimation of both labor hours and material costs. They noted that Category I furnaces operate under negative pressure and are mainly vented vertically with substantially longer venting systems, which does not reflect the typical venting of a gas-fired instantaneous water heater. (AGA *et al.*, No. 1439 at pp. 3–5 and p. 6; Rinnai, No. 1443 at pp. 11–14) AGA *et al.* and Rinnai claimed that in the model 100 percent of installations were assumed to use stainless steel parts with associated high labor costs due to the complexity of vertical installations and that the model failed to account for the fact that gas-fired instantaneous water heaters do not universally require such extensive venting solutions. They later acknowledged that DOE's model had identified 86 percent of installations as horizontal but still believed that the percentage of vertical installations was overestimated. Additionally, they stated that the average horizontal system requires less than 7 feet of venting and follows a straightforward work plan like that of a condensing unit, and that DOE's model applied the same labor costs to horizontal installations as it does to vertical, which resulted in an overestimation. Rinnai also echoed this comment. (AGA *et al.*, No. 1439 at pp. 3–5 and p. 6; Rinnai, No. 1143, at p. 13)

AGA *et al.* claimed that while DOE's model includes cost data for alternative materials like double-walled aluminum flex pipe, which is approximately half the cost of stainless steel, these alternatives were not applied in any of the 10,000 trials, which led to inflated installation cost estimates for gas-fired instantaneous water heaters. (AGA *et al.*, No. 1439 at p. 4) Similarly, Rinnai commented that the July 2024 NODA model incorrectly assumed that stainless-steel pipes are used in all 10,000 trials with the end result being venting costs are significantly overstated. Furthermore, both AGA *et al.* and Rinnai stated that an additional

markup of 39 percent is applied to metal venting which further widens the gap in installation cost between EL 0 and higher efficiency levels. (AGA *et al.*, No. 1439 at p. 5; Rinnai, No. 1443 at pp. 14–15)

In response, DOE believes that commenters have misinterpreted documentation in July 2023 NOPR TSD and the July 2024 NODA analytical tool. As discussed above, non-condensing gas-fired instantaneous water heaters are Category III appliance that operates under positive pressure requiring stainless steel vent material. Condensing gas-fired instantaneous water heaters are Category IV appliance that can be vented through a PVC, CPVC, or polypropylene vent material. DOE did not assume the same venting for gas-fired instantaneous water heaters as for furnaces. DOE also did not assume 100 percent of non-condensing gas-fired instantaneous water heater installations to be using stainless steel vent pipe. To further clarify, for the 41 percent of non-condensing gas-fired instantaneous water heater installations that are assumed to be using a concentric pipe, DOE applied the material cost estimated based on market research of aluminum/PVC concentric pipe which is the most affordable option on the market. In its analytical tool, a conversion factor of 1.33 was applied to convert the material price data for a regular 4" stainless steel vent to that of a concentric pipe for simplicity. Note that the conversion factor changed slightly from 1.39 in July 2024 NODA because of the update from 2022\$ to 2023\$.

Rinnai claimed that in the July 2024 NODA, DOE ignored the replacement market where consumers already using a non-condensing gas-fired instantaneous water heaters will have no venting cost with a like-for-like replacement. (Rinnai, No. 1443 at p.18) In response, DOE believes that it is unlikely for a new gas-fired instantaneous water heater to be compatible with the old vent of a unit being replaced, even if both water heaters fall under the same vent category. According to product literature, many models recommend installation with vent pipes from a suggested list of specific brands. Even if the new non-condensing water heater is from the same manufacturer, the model is not likely to be the same since the model nomenclature, specifications and designs change every several years and therefore such installation will likely require a new venting system. Therefore, DOE did not consider the case of reusing stainless steel vent. DOE notes that even if no venting cost was associated with a like-for-like

replacement of non-condensing units, given the limited market share of non-condensing gas-fired instantaneous water heaters in no-new-standards case, this assumption will not impact the economic justification reflected in the positive LCC savings at the adopted TSL.

c. Condensate Management Costs

Besides the basic installation cost for removing the old water heater and setting up the new and the venting cost associated with setting up the flue vent and air intake pipework, DOE also considered specifically for condensing gas-fired instantaneous water heaters the cost of condensate management. In order to drain condensate properly, cost items can apply based on the specifics of the installation including condensate pipe, condensate pump, condensate neutralizer, and condensate drain. DOE additionally considered cases where a heat tape is applied and cases where an electric connection setup is needed.

In response to the June 2023 NOPR, Rinnai stated that DOE excluded from its analysis of condensing gas-fired instantaneous water heaters many of the costs of condensate management including drains, pumps, neutralizers, and associated and recurring maintenance costs. (Rinnai, No. 1186 at pp. 24–25) In response to July 2024 NODA, Rinnai further claimed that the analysis underestimates the cost of condensate management and states that DOE either omits typical costs needed for condensing installations or applies them to a relatively small proportion of condensing gas-fired instantaneous water heater installations. For example, Rinnai claimed that the July 2024 NODA only applies a condensate neutralizer to 12.5 percent of installations rather than 25 percent of cases. Rinnai further requested DOE provide evidence that the default of 12.5 percent represents a survey of installations and market conditions. (Rinnai, No. 1443 at p. 17) In response, as mentioned above, DOE took into account various cost items for condensate management. DOE assumed that some cost items would apply to only a certain fraction of installation. For example, DOE assumed that condensate pipe cost is needed for both replacement and new construction installations but then only 12.5 percent of replacement installations where the household does not have a central AC or heat pump would need to be applied the cost of a condensate pump. As Rinnai pointed out, DOE assumed that 12.5 percent of all installations would be applied the cost of condensate neutralizer. DOE adopted this estimate

based on its market and technology assessment, engineering analysis, and its expert consultant feedback. Rinnai however provided no basis to support doubling the installation of condensate neutralizers to 25% of all cases. Nor has DOE found any other market data to support an alternative estimate. For lack of further data and evidence, DOE maintained its assumption of 12.5 percent of condensate neutralizer installations in this final rule.

PHCC commented that DOE's assumption that drains are required at or near water heaters is wrong as codes do not require it. They commented that changing to an appliance that produces condensate will require a pump or drain that is near the heater because that condensate cannot drain routinely across the floor as it can create slippery surfaces, and that an installed pipe to a remote drain can be a trip hazard. PHCC commented that the cost for adding a drain should be allocated against all replacement water heaters that will produce condensate. (PHCC, No. 1151 at p. 3) In response, DOE took into consideration the cost items of setting up a condensate pump and condensate drain in its analysis. Condensate pump is usually needed when the water heater is below the closest drain or when without an immediate drain the condensate need to be pumped to a remote drain. DOE assumed that for gas-fired instantaneous water heaters, around 12.5 percent of the replacements will need to set up a new condensate pump when the households do not have installed central air conditioner or heat pump that may already be equipped with a condensate pump. Accordingly, DOE applied the cost of non-corrosive drain to those installations that require the setup of a condensate pump. On average, DOE estimated a cost of \$36 for condensate management in total.

Noritz commented that the ability to replace a water heater in an emergency is an important attribute of value to consumers, and changes in installation patterns raise costs and impose other time-related constraints such as changing venting patterns, carpentry to make changes to the house, and possible electrical work to complete installation. Noritz commented that a condensing gas-fired instantaneous water heater does provide the same utility to customers, but as noted in the NOPR there are significant installation changes which would require significant cost. (Noritz, No. 1202 at pp. 1–2) DOE agrees that in emergency replacement, like-for-like equipment provides the most convenience to the consumer. However, DOE estimates that the installation of condensing equipment, including the

flue venting, the condensate pipe, and pump can be accomplished as part of an emergency replacement, meaning that for emergency replacements, non-condensing equipment do not necessarily bring significant additional value.

3. Annual Energy Consumption

For each sampled household and building, DOE determined the energy consumption for consumer gas-fired instantaneous water heaters at different efficiency levels using the approach described previously in section IV.E of this document.

Higher-efficiency gas-fired instantaneous 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 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, thus it is not simply an added cost. DOE does include rebound in the NIA for a conservative estimate of national energy savings and the corresponding impact to consumer NPV. See chapter 10 of the final rule TSD for more details.

4. Energy Prices

Because marginal energy price more accurately captures the incremental savings associated with a change in energy use from higher efficiency, it provides a better representation of incremental change in consumer costs than average electricity prices. Therefore, DOE applied average 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.^{76 77 78}

⁷⁶ 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 August 29, 2024).

⁷⁷ U.S. Department of Energy—Energy Information Administration, Natural Gas Navigator (2022) (Available at: www.eia.gov/naturalgas/data.php) (Last accessed August 29, 2024).

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 and natural gas. For the derivation of monthly price factors and marginal price factors, DOE used historical data from EIA from 2003 up to 2022 and from 2013 up to 2022, respectively. DOE adjusted energy prices to 2023\$ using the Consumer Price Index. Further details may be found in chapter 8 of the final rule 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 2050.⁷⁹ 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”).⁸⁰

Rinnai stated that the July 2024 NODA improperly uses national averages in its state-level analysis and failed to account for regional differences in cost and utilization. Rinnai noted that there are significant regional and state differences that directly impact water heating demands, the efficiency and operational costs of water heating. Rinnai encouraged DOE to consider state-specific data in its distribution using discrete inputs to ensure results reflect diverse conditions across the U.S. (Rinnai, No. 1443 at p. 20) In response to Rinnai's concern, DOE reiterates that, given that the hot water use was derived based on representative energy consumption data reported from RECS 2020, there is already embedded regionality accounted for in the results. For no-new-standards case efficiency distribution, for lack of more granular data, DOE did not derive a market share that varies by state. In terms of operating costs of water heating, as discussed above, DOE utilized state-level energy prices for calculating the operating

⁷⁸ U.S. Department of Energy—Energy Information Administration, State Energy Data System (“SEDS”) (2021) (Available at: www.eia.gov/state/seds/) (Last accessed August 29, 2024).

⁷⁹ EIA. *Annual Energy Outlook 2023 with Projections to 2050*. Washington, DC. Available at www.eia.gov/forecasts/aeo/ (last accessed August 29, 2024).

⁸⁰ 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 August 29, 2024).

costs. See appendix 8E of the final rule TSD for more details.

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. DOE included additional maintenance and repair costs for higher efficiency consumer gas-fired instantaneous water heaters (including maintenance costs associated with condensate withdrawal and deliming of the heat exchanger and repair costs associated with burner and blower assembly) based on 2023 RSMeans data.⁸¹ DOE accounted for regional differences in labor costs by using RSMeans regional cost factors.

Rinnai and AGA *et al.* claimed that the July 2024 NODA underestimated the maintenance cost associated with general condensate withdrawal for condensing gas-fired instantaneous water heater units. Rinnai claimed that a basic neutralizer refill can cost between \$35–50 (instead of \$20 as assumed in July 2024 NODA). Rinnai also requested clarification on the source of the \$20 estimate. (Rinnai, No. 1443 at p. 17; AGA *et al.*, No. 1439 at p. 7) In response, DOE derived the material cost of \$20 for condensate management maintenance based on its consultant report included in the appendix 8F of the final rule TSD. For this final rule, given that the market price can change between the time of the final rule analysis and that of the report, DOE reviewed the current market prices for refills of condensate neutralizer and decided that an average price of \$41.17 would be more representative of the price paid by the consumers. DOE has updated the LCC analytical tool and the final rule TSD accordingly to reflect the market prices it reviewed and the updated cost assumption.

6. Product Lifetime

Product lifetime is the age at which an appliance is retired from service. DOE conducted an analysis of gas-fired instantaneous water heater lifetimes based on the methodology described in a journal paper.⁸² For this analysis, DOE relied on RECS 1990, 1993, 2001, 2005,

2009, 2015, and 2020.⁸³ 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.⁸⁴ 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 20 years for instantaneous water heaters.

Noritz disputed that condensing and non-condensing products have the same average lifespan based on their internal testing. Noritz argued that the less complex nature of the non-condensing product in their testing typically lasts between 10 and 20 percent longer than a similar condensing product. Noritz argued that the analysis conducted by DOE that proposes the average lifespan of the two products to be identical will impact the LCC and payback analysis. (Noritz, No. 1202 at p. 3). In response, DOE has not found any evidence in its research pointing to a significantly different lifespan for the two types of water heaters. As described in appendix 8G of the final rule TSD, the data sources cited did not indicate any systematic decrease in lifetime for gas-fired condensing products (additionally, a majority of gas-fired instantaneous water heaters in the market are condensing). For this final rule, DOE maintains its methodology of assuming the same lifetime for all gas-fired instantaneous water heaters.

In order to evaluate the impact of the lifetime on the economic analysis results, for this final rule DOE conducted a sensitivity analysis, where two additional lifetime scenarios were evaluated. The sensitivity results do not change DOE's conclusion of economic justification of the adopted standards (see appendix 8G of the final rule TSD for the comparison of results).

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 gas-fired instantaneous 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.⁸⁵ 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 Finances⁸⁶ (“SCF”) starting in 1995 and ending in 2019. Using the SCF and other sources, DOE developed a distribution of rates for each type of debt and asset by income group to represent the rates that may apply in the year in which amended standards would take effect.

⁸⁵ 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.

⁸⁶ 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 August 29, 2024). The Federal Reserve Board is currently processing the 2022 Survey of Consumer Finances, which is expected to be fully available in late 2023.

⁸¹ RSMeans Company, Inc., *RS Means Facilities Repair and Maintenance* (2023), available at www.rsmeans.com/ (last accessed August 29, 2024).

⁸² 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 August 29, 2024).

⁸³ 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 August 29, 2024).

⁸⁴ 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 August 29, 2024).

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 is 4.2 percent. See chapter 8 of the final rule TSD for further details on the development of consumer discount rates.

To establish commercial discount rates for the small fraction of consumer gas-fired instantaneous water heaters installed in commercial buildings, DOE estimated the weighted-average cost of capital using data from Damodaran Online.⁸⁷ 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 Lawrence Berkeley National Laboratory report, and the distribution varies by business activity.⁸⁸ The average rate for consumer gas-fired instantaneous water heaters used in commercial applications in this final rule analysis, across all business activity, is 6.9 percent.

See chapter 8 of this final rule 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 gas-fired instantaneous water heaters for 2030, DOE used available shipments data by efficiency including in previous AHRI submitted historical shipment data,⁸⁹ ENERGY STAR unit shipments data,⁹⁰ and data from a 2023 BRG Building Solutions report.⁹¹ To cover gaps in the available shipments data, DOE used DOE's public CCD model database⁹² and AHRI certification directory.⁹³

The estimated market shares for the no-new-standards case for consumer gas-fired instantaneous water heaters are shown in table IV.11. See chapter 8 of the final rule TSD for further information on the derivation of the efficiency distributions.

TABLE IV.11—NO-NEW-STANDARDS CASE ENERGY EFFICIENCY DISTRIBUTIONS IN 2030 FOR CONSUMER GAS-FIRED INSTANTANEOUS WATER HEATERS

Efficiency level	Draw pattern					
	Low		Medium		High	
	UEF *	Market share (%)	UEF *	Market share (%)	UEF *	Market share (%)
Gas-Fired Instantaneous Water Heaters, <2 gal and >50,000 Btu/h						
0			0.81	30%	0.81	30%
1			0.87	8	0.89	8
2			0.91	48	0.93	47
3			0.92	6	0.95	7
4			0.93	8	0.96	8

* UEF at the representative rated capacity.

The LCC Monte Carlo simulations draw from the efficiency distributions and assign an efficiency to the gas-fired instantaneous water heater purchased by each sample household in the no-new-standards case according to these distributions.

Finally, DOE considered the 2019 AHCS survey,⁹⁴ 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 is relevant to other larger appliances such as consumer water heaters since they similarly represent large energy end uses. From these data, DOE found that households with larger square footage exhibited a higher fraction of High- or

Super-High efficiency equipment installed. The fraction of respondents with “super high efficiency” equipment was larger by approximately 5 percent for larger households and correspondingly smaller for smaller households. DOE therefore 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

⁸⁷ Damodaran Online, Data Page: Costs of Capital by Industry Sector (2021) (Available at: pages.stern.nyu.edu/~adamodar/) (Last accessed August 29, 2024).

⁸⁸ 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 August 29, 2024).

⁸⁹ AHRI. Confidential Instantaneous Gas-fired Water Heater Shipments Data from 2004–2007 to LBNL. March 3, 2008.

⁹⁰ 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 August 29, 2024).

⁹¹ BRG Building Solutions. The North American Heating & Cooling Product Markets (2023 Edition). 2023.

⁹² U.S. Department of Energy's Compliance Certification Database is available at regulations.doe.gov/certification-data (last accessed August 29, 2024).

⁹³ Air Conditioning Heating and Refrigeration Institute. Consumer's Directory of Certified Efficiency Ratings for Heating and Water Heating Equipment. May 16, 2023. (Available at www.ahridirectory.org) (Last accessed August 29, 2024).

⁹⁴ Decision Analysts, 2019 American Home Comfort Studies (Available at: www.decisionanalyst.com/syndicated/homecomfort/) (Last accessed August 29, 2024).

points; and (2) the market share of condensing equipment for households above 2,500 sq. ft. was increased by 5 percentage points. Other household and demographic characteristics in the survey did not exhibit any statistical correlations with efficiency.

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. However, assignment of water heater efficiency for a given installation based solely on economic measures such as life-cycle cost or simple payback period does 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 finds that the method of assignment 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 heaters make economically irrational decisions (*i.e.*, the lack of a correlation is not the same as a negative correlation). As part of the sample 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. By using this approach, DOE acknowledges the variety of market failures and other consumer behaviors present in the water heater market, and does not assume certain market conditions unsupported by 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.⁹⁵ 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.⁹⁶ 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.⁹⁷ R.H. 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.⁹⁸ 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, for gas-fired instantaneous water heaters, approximately 10 percent of households are renters. Given the greater market share of instantaneous water heaters in new construction compared to other water heater product classes, this fraction of renters is lower than the national average (which is approximately one third). For low-income households (see section IV.I of this document and chapter 11 of the final rule TSD), however, the fraction of renters increases to 38 percent of households. The principal-agent problem can also impact homeowners. For example, 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 based on which products they are familiar with.

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. The consideration of alternative product options is far more likely for planned replacements and installations in new construction.

Additionally, Davis and Metcalf⁹⁹ 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

⁹⁶ Thaler, R.H., Sunstein, C.R., and Balz, J.P. (2014). "Choice Architecture" in *The Behavioral Foundations of Public Policy*, Eldar Shafir (ed).

⁹⁷ 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).

⁹⁸ Thaler, R.H., and Sunstein, C.R. (2008). *Nudge: Improving Decisions on Health, Wealth, and Happiness*. New Haven, CT: Yale University Press.

⁹⁹ 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 January 5, 2024).

⁹⁵ 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 January 5, 2024).

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, et al.¹⁰⁰ show that consumers tend to underestimate the energy use of large energy-intensive appliances but tend to overestimate the energy use of small appliances. Water heaters are one of the largest energy-consuming end-uses in a home. 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 may affect a sizeable share of the consumer population. A study by Houde¹⁰¹ 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, though subsequent studies using alternative methodologies have highlighted other consumer groups who are to some extent responsive to local energy prices with their appliance purchases.¹⁰² The extent to which consumers are perceptive of energy prices and product efficiency when making appliance purchasing decisions is a topic of ongoing research.

Although consumer gas-fired instantaneous water heaters are predominantly installed in the residential sector, some are also installed in commercial buildings (6 percent of projected shipments; see chapter 9 of the final rule TSD). There are market failures relevant to consumer

gas-fired instantaneous 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.^{103 104} 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 in some cases 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.¹⁰⁵ 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.¹⁰⁶ 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.¹⁰⁷

Second, the nature of the organizational structure and design can influence priorities for capital budgeting, resulting in choices that do not necessarily maximize profitability.¹⁰⁸ 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.¹⁰⁹ U.S. tax rules for

¹⁰⁶ 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).

¹⁰⁷ 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 January 5, 2024)

¹⁰⁸ 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.

¹⁰⁹ 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;

Continued

¹⁰⁰ 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 January 5, 2024).

¹⁰¹ 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 January 5, 2024).

¹⁰² Houde, S. and Meyers, E. (2021). "Are consumers attentive to local energy costs? Evidence from the appliance market," *Journal of Public Economics*, 201 (Available at: sciencedirect.com/science/article/pii/S004727272100116X) (Last accessed March 7, 2024).

¹⁰³ 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.

¹⁰⁴ Blum, H. and Sathaye, J. (2010). "Quantitative Analysis of the Principal-Agent Problem in Commercial Buildings in the U.S.: Focus on Central Space Heating and Cooling," Lawrence Berkeley National Laboratory, LBNL–3557E. (Available at: escholarship.org/uc/item/6p1525mg) (Last accessed January 5, 2024).

¹⁰⁵ 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).

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.¹¹⁰

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.¹¹¹ Asymmetric information in financial markets is particularly pronounced with regard to energy efficiency investments.¹¹² 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,¹¹³ 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 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.¹¹⁴ 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).¹¹⁵ 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.¹¹⁶

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 rates¹¹⁷ and required payback periods of many firms are higher than the appropriate cost of capital for the investment.¹¹⁸ 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.¹¹⁹ 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.¹²⁰ For small businesses, the payback periods for higher efficiency gas-fired instantaneous water heaters are typically 7 to 8 years on average, longer than the usual requirement of 1 to 2 years, which ultimately discounts the significant long-term savings from these higher efficiency products. 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,¹²¹ supermarkets,¹²² and the electric motor market.¹²³

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. Although these studies are not specifically targeted to the water heater market, they cover decision-making generally and the impact of energy efficiency, operating costs, and future savings/expenditures on those decisions, all of which apply to the purchase of a consumer gas-fired instantaneous water heater. DOE is not aware of any market failure studies specifically and narrowly focused on gas-fired instantaneous water heaters and so relies on the available literature discussed above. 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

Spillovers from firm management practices to energy efficiency,” *Journal of Environmental Economics and Management*, 68(3), 463–479.

¹¹⁰ Lovins, A. (1992). Energy-Efficient Buildings: Institutional Barriers and Opportunities. (Available at: rmi.org/insight/energy-efficient-buildings-institutional-barriers-and-opportunities/) (Last accessed January 5, 2024).

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.

¹¹² 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.

¹¹³ 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 January 5, 2024).

¹¹⁴ Cooremans, C. (2012). “Investment in energy efficiency: do the characteristics of investments matter?” *Energy Efficiency*, 5(4), 497–518.

¹¹⁵ 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 January 5, 2024).

¹¹⁶ 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 January 5, 2024).

¹¹⁷ 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.

¹¹⁸ DeCanio 1994, op. cit.

¹¹⁹ DeCanio, S.J. (1998). “The Efficiency Paradox: Bureaucratic and Organizational Barriers to Profitable Energy-Saving Investments,” *Energy Policy*, 26(5), 441–454.

¹²⁰ 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.

¹²¹ 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.

¹²² Klemick, H., Kopits, E., Wolvertson, 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.

¹²³ 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 January 5, 2024).

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.

AGA *et al.* stated that DOE's model makes several assumptions that significantly impact its outcomes. According to AGA *et al.*, DOE does not account for regional variations when implementing a national market share for each product level, and bases installation on square footage rather than other household attributes such as the number of bathrooms, bedrooms, or inhabitants. (AGA *et al.*, No. 1439 at p. 7)

Rinnai asserted that installations of condensing and non-condensing units vary regionally and DOE should account for this in the model instead of using national market share for each product level and assuming an increased likelihood a consumer purchases a more efficient option based on square footage. (Rinnai, No. 1443 at p.18)

In response, DOE notes that the market share data for gas-fired instantaneous water heaters are not available at a regional or State level. Manufacturer and industry associations did not provide any regional or State-level shipments data by efficiency level to be incorporated into the analyses. There is similarly no data set DOE is aware of, nor that any stakeholder pointed to, that correlates gas-fired instantaneous water heater efficiency to household attributes or consumer demographics. DOE therefore used national-level data to estimate the market share by efficiency level for gas-fired instantaneous water heaters. However, RECS 2020 is a nationally representative survey of energy consumption and incorporates regional variation with respect to household attributes, water heater usage, water inlet temperature, and energy consumption. Therefore, the LCC analysis does include regional variation with respect to housing characteristics, sample location, labor cost (and therefore installation cost), and estimates of water heating usage. The total costs are therefore not based solely on square footage, but rather on multiple household attributes. Square footage is used to adjust the national efficiency distribution based on the observed consumer behavior that larger homes are more likely to invest in more efficient water heating equipment, as discussed above.

Rinnai objected to DOE's use of the Monte Carlo method for estimating energy savings, which Rinnai argues overstates benefits by ignoring rational consumer choice. Rinnai further stated

that this error is compounded by not analyzing product switching. (Rinnai, No. 1443 at pp. 22–23)

In response, DOE notes that there are a multitude of market failures present in the water heater market that can influence the efficiency of water heater chosen by consumers in the absence of new standards, as discussed above. DOE is not ignoring rational consumer choice, rather the methodology acknowledges the range in consumer behavior present in the market, including those who make equipment choices that minimize their costs. Those consumers are indeed reflected in the analysis, along with other consumers who do not or cannot make choices that minimize their costs for a variety of reasons. With respect to switching to other types of water heaters, as discussed in greater detail in section IV.F.10 of this document, the LCC savings over a longer product lifetime, other attributes of instantaneous water heaters valued by consumers, logistical barriers to switching in some housing contexts, and marginal installed cost differences will minimize the incentives for consumers to switch to alternative water heater product classes rather than simply adopting a standards-compliant gas-fired instantaneous water heater. DOE therefore concludes that the likelihood of an adopted standard for gas-fired instantaneous water heaters driving any significant product class switching to be negligible.

AGA *et al.* commented that DOE's assignment methodology is unreasonable and simulates extreme and unreasonable purchasing behavior as well as skews the result of DOE's analysis. They contended that economic considerations do influence purchasing behavior yet DOE's assignment methodology assumes that economic considerations never matter. (AGA *et al.*, No. 1439 at pp. 8–9)

In response, DOE has never stated that economic considerations never matter. This is a mischaracterization of the analysis. DOE acknowledges the full range of consumer behaviors in the water heater market and the analysis is modeled to reflect this range. As discussed below, the model produces a variety of outcomes including a significant fraction of consumers who choose an efficiency level that minimizes their life-cycle costs in the absence of new standards. These are consumers that the commenter would characterize as "reasonable" and they are reflected in the total sample. However, DOE also acknowledges that other groups of consumers exist who face a variety of market failures, preventing from choosing an efficiency

level that minimizes their life-cycle costs in the absence of new standards.

DOE's focus on a limited number of variables in projecting the efficiency assignment in the no-new-standards case reflects the limits that constrain consumer decision-making. A full life-cycle analysis requires a variety of inputs, such as product prices, product energy consumption, energy prices, maintenance and repair costs, product lifetime, and discount rates. All of these figures are—by their nature—forward looking, predictive, and, therefore, subject to uncertainty. To account for uncertainty and variability in specific inputs, such as equipment lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value.

In terms of how consumers make purchase decisions in the real world, a typical consumer has neither the expertise nor the time to review information about discount rates, projected price trends, or the host of other variables included in DOE's own calculations. Instead, consumers generally rely on the appliances recommended by contractors, who typically prefer to install appliances that are in stock and with which they are familiar. That is particularly true in emergency replacement situations, such as when an appliance and a replacement must be obtained and installed quickly. Consumer decisions, therefore, do not necessarily involve an exhaustive review of all variables that may affect long-run costs, but instead primarily reflect the prevalence of existing units in the relevant market.

There are many reasons to conclude that this imperfect decision-making environment leads consumers to purchase fewer condensing gas-fired instantaneous water heaters than would be economically justified. Studies show that consumers tend to undervalue energy efficiency and that a subset appear to purchase appliances without taking into account their energy efficiency and operating costs at all.

The market failures that generally affect energy-related decisions are particularly pernicious in the context of consumer water heaters. As discussed elsewhere in this document, landlords, contractors, and developers often make the choice of what appliance to install but do not benefit from the lower operating costs associated with condensing units (or suffer from the higher utility bills associated with non-condensing units).

As courts have found, EPCA itself recognizes that consumers do not invariably select appliances that are cost-justified in the long-term, but

instead, the statute reflects Congress's "concern[] over the tendency of consumers to reject efficiency-improving appliances with long payback periods." *Natural Res. Def. Council, Inc. v. Herrington*, 768 F.2d 1355, 1405 (D.C. Cir. 1985). Indeed, "[n]umerous witnesses [before Congress] . . . testified that the average consumer looks for a payback from higher purchase prices within 3 years." *Id.* (quotation marks omitted). This propensity to focus on the short term is especially unfortunate here, where the benefits of condensing units extend for two decades or more. By authorizing DOE to amend efficiency standards, Congress acted in part to rectify this and other distortions in appliance markets. See *id.* (noting that "Congress viewed this consumer behavior as a kind of market failure").

In promulgating EPCA (Pub. L. 94–163, 89 Stat. 871 (1975)), Congress itself expressed a view that markets are not perfect, enacting the statute to promote national "energy conservation," including by improving the energy efficiency of certain "major appliances" and "consumer products." (42 U.S.C. 6201(4), (5)) Congress initially established a voluntary, market-based program for achieving that goal (see § 325, 89 Stat. 923–26), but it soon amended EPCA to require mandatory energy conservation standards (see National Energy Conservation Policy Act, Pub. L. 95–619, tit. IV, pt. 2, § 422, 92 Stat. 3206, 3259–62 (1978)), and Congress has continued to amend EPCA over time to revise those standards and to advance the goal of energy conservation.

The use of the efficiency assignment methodology of the gas-fired instantaneous water heater efficiency in the no-new-standards case in the LCC model is a methodological approach that reflects the full range of consumer behaviors in this market, including consumers who make informed and beneficial cost-minimizing decisions and other consumers who, due to the market failures discussed, do not or cannot make such perfectly beneficial decisions. The methodology is further constrained by shipments data by efficiency level; it must produce an overall distribution that matches the available market data. For example, for the gas-fired instantaneous water heater consumer sample at the adopted standard level (EL 2), DOE's methodology results in the following groups of consumers:

(1) Consumers who, in the absence of standards, choose a lower efficiency product with a lower life-cycle cost based on their surveyed hot water usage.

These consumers are making an optimal choice from the perspective of cost savings in the model in the no-new-standards case. These are consumers who are choosing a baseline non-condensing gas-fired instantaneous water heater (EL 0) or consumers choosing a condensing gas-fired instantaneous water heater with the lowest efficiency (EL 1). With amended standards, they are made to purchase a more efficient product at EL 2 and therefore experience a net cost in the standards case. (15 percent of the gas-fired instantaneous water heater sample.) These consumers represent nearly half of all consumers choosing EL 0 in the no-new-standards case, therefore the efficiency assignment model is already assigning minimum-cost choices to this fraction of consumers in the no-new-standards case.

(2) Consumers who, in the absence of standards, choose a higher efficiency product that also lowers their life-cycle cost compared to the baseline efficiency product. These are consumers who are choosing a condensing gas-fired instantaneous water heater with higher efficiency, including at the adopted standard level (EL 2, EL 3, and EL 4). These consumers are making a cost-minimizing choice in the model in the no-new-standards case. With amended standards, these consumers are not impacted because they are already purchasing a standards-compliant product. (34 percent of the gas-fired instantaneous water heater sample.) The efficiency assignment model is already assigning minimum-cost choices to this fraction of consumers in the no-new-standards case.

(3) Consumers who, in the absence of standards, choose a lower efficiency product that does not minimize the life-cycle cost. These are consumers who are choosing a baseline non-condensing gas-fired instantaneous water heater (EL 0) or consumers choosing a condensing gas-fired instantaneous water heater with the lowest efficiency (EL 1). The market failures discussed above apply to these consumers, preventing them from making the choice that minimizes their life-cycle costs in the no-new-standards case. With amended standards, they are made to purchase a more efficient product at EL 2 that ultimately results in a lower life-cycle cost. These consumers experience a net benefit as a result of the standard. (23 percent of the gas-fired instantaneous water heater sample)

(4) Consumers who, in the absence of standards, choose a higher efficiency product that does not lower their life-cycle cost compared to the baseline or

lower efficiency product. These are consumers who are choosing a condensing gas-fired instantaneous water heater with higher efficiency, including at the adopted standard level (EL 2, EL 3, and EL 4). Although these consumers are choosing a higher efficiency product in the no-new-standards case, they may have incomplete knowledge of the energy consumption of the equipment or may value environmental features such as efficiency more heavily, resulting in a choice of a higher efficiency product that does not lower life-cycle cost compared to a baseline or lower efficiency product. With amended standards, these consumers are not impacted because they are already purchasing a standards-compliant product. (29 percent of the gas-fired instantaneous water heater sample)

DOE's methodological approach is a proxy that ultimately reflects a diversity of scenarios for consumers and therefore the range of outcomes that will result from this diversity. The approach already reflects market share outcomes with some degree of market efficiency and optimal decision-making among some consumers, but the approach also acknowledges a number of factors that hinder perfect decision-making for others. Furthermore, the model produces an overall distribution of efficiency that matches the available shipments data.

Although DOE's efficiency assignment methodology does not explicitly model consumer decision making, nor does it take a stance on the rationality or irrationality of specific consumers, DOE believes that the approach would be consistent with a model in which some share of consumers make optimal cost-minimizing decisions, and some consumers—in the face of market failures—do not. The use of an assignment of gas-fired instantaneous water heater efficiency is a methodological approach that reflects the full range of consumer behaviors in this market, including consumers who make beneficial decisions that minimize their costs and consumers who, due to market failures, do not or cannot make such beneficial decisions, both of which occur in reality. Within those constraints, DOE then assigns product efficiencies to consumers in the LCC, consistent with the economics literature discussed above, to reflect neither purely rational nor purely irrational decision-making.

DOE's analytical approach reflects some degree of market efficiency. An alternative approach which assumes consumer behavior is based solely on cost outcomes, for example by ranking

LCCs and using those to assign efficiencies, is not evidenced by the scientific literature surveyed above or by any data submitted in the course of this rulemaking. This approach depends on the assumption, for example, that homeowners know—as a rule—the efficiency of their homes' water heater and water heating energy use, such that they always make water heating investments accordingly. Similarly, this approach assumes that, faced with a water heater failure, homeowners will always select as a replacement the most economically beneficial available model. Given the work documenting market failures in the energy efficiency contexts described above, DOE believes that such assumptions would bias the outcome of the analysis to the least favorable results. DOE's approach, by contrast, recognizes that assumptions like these hold for some consumers some of the time—but not all consumers and not at all times.

As part of the assignment, some households or buildings with large water heating loads will be assigned higher-efficiency water heaters in the no-new-standards case, and some households or buildings with particularly low water heating loads will be assigned baseline water heaters—*i.e.*, the lowest cost investments.

Regarding the role of contractors, DOE notes that they can exert a high degree of influence over the type of water heater purchased. DOE acknowledges that they can serve as an information mediator. However, it is possible for a contractor to also influence the decision toward a familiar like-for-like replacement, for example, or perhaps the quickest replacement option available (*e.g.*, based on equipment availability). Ultimately, there are multiple actors involved in the decision-making process which results in complex purchasing behavior.

As DOE has noted, there is a complex set of behavioral factors, with sometimes opposing effects, affecting the water heater market. It is impractical to model every consumer decision incorporating all of these effects at this extreme level of granularity given the limited available data. Given these myriad factors, DOE estimates the resulting distribution of such a model would be very scattered with high variability. It is for this reason DOE utilizes a probability distribution (after accounting for market share constraints) to approximate these effects. This is the standard methodological approach used on all of DOE's prior rules. The methodology is not an assertion of economic irrationality, but instead, it is

a methodological approximation of complex consumer behavior. The analysis is neither necessarily biased toward high or low energy savings. The methodology does not preferentially assign lower-efficiency gas-fired instantaneous water heaters to households in the no-new-standards case where savings from the rule would be greatest, nor does it preferentially assign lower-efficiency gas-fired instantaneous water heaters to households in the no-new-standards case where savings from the rule would be smallest. However, it is worth noting that energy use could be improperly estimated if preferences for energy efficiency are correlated with demand for hot water. Some consumers were assigned the water heaters that they would have chosen if they had engaged in perfect economic thinking. Others were assigned less-efficient water heaters even where a more-efficient water heater would eventually result in life-cycle savings, simulating scenarios where, for example, various market failures prevent consumers from realizing those savings. Still others were assigned water heaters that were more efficient than one would expect simply from life-cycle costs analysis, reflecting, say, "green" behavior, whereby consumers ascribe independent value to minimizing harm to the environment.

DOE cites the available economic literature of which it is aware on this subject, supporting the existence of the various market failures in other appliance markets which would give rise to such a distribution, and has requested more data or studies on this topic in the May 2020 RFI, March 2022 preliminary analysis, and July 2023 NOPR. DOE is not aware of any specific study regarding how consumer water heaters (and their efficiency) are purchased.

DOE acknowledges that in the LCC, there are a handful of outcomes with large benefits as a consequence of the assignment methodology. Nevertheless, the median results (instead of the average results) from the LCC continue to show positive LCC savings at the adopted standard levels. However, for gas-fired instantaneous water heaters, DOE considered a sensitivity analysis that eliminated these outcomes with large benefits. Under certain combinations of parameters, particularly in new construction, the total installed cost of a condensing, higher efficiency gas-fired instantaneous water heater can be lower than a non-condensing baseline gas-fired instantaneous water heater (due to the differing vent lengths and material costs). With assignment methodology used by DOE (and the

constraints of the market data by efficiency level), there are a handful of individual gas-fired instantaneous water heater LCC consumers assigned a baseline non-condensing gas-fired instantaneous water heater even though a higher efficiency product would cost less. This is a rare outcome and only occurs for approximately 2.5 percent of the sample. In the sensitivity analysis, DOE removed these outlier consumers from the analysis in case they may be overly biasing the overall results. This sensitivity scenario therefore eliminates any instance of a consumer assigned EL 0 even though EL 2 would cost less to install. The resulting average LCC savings are reduced to \$87 across the rest of the entire gas-fired instantaneous water heater consumer sample, with 15 percent of consumers experiencing a net cost, 20 percent experiencing a net savings, and 65 percent of consumers not impacted by the rule. Although the average LCC savings are reduced in this sensitivity analysis, and slightly more consumers are negatively impacted by the adopted standards, the average (and median) LCC savings remain positive and there continue to be significant energy and environment savings. DOE continues to conclude that the adopted standard level for gas-fired instantaneous water heaters is economically justified even in this sensitivity analysis that eliminates outlier results.¹²⁴

In summary, DOE's efficiency assignment methodology produces overall results that are consistent with the observed distribution of efficiency across products as seen in the shipments data. The methodology also results in a share of consumers being assigned product efficiencies that minimize their life-cycle costs in the absence of standards. This represents consumers making informed decisions regarding the efficiency of their products, without amended standards. These consumers will be negatively impacted by the adopted standard levels and the analysis accounts for these impacts. However, the methodology also acknowledges that some consumers are unable to minimize the life-cycle costs of their products for a variety of reasons discussed in the economics literature (*e.g.*, renters with no say in the products purchased for their household). Even for motivated and informed consumers, the information and data required to ultimately make the best product choice that minimizes life-cycle cost is

¹²⁴ These sensitivity results can be found in the LCC Results spreadsheet, available at www.regulations.gov/docket/EERE-2017-BT-STD-0019 (docket reference).

complex and time-consuming. As a result, there are a subset of consumers for whom adopting more stringent standard levels will result in life-cycle savings. DOE's methodology reflects some degree of market efficiency in terms of consumer choice of product efficiency, but it also reflects a variety of observed effects that inhibit perfect market efficiency. This is representative of the water heater market. On the whole, when accounting for both consumers negatively impacted by, as well as those benefiting from, amended standards, DOE's analysis demonstrates that there are economically justified savings.

9. Payback Period Analysis

The payback period is the amount of time (expressed in years) it takes the consumer to recover the additional installed cost of more-efficient products, compared to baseline products, through energy cost savings. Payback periods that exceed the life of the product mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation for each efficiency level are the change in total installed cost of the product and the change in the first-year annual operating expenditures relative to the baseline. DOE refers to this as a "simple PBP" because it does not consider changes over time in operating cost savings. The PBP calculation uses the same inputs as the LCC analysis when deriving first-year operating costs.

As noted previously, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered efficiency level, DOE determined the value of the first year's energy savings by calculating the energy savings in accordance with the applicable DOE test procedure, and multiplying those savings by the average energy price projection for the year in which compliance with the amended standards would be required.

10. Accounting for Product Switching

For the preliminary analysis, DOE did not account for product switching under potential standards. For the July 2023 NOPR and this final rule, DOE maintained the same approach and did not include any product switching with

respect to gas-fired instantaneous water heaters in its analysis. DOE assumes that any product switching as a result of the adopted standards is likely to be minimal.

As discussed in the specific examples in the following paragraphs and in section 9.4 of the final rule TSD, the costs to switch to another product class can be higher than simply purchasing a standards-compliant product in the same product class. When faced with the need to replace a gas-fired instantaneous water, a consumer can either install a standards-compliant product of the same product class as they originally had, or consider a switch to a standards-compliant product of an alternative product class. Similarly, when faced with the need to install a consumer water heater in new construction, the consumer can choose from available standards-compliant products across various product classes. As part of considering which water heater to purchase, consumers look at the first cost, the installation cost, expected energy savings, and the amenities provided by the water heaters such as the location within the residence and the amount of hot water the water heater could deliver.

In consumer hot water heater replacement scenarios, shipments data demonstrate purchasers mostly replace their existing water heater with the same product class when purchase price is similar (see section 9.3.1 of chapter 9 of the TSD for details). In the case of gas-fired instantaneous water heaters, other product classes often cost more to switch to and install than a standards-compliant gas-fired instantaneous water heater (as discussed below). Even if, for a given household, another product class costs less, DOE expects other factors (including logistical barriers, lower LCC savings, shorter product lifetimes, and other attributes consumers value in instantaneous water heaters) to limit product-switching. Because of the higher cost in some scenarios, consumer preferences, and other limitations on product-switching, DOE concludes it is extremely unlikely that consumers would choose to switch product classes specifically in response to these amended standards. In the absence of amended standards, some consumers choose to switch for reasons other than simply cost, and that is reflected in historical market trends that are incorporated into the analysis. However, for the purposes of the analysis, the issue is whether *more* consumers would switch due to the higher incremental costs of standards-compliant products. DOE concludes that

this is very unlikely and therefore market trends will be unaffected.

DOE compared the costs of a consumer switching from a baseline non-condensing gas-fired instantaneous water heater to three potential replacement options (standards-compliant gas-fired instantaneous water heater, baseline gas-fired storage water heater under the recently updated standard, and baseline electric storage water heater under the recently updated standard), in both residential new construction and replacement scenarios for existing households. In the new construction scenario, the analysis shows that average total installed costs are typically lowest for a standards-compliant gas-fired instantaneous water heater. In the replacement scenario, the factors considered in DOE's analysis show that average total installed costs are lower in some cases and marginally higher in others. However, switching to an alternative option also involves several additional costs to accommodate the alternative water heater, including new venting, electrical upgrades, and potential relocation of the water heater. Accordingly, even if, for a given household, a potential replacement option other than a standards-compliant gas-fired instantaneous water heater is cheaper to install, DOE expects that other factors will limit consumer incentives for product switching: logistical barriers arising from different physical and space requirements as described below, the greater LCC savings of a gas-fired instantaneous water heater, the longer lifetime of a gas-fired instantaneous water heater, and consumer preferences for instantaneous water heater attributes such as limitless hot water supply. DOE notes many consumers have already switched from a gas-fired storage to a gas-fired instantaneous water heater despite the high costs of doing so (to replace all the venting and potentially relocate the water heater), and does not expect this trend to reverse as a result of the amended standards.

In the hypothetical case of a consumer switching from a gas-fired instantaneous water heater to an electric storage water heater when replacing a water heater in an existing household, there are likely additional installation costs necessary to add an electrical connection since this type of water heater typically requires high wattage. These are costs above and beyond the normal equipment and installation costs. In some cases, it may be possible to install a 120-volt 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-volt electrical storage water heater would be installed. To do so, the consumer would need to add a 240-volt circuit to either an existing electrical panel or upgrade the entire panel if there is insufficient room for the additional amperage. The installation of a new 240-volt circuit by a qualified electrician will be at least several hundred dollars. Panel upgrade costs are significant and can be approximately \$750–\$2,000 to upgrade to a 200-amp electrical panel.¹²⁵ 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. The average total installed cost of a replacement standards-compliant electric storage water heater is \$1,913,¹²⁶ therefore the average total costs to switch to an electric storage water heater, after accounting for electrical upgrade costs, easily exceed the average replacement cost of a standards-compliant gas-fired instantaneous water heater (\$2,499). Given the significant additional installation costs for nearly all homes potentially switching to an electric water heater, DOE estimates that very few consumers would switch from gas-fired instantaneous water heaters to electric water heaters as a result of an energy conservation standard, especially at the adopted standard at TSL 2. When including the above additional costs, the average total installed cost to switch to an electric water heater is higher than the standards-compliant gas-fired instantaneous water heater. Instantaneous water heaters also provide differing utility to consumers compared to storage water heaters (e.g., limitless hot water) and thus these products are not perfect substitutes. Additionally, storage water heaters require more space than a gas-fired instantaneous water heater and may require relocating the water heater, incurring even greater costs. Switching from a gas-fired instantaneous water heater to an electrical water heater is especially unlikely 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 what new water heater 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 a water heater that utilizes a different fuel source in the emergency replacement scenario. See section 9.4 of the final rule TSD for a summary comparison of costs.

In the hypothetical case of a consumer switching from a gas-fired instantaneous water heater to a gas-fired storage water heater when replacing a water heater in an existing household, there are additional installation costs necessary as well. The vast majority of gas-fired storage water heaters (“GSWHs”) utilize non-condensing technology that utilizes Category I type B metal vent material, whereas gas-fired instantaneous water heaters require Category III or Category IV venting material, depending on the existing efficiency level. Regarding existing non-condensing gas-fired instantaneous water heaters, A.O. Smith and Rinnai noted that these utilize Category III venting (A.O. Smith, No. 1182 at p. 15; Rinnai, No. 1443 at p. 12). Condensing gas-fired instantaneous water heaters require Category IV venting. Switching from a gas-fired instantaneous water heater to a baseline GSWH would therefore require replacing the venting regardless of the existing efficiency of the gas-fired instantaneous water heater. Replacing the venting system would result in significant additional installation costs if a consumer opted to switch to a GSWH. The most comparable cost for this scenario is the average cost to install a GSWH in new construction (\$2,095),¹²⁷ which requires all-new venting, however this estimate does not include removal and disposal costs for the old equipment or potentially relocating the water heater. GSWHs and gas-fired instantaneous water heaters have very different physical dimensions and space requirements, with GSWHs being significantly larger water heaters. Switching from a gas-fired instantaneous water heater to a GSWH may not always be possible in the available space and may require even larger costs to accommodate a GSWH (e.g., relocating the water heater in the home). This may be particularly acute in smaller households where space is at a premium (e.g., townhomes). All of these

additional costs can easily exceed many hundreds of dollars, if not higher, depending on need to relocate the water heater.¹²⁸ Therefore, the total cost to switch to a GSWH can exceed the cost to simply replace with a standards-compliant gas-fired instantaneous water heater (\$2,499). This situation is the same as exists today, prior to the amendment of standards for either gas-fired instantaneous water heaters or for GSWHs. The cost differential is very similar between the two and the market share of instantaneous water heaters is growing relative to storage tank water heaters, not the reverse. See section 9.4 of the final rule TSD for a summary comparison of costs.

Furthermore, the average lifetime of a gas-fired instantaneous water heater is approximately 20 years, compared to approximately 14.5 years for GSWHs, which results in a total annualized cost of ownership for instantaneous water heaters that is even lower compared to GSWHs. Instantaneous water heaters also provide differing utility to consumers (e.g., limitless hot water) and thus these products are not perfect substitutes. These attributes are clearly valued by consumers, given the recent increasing market share of gas-fired instantaneous water heaters. Consumers that have already paid the costs to switch from an existing GSWH to a gas-fired instantaneous water heater in the absence of any amended standard are highly unlikely to switch back to a GSWH due to amended standards and pay all of those extra costs again.

As a result of all the cost and other considerations above, DOE estimates that it is highly unlikely that consumers would switch from gas-fired instantaneous water heaters to GSWHs when needing to replace their existing water heater, specifically as a result of the incremental costs of an energy conservation standard, particularly in the case of an emergency replacement.

Even if some small subset of existing gas-fired instantaneous water heater consumers opt to switch to GSWHs instead of replacing their gas-fired instantaneous water heaters with a more efficient unit as a result of the adopted standards, despite the additional costs in doing so, those consumers would still need to switch to a more efficient

¹²⁵ For example, see: www.homeadvisor.com/cost/electrical/upgrade-an-electrical-panel/#upgrade (last accessed August 29, 2024).

¹²⁶ These results are available in the May 2024 final rule LCC Results spreadsheet (EERE–2017–BT–STD–0019–1424), where LCC results are available separately for replacements and new construction. Available at: www.regulations.gov/document/EERE-2017-BT-STD-0019-1424 (last accessed: Aug. 29, 2024).

¹²⁷ These results are available in the May 2024 final rule LCC Results spreadsheet (EERE–2017–BT–STD–0019–1424), where LCC results are available separately for replacements and new construction. Available at: www.regulations.gov/document/EERE-2017-BT-STD-0019-1424 (last accessed: Aug. 29, 2024).

¹²⁸ As an example of such costs, table 8D.5.66 in the final rule TSD estimates permitting, removal, and disposal costs of \$260. Section 8D.3.5.3 (3) of the May 2024 final rule TSD estimates that relocation costs in the case of electric storage water heaters could range up to \$2,000. Relocating GSWHs would incur similar costs to accommodate all-new water and gas lines in a relocation. Available at: www.regulations.gov/document/EERE-2017-BT-STD-0019-1416 (last accessed: Aug. 29, 2024).

GSWH at the newly adopted standard level. 89 FR 37778. While this would result in a marginal increase in energy consumption and life-cycle costs for these consumers, those increases are smaller than if the consumers switched to a previous baseline GSWH. Furthermore, these marginal increases would be outweighed by the energy savings and life cycle savings of the remaining consumers of gas-fired instantaneous water heaters. For example, even if 10 percent of gas-fired instantaneous water heater consumers elected to switch to GSWHs despite the costs, the percentage of consumers experiencing a net cost would increase by at most 10 percent and the average LCC savings for gas-fired instantaneous water heater consumers would still be positive, which would not change the conclusion of economic justification. It would likely take approximately half of the GIWH purchasers to choose a gas storage water heater instead of a GIWH in order for the economic justification to come into question, which is not a plausible scenario given the facts and analysis concerning the costs associated with switching as presented above.

In new construction, the average total installed costs are different because new venting is always required if installed indoors, however the location of the water heater can be optimized to limit those venting costs for gas-fired instantaneous water heaters. Water heaters can also be installed outdoors in some cases. In today's market, the total installed cost of a gas-fired instantaneous water heater in new construction is typically less than a GSWH, a factor in the increasing market share of gas-fired instantaneous water heaters seen in recent historical shipments (as described in section IV.G) and projected in the no-new-standards case. With newly adopted standards for both GSWHs and gas-fired instantaneous water heaters, the average total installed cost (including all venting) of a minimally standards-compliant GSWH in residential new construction is \$2,095,¹²⁹ which is similar to and slightly higher than a minimally compliant gas-fired instantaneous water heater in residential new construction at the amended standard level (\$2,070). The

adopted standard levels for both GSWHs and gas-fired instantaneous water heaters therefore preserve this market dynamic and gas-fired instantaneous water heaters will continue to have total installed costs that are similar to or lower on average in new construction compared to GSWHs. Furthermore, gas-fired instantaneous water heaters have longer lifetimes (representing a more cost-effective investment) and additional features (such as a smaller footprint and endless hot water supply) that will continue to be attractive to some builders and consumers. As a result, DOE estimates that the existing trend of increasing gas-fired instantaneous water heater market share in new construction will continue.

In existing installations of GSWHs, there are significant costs to switch from a GSWH to a gas-fired instantaneous water heater, since new venting is required. In today's market, however, some consumers are electing to make that switch despite the extra costs, because instantaneous water heaters have certain attributes that consumers value (e.g., smaller footprint, endless supply of hot water). Even with the adopted standard for gas-fired instantaneous water heaters, the relative incremental cost will be similar because DOE also recently adopted a revised standard for GSWH in a May 2024 final rule, so costs for both product classes will increase. 89 FR 37778. For example, the average total installed cost of a pre-standard baseline GSWH in a residential replacement installation was estimated to be \$1,376 in the May 2024 final rule, whereas the average total installed cost of a baseline gas-fired instantaneous water heater in a residential replacement installation is estimated to be \$2,282.¹³⁰ Therefore, switching to baseline gas-fired instantaneous water heaters in existing GSWH installations in today's market already represents a significant additional cost, estimated to be \$906 on average, nearly twice the cost of simply replacing a GSWH with another GSWH. Despite this extra cost, the market share of gas-fired instantaneous water heaters in replacement installations is increasing. With newly adopted standards for both product classes, the average installed costs in residential replacement installations for minimally compliant products are estimated to be \$1,523 and \$2,499 for GSWHs and gas-

fired instantaneous water heaters, respectively, with a difference of \$976. Therefore, there is still a significant additional cost to switch after the adoption of new standards, just as in today's market. However, instantaneous water heaters will continue to have the same attributes and features that some consumers prefer and those consumers will continue to make the switch when replacing their existing storage water heaters, despite the costs of doing so. The adopted standard level for gas-fired instantaneous water heaters is unlikely to significantly disrupt this existing market dynamic because there was already a high cost to switch from existing GSWHs to gas-fired instantaneous water heaters.

Even if a small subset of existing GSWH consumers, who would have switched to gas-fired instantaneous water heaters in the no-new-standards case, instead remain with GSWHs as a result of the adopted standards, the adopted rule for gas-fired instantaneous water heaters will still result in significant energy savings even though the overall energy savings might be incrementally lower than estimated in this final rule analysis. In this hypothetical scenario, even if the market growth of gas-fired instantaneous water heaters slows down and more consumers remain with GSWHs, there are still energy and LCC savings for gas-fired instantaneous water heaters, the rule as a whole saves a significant amount of energy, and therefore the conclusion of economic justification remains unchanged.

DOE received comments from stakeholders who were concerned that, if DOE were to adopt more stringent standards for gas-fired instantaneous water heaters compared to the standards adopted for gas-fired storage water heaters, consumers would opt for gas-fired storage water heaters instead of gas-fired instantaneous water heaters, which could have negative impacts to the outcome of this rulemaking.

TPPF stated that consumers recognize the differences between condensing and non-condensing products, which leads consumers to purchase products at different price points. Because condensing products are more expensive, TPPF stated, consumers will instead opt for non-condensing gas-fired storage water heaters, and these economic tradeoffs illustrate that condensing and non-condensing water heaters are not interchangeable. (TPPF, No. 1153 at pp. 3–4)

Rinnai stated their expectation that most would-be consumers of non-condensing tankless water heaters would instead purchase less efficient

¹²⁹ These results are available in the May 2024 final rule LCC Results spreadsheet (EERE-2017-BT-STD-0019-1424), where LCC results are available separately for replacements and new construction. The total installed costs for baseline models (reflecting the current minimally compliant models) are similarly less for gas-fired instantaneous water heaters compared to GSWHs. Available at: www.regulations.gov/document/EERE-2017-BT-STD-0019-1424 (last accessed: Aug. 29, 2024).

¹³⁰ Separate LCC results for residential vs. commercial buildings and replacement installations vs. new construction are available in the LCC results spreadsheets. The May 2024 final rule LCC results spreadsheet is available at: www.regulations.gov/document/EERE-2017-BT-STD-0019-1424 (last accessed Sept. 17, 2024).

gas-fired storage water heaters if the proposed standards are finalized. Rinnai asserted that, because DOE does not adequately account for such product switching, DOE's analysis overstates LCC and energy savings for gas-fired instantaneous water heaters. Rinnai estimated that at least 80 percent of their current non-condensing gas-fired instantaneous water heater sales would switch to non-condensing gas-fired storage water heaters as a result of the proposed rule. Rinnai added that based on their calculations, if 31 percent of the market switched, there would be a net loss of 0.4 percent in energy savings and 0.04 percent in emissions reductions as compared to the manufacturer's analysis of a no-new-standards case scenario over the first 20 years the proposed rule goes into effect. (Rinnai, No. 1186 at pp. 2–18)

The Attorney General of GA commented that condensing and non-condensing gas-fired tankless water heaters are highly efficient and reduce standby heat loss as compared to traditional storage-type units. The Attorney General of GA commented that both types (condensing and non-condensing) of tankless water heaters require less energy and have higher lifespans than units with tanks, and both types currently satisfy DOE's minimum efficiency requirement. (Attorney General of GA, No. 1026 at p. 1) In response to the July 2024 NODA, Commenters from the U.S. House of Representatives claimed that the "unique design" of non-condensing gas-fired instantaneous water heaters yields a longer appliance life-cycle by heating water only on demand, limiting exposure to corrosive elements. (U.S. House of Representatives, No. 1445 at p. 1)

DOE agrees with the commenters that instantaneous water heaters are different from storage water heaters because they heat water on demand; however, this ability is not unique to non-condensing gas-fired products. "Tankless" models are instantaneous water heaters with very little storage volume. They are equipped with sensors that activate the heating process based on water flow to produce hot water on demand. Endless hot water is a feature that is valued by some consumers, as indicated by the recent increasing market share of gas-fired instantaneous water heaters. Furthermore, DOE's analysis shows that gas-fired instantaneous water heaters can have longer lifetimes than gas-fired storage water heaters. The estimated average lifetime for a gas-fired instantaneous water heater is about 20 years, whereas gas-fired storage water heaters operate for about 14 to 15 years.

This is one reason why there has been a historical trend of increasing shipments of gas-fired instantaneous water heaters—both non-condensing and condensing—and why it is reasonable to expect consumers to continue opting for gas-fired instantaneous water heaters in a scenario where standards are set at a condensing efficiency level.

Rinnai noted that the efficiency levels for gas-fired instantaneous water heaters proposed in the July 2023 NOPR represent a much larger increase from existing standards than the proposed efficiency levels for gas-fired storage water heaters. (Rinnai, No. 1186 at pp. 6–7) Commenters from the U.S. House of Representatives expressed concern that the efficiency level for the proposed standards for gas-fired storage water heaters are less stringent than the efficiency level proposed for gas tankless water heaters. Commenters from the U.S. House of Representatives asserted that this efficiency difference would restrict consumer choice and increase prices. (U.S. House of Representatives, No. 1025 at pp. 1–2) Commenters from the U.S. House of Representatives reiterated these concerns in response to the July 2024 NODA, claiming that the proposed standards would eliminate non-condensing gas-fired instantaneous water heaters from the market. The U.S. House of Representatives stated that the proposed standards would leave condensing gas-fired instantaneous water heaters, which are significantly more expensive, and gas-fired storage water heaters, which have significantly higher emissions profiles, on the market. (U.S. House of Representatives, No. 1445 at p. 1) Commenters from the U.S. House of Representatives claimed that the proposed standards would harm consumers who rely on the size, cost, and flexibility of gas-fired instantaneous water heaters. (U.S. House of Representatives, No. 1445 at p. 1)

CNGC urged DOE to reconsider the implications on both consumers and manufacturers, stating that if efficiency standards exceed 91 percent, it becomes technologically infeasible to produce non-condensing gas-fired tankless water heaters at their current affordable price, leaving consumers to choose less-efficient storage water heaters and undermine environmental goals. (CNGC, No. 648 at p. 1) CHPK and Huntsville Utilities also stated that the unattainable energy efficiency requirements for gas-fired instantaneous water heaters utilizing non-condensing technology would discourage consumers from investing in tankless models, and instead they would purchase less-

efficient water heaters. (CHPK, No. 1008 at pp. 1–2; Huntsville Utilities, No. 1176 at p. 1) The Attorney General of GA commented that the proposed standards are feasible only for condensing units and would make tankless water heaters unaffordable for many consumers. The Attorney General of GA added that the proposed rulemaking will effectively eliminate non-condensing gas-fired tankless water heaters and leave consumers with a choice between less-efficient storage water heaters, or more expensive condensing tankless water heaters, and suggested that if consumers are incentivized to purchase inefficient storage water heaters, the rule will violate DOE's requirement that any new or amended standards must result in a significant conservation of energy. (Attorney General of GA, No. 1026 at pp. 1–2)

DOE recognizes that total installed cost is a significant factor in consumer decision-making when purchasing a new water heater. In this final rule, DOE has incorporated specific feedback from stakeholders to improve its life-cycle cost analysis with respect to installation cost estimates. As discussed above, DOE concludes that, based on costs, consumers who already have gas-fired instantaneous water heaters would not switch to a gas-fired storage water heater when making a replacement. Secondly, in new construction, installing a gas-fired instantaneous water heater is still less expensive on average than installing a gas-fired storage water heater with the adoption of amended standards. Thirdly, consumers switching from gas-fired storage water heaters to gas-fired instantaneous water heaters in the no-new-standards case will require a change to the venting configuration regardless of whether the gas-fired instantaneous water heater is non-condensing or condensing. The choice to switch from a storage water heater to an instantaneous water heater in the no-new-standards case is influenced by other factors beyond just cost. Based on its assessments of total installed costs in the life-cycle cost analysis, DOE has determined that it is unlikely for consumers to stop switching from gas-fired storage water heaters to gas-fired instantaneous water heaters only as a result of the adopted rule. Even if that premise was true, where a fraction of consumers in the amended standards case, as compared to the no-new-standards case, opted to stay with storage water heaters instead of switching to instantaneous water heaters, DOE would still find economic justification with the adopted rule. A majority of consumers would have to

forgo adopting instantaneous water heaters in the standards case for the rule to result in an increase in energy consumption, a scenario DOE has determined to not be remotely plausible given the discussion of total installed costs above.

The Attorney General of TN commented that the proposed rulemaking does not consider the loss of consumer utility that could occur from the implementation of these standards, particularly consumers' needs for different types of water heaters (*i.e.*, condensing versus non-condensing) depending on the configuration of their home. The Attorney General of TN commented that by reducing market availability for non-condensing, gas-fired, instantaneous water heaters in favor of less affordable electric-powered water heaters, the proposed rulemaking would lead consumers to purchase less-efficient non-condensing gas-storage water heaters. (Attorney General of TN, No. 1149 at p. 3)

In the July 2023 NOPR, DOE explained why non-condensing versus condensing gas-fired appliances do not constitute a consumer utility for which the Department can justify separate standards. 88 FR 49058, 49079. This determination is discussed further in section IV.A.1 of this document.

NPGA, APGA, AGA, and Rinnai stated that DOE misunderstands the consumer water heater market due to its claim that consumers do not make decisions based on rational economic terms, but conceded that many water heater decisions are made in emergencies where price and immediate availability are the strongest factors in decision-making. According to NPGA, APGA, AGA, and Rinnai, DOE rejects the idea that consumers would switch products across various product classes and does not evaluate associated market shifts, and by failing to understand that by limiting or eliminating the market for non-condensing instantaneous water heaters, consumers may choose to switch to a non-condensing gas-fired storage water heaters, resulting in a lower UEF and enhanced emissions from their water heater and has not accounted for installation costs of this potential product class switch. (NPGA, APGA, AGA, and Rinnai, No. 441 at p. 3)

In response, DOE notes that its assessment is based on the comparison of total installed costs needed to switch from product class to product class, as noted above. The total costs to switch product classes in response to an amended standard are higher than simply purchasing a compliant product in the same product class. Therefore,

DOE estimates no switching in response to an amended standard as a result of incremental costs. DOE does not reject the idea that this may happen in the no-new-standards case for reasons other than just total cost. Indeed, the shipments projection accounts for recent market trends that show growing consumer demand for gas-fired instantaneous water heaters compared to GSWHs. Consumers are valuing instantaneous water heater features beyond just cost. DOE estimates that this trend will not substantively change in the standards case, given that cost comparison between GSWHs and gas-fired instantaneous water heaters is similar, whether at baseline ELs or at the adopted ELs.

Commenting on the July 2023 NOPR, Ecotemp commented that product switching, from tankless to tank water heaters is likely to happen as a result of this rule and DOE not modeling that possibility is missing a huge consumer base doing exactly that. (Ecotemp, No. 1092 at p. 2) NMHC and NAA stated that DOE fails to properly evaluate the impacts of market unavailability that forces product switching with the example of the elimination of non-condensing tankless water heaters from the proposed standard potentially requiring a non-condensing gas storage water heater over a traditional replacement of non-condensing tankless water heaters, and the 25 percent drop in efficiency associated with these products. NMHC and NAA stated that this rule will result in greater use of electric water heaters in replacement of existing gas water heaters which will require more interconnectivity, changes to power systems, and upgrades to electrical infrastructure. (NMHC and NAA, No. 996 at p. 5)

In response, DOE notes that existing market trends are incorporated into the shipments analysis and projection. To the extent that some product classes are becoming more prevalent in certain types of buildings, that is reflected in the no-new-standards case shipments projection. With respect to switching from a tankless to storage tank water heater, as summarized above, DOE determines that minimal switching would happen to either a gas-fired storage or electric storage water heater. As DOE has discussed above, the costs to switch product classes in response to amended standards are larger than simply purchasing standards-compliant products within the same product classes. Therefore, DOE estimates that no additional switching will occur beyond existing market trends.

Atmos Energy argued that because the cost to fuel switch is high, DOE fails to

“acknowledge the equally prohibitive costs that will be associated with high efficiency gas appliances as a result of this proposal and the lack of gas-fired replacements in the market.” (Atmos Energy, No. 1183 at p. 6). Rinnai argued that DOE has failed to take into account substitution effects in replacement markets, especially in regards to non-condensing gas-fired instantaneous water heater. Rinnai argued that in particular the lack of consideration of non-condensing gas-fired instantaneous water heater to gas storage water heater (due to lack of condensing gas-fired instantaneous water heater option) is not being represented. (Rinnai, No. 1186 at pp. 30–31) As discussed above, DOE estimates that switching away from gas-fired instantaneous water heaters as a result of the rule is likely to be negligible, due to the high installation costs of such switching, (costs that are acknowledged to be high by Atmos Energy in their comment). DOE finds no evidence that there would be a lack of condensing gas-fired instantaneous water heater models available in the standards case for replacements. Many such models for gas-fired instantaneous water heaters are currently available on the market by multiple manufacturers. See chapter 8 and appendix 8D of the final rule TSD for detailed description of the installation costs.

Rinnai stated that the July 2024 NODA declares that no consumers would switch between product categories, including to gas storage water heaters, an assumption that Rinnai stated would contradict historic market data and evidence of consumer purchasing behavior. According to Rinnai, gas tankless water heaters are taking market share from gas tank sales, with GSWH sales declining at the same time gas-fired instantaneous water heater sales have increased. Rinnai speculated that this may be due to consumer purchasing decisions due to the increased cost to purchase and install gas-fired instantaneous water heater. Rinnai also note that by removing non-condensing gas-fired instantaneous water heater options, consumers may be less inclined to replace an existing GWSH with an even more expensive condensing gas-fired instantaneous water heater unit. Rinnai stated that DOE's position that consumers purchasing gas tankless water heaters will never consider buying a gas tank in contrary to observable market behavior. (Rinnai, No. 1443, at p. 2 and pp. 5–8)

In contrast, the Joint Advocates supported DOE's conclusion that the proposed standards for gas-fired instantaneous water heaters would not

result in any significant product switching among consumers. The Joint Advocates commented that, contrary to one manufacturer's assumption, such an outcome is highly unlikely for the following reasons: (1) gas-fired instantaneous water heaters are already significantly more expensive than gas storage water heaters and that the total installed cost of a gas-fired instantaneous water heater that just meets the current standard is 41 percent higher than that of a gas storage water heater; (2) the cost differential between gas storage and gas-fired instantaneous water heaters would remain essentially unchanged at the proposed standard level (*i.e.*, the estimated total installed cost of gas-fired instantaneous water heaters would remain at 41 percent higher than gas storage water heaters); (3) consumers with an existing gas-fired instantaneous water heater would be unlikely to replace it with a gas storage water heater due to space and venting issues; and (4) DOE data show that 70 percent of current gas-fired instantaneous water heater sales are already at condensing levels and more than 60 percent of current sales meet EL 2. For these reasons, the Joint Advocates supported DOE's determination that additional consumer product switching is unlikely as a result of amended standards for gas-fired instantaneous water heaters. (Joint Advocates, No. 1444 at pp. 2–3)

A.O. Smith agreed with DOE's conclusion that condensing standards for gas-instantaneous water heaters would not shift shipments away from tankless products due to significant cost for changing venting system. The commenter also noted that approximately 65 percent of shipments are already condensing products and it suggests that consumers are already voluntarily opting for condensing tankless products despite their higher initial costs over non-condensing tankless products. (A.O. Smith, No. 1440 at p. 6)

In response, DOE acknowledges that historic and present-day market trends show an increasing demand for gas-fired instantaneous water heaters over GSWHs. This overall trend is incorporated into the shipments analysis and shipment projections, as discussed in section IV.G of this document. However, this market dynamic is occurring in the absence of any new energy conservation standard for gas-fired instantaneous water heaters. In new construction, instantaneous water heaters are becoming popular in large part because the total installed cost of a gas-fired instantaneous water heater is, on

average, similar to or less than a GSWH, since new venting is required in either case and the venting length can be very short for gas-fired instantaneous water heaters. Even with the adopted standard level, gas-fired instantaneous water heaters will continue to be similar to or less expensive to install in new construction, on average, and therefore the standard is highly unlikely to cause significant product switching to GSWHs. Furthermore, instantaneous water heaters also provide differing utility to consumers (*e.g.*, limitless hot water, smaller footprint) compared to storage water heaters. These attributes are clearly valued by consumers, given the recent increasing market share of gas-fired instantaneous water heaters.

11. Analytical Results

Rinnai stated that the Department has proposed new minimum efficiency standards for twelve separate categories of consumer gas-fired instantaneous water heaters but the Department provided only one life-cycle-cost analysis for them. (Rinnai, No. 1186 at p. 34)

In response, DOE clarifies that for two types of gas-fired instantaneous water heaters (and each of their four their associated draw patterns), DOE is only updating the rating metric to the UEF descriptor and the adopted standards do not constitute an increase in stringency. This applies to 8 of the 12 categories the commenter identified. For gas-fired instantaneous water heaters with less than 2 gallons of effective storage volume and rated inputs greater than 50,000 Btu/h, DOE conducted an analysis, as presented in this final rule, to determine whether amended UEF standards would be appropriate and justified. Two of the four draw patterns have no products and no market share in today's market and thus there is no analysis to conduct. For the remaining two draw patterns (medium and high draw), they are fully analyzed as part of DOE's rulemaking analysis and incorporated into the LCC consumer sample. DOE assigned a draw pattern to the sampled household or building based on the market split of two draw patterns. The analytical results are a weighted average representing the economic impact to the market as a whole combining the two draw patterns. Additionally, the published analytical results spreadsheet contains the breakdown of the results by draw patterns.

Commenting on the July 2023 NOPR, Rinnai argued that the density distribution of its LCC analysis for gas-fired instantaneous water heaters shows heavily skewed distributions which can

be attributed to high impact outliers. Rinnai argued that because the mean is being used to determine feasibility, it moves the LCC results away from its central tendencies and typical savings/costs for consumers. Rinnai argued that DOE should do a sensitivity analysis on gas-fired instantaneous water heater to defend the impact of the proposal. (Rinnai, No. 1186 at p. 21) Rinnai argued that small changes in estimates of installation costs or maintenance costs for condensing gas-fired instantaneous water heaters could result in negative average LCC savings. Rinnai argued this sensitivity warrants not enacting the standard for gas-fired instantaneous water heaters. (Rinnai, No. 1186 at p. 22)

Rinnai noted that the LCC probability distribution contains a long tail with many consumers experiencing higher LCC values than the average value. Rinnai suggested that DOE should produce results using "different averaging" to better understand the impact of different data populations. Rinnai stated that DOE should consider the distribution in consumer trade-offs between upfront costs and long-term savings, as well as the overall costs that many consumers will face across different scenarios, to provide more accurate insights on consumer behavior, purchasing decisions, and impacts on cost savings and energy savings. (Rinnai, No. 1443 at pp. 20–21) In response, DOE clarifies that it uses probability distributions for a number of input variables that are reasonably expected to exhibit natural variation and diversity in practice (*e.g.*, lifetime, repair cost, installation costs). These probability distributions are modeling diversity and are representative of the real world. In contrast, DOE addresses input uncertainty primarily with the use of sensitivity scenarios. To determine whether the conclusions of the analysis are robust, DOE performed several sensitivity scenarios with more extreme versions of these input variables (*e.g.*, high/low economic growth and energy price scenarios, alternative price trend scenarios, alternative mean lifetime scenarios). The relative comparison of potential standard levels in the analysis remains the same throughout these sensitivity scenarios, confirming that the conclusion of economic justification is robust despite some input uncertainty. Furthermore, DOE provides a range of statistics in the LCC spreadsheet, including median values and values at various percentiles for many intermediate variables, as well as the full data output table for all 10,000 samples. For example, the 25th and 75th

percentiles of average LCC savings for all ELs are available in the LCC spreadsheet. DOE also provides a distribution of impacts, including consumers with a net benefit, net cost, and not impacted by the rule in the LCC spreadsheet and in chapter 8 of the final rule TSD.

DOE develops probabilities for as many inputs to the LCC analysis as possible, to reflect the distribution of impacts as comprehensively as possible. For example, DOE develops probabilities for building sampling, installation costs, lifetime, discount rate, and efficiency distribution, among other inputs. If there are insufficient data with respect to a specific input parameter to create a robust probability distribution, DOE will utilize a single input parameter. Such approach is neither arbitrary nor capricious; it is informed by the available data.

The installation and maintenance cost estimates are the result of a significant research and cite multiple sources, as discussed at length in section IV.F.2 and appendix 8D of the final rule TSD. DOE has incorporated feedback from various stakeholders and revised those costs for this final rule. There is no basis to expect installation costs are under- or overestimated and therefore creating sensitivity scenarios based on hypothetical adjustments to those costs is unwarranted.

As discussed in section IV.F.8, DOE also conducted a sensitivity analysis for gas-fired instantaneous water heaters in which certain positive outlier outcomes were replaced. While the average (and median) LCC savings are reduced in this sensitivity analysis, they are still positive.¹³¹

DOE provides stakeholders with the opportunity to provide accurate data to represent a breadth of operating conditions, prices, and use cases. In the absence of stakeholder provided information, DOE makes a good-faith effort to collect reliable data from various sources and summarize assumptions on the missing parameters. The Monte Carlo simulation and its large number of samples (10,000 for each product class) ensures that the results converge to a representative average. For some inputs whose uncertainty is not well characterized, such as future equipment prices or economic growth conditions, DOE performed a series of sensitivity analyses to ensure that the results of the analysis are not strongly dependent on those inputs and that the conclusions of the analysis remain the same. As a

result, DOE's conclusion of economic justification is robust to a broad range of sensitivity scenarios which capture the uncertainty inherent in economic projections.

Rinnai claimed that the LCC savings at the EL 2 in the July 2024 NODA are minimal (approximately \$5 a year), while imposing substantial costs on a large percentage of consumers. Rinnai claimed that the July 2024 NODA results are based on flawed and inaccurate data and assumptions and Rinnai's analysis shows the LCC savings would be negative at the proposed EL if DOE adjusted venting installation costs. (Rinnai, No. 1443 at pp.10, 18–19 and 25) In response, DOE has individually responded to Rinnai's specific comments to the venting installation cost methodology in section IV.F.2. DOE reviewed the analytical method for this final rule and based on the results the LCC savings are still in support of the proposed efficiency level.

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.¹³² The shipments model takes an accounting approach, tracking market shares of products 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 gas-fired instantaneous water heater shipments by projecting shipments in three market segments: (1) replacement of existing consumer gas-fired instantaneous water heaters; (2) new housing; and (3) new owners in buildings that did not previously have a consumer gas-fired instantaneous water heater or existing gas-fired instantaneous water heater owners that are adding an additional consumer gas-fired instantaneous water heater.¹³³

¹³² 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.

¹³³ 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

To project gas-fired instantaneous water heater replacement shipments, DOE developed retirement functions from gas-fired instantaneous 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 lifetime estimates. Annual historical shipments sources are: (1) AHRI data submittals;¹³⁴ (2) the BRG Building Solutions 2023 report;¹³⁵ (3) ENERGY STAR unit shipments data;¹³⁶ and (4) the 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,¹³⁷ 138 Home Innovation Research Labs Annual Builder Practices Survey,¹³⁹ RECS 2020, AHS 2021, and CBECS 2018 to estimate new construction water heater saturations for consumer gas-fired instantaneous water heaters.¹⁴⁰

DOE estimated shipments to the new owners' market based on residual shipments from the calculated replacement and new construction shipments compared to historical shipments in the last 5 years (2018–

shipments model compared to historical shipments, new owners also include shipments that historically switch away from water heater product class to another.

¹³⁴ AHRI. Confidential Instantaneous Gas-fired Water Heater Shipments Data from 2004–2007 to LBNL. March 3, 2008.

¹³⁵ BRG Building Solutions. The North American Heating & Cooling Product Markets (2023 Edition). 2023.

¹³⁶ 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 August 29, 2024).

¹³⁷ U.S. Census. Characteristics of New Housing from 1999–2022. Available at www.census.gov/construction/chars/ (last accessed August 29, 2024).

¹³⁸ U.S. Census. Characteristics of New Housing (Multi-Family Units) from 1973–2022. Available at www.census.gov/construction/chars/mfu.html (last accessed August 29, 2024).

¹³⁹ 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 August 29, 2024).

¹⁴⁰ Note that DOE does not project housing regionally. New housing is therefore assumed to grow in the same regional distribution as the current data would suggest.

¹³¹ This sensitivity result can be found in the LCC Results spreadsheet, available at XXXX.

2023 for this final rule). DOE compared this with data from the Decision Analysts' 2002 to 2022 American Home Comfort Study¹⁴¹ and 2023 BRG data, which showed similar historical fractions of new owners. DOE used the last 10 years (2013–2022) of modeled new owner data to project trend into future years from 2023–2059. 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).

For the preliminary analysis and July 2023 NOPR, 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 acknowledges, however, 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's shipments projections account for impacts that are most likely in the relevant time frame. The assumptions are described in chapter 9 and appendix 9A of the final rule TSD. The changes result in a decrease in gas-fired 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 instantaneous water heaters than projected in this final rule, 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 adopted rule. For example, if incentives and rebates shifted 5 percent of shipments in the no-new amended standards case from gas-fired instantaneous water heaters to heat pump electric storage water heaters, then the energy savings estimated for gas-fired instantaneous water heaters in this adopted 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 adopted 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 does not estimate that a significant market shift away from instantaneous water heaters would occur, given that the relative comparison of prices between gas-fired instantaneous and storage water heaters will remain similar. See section IV.F.10 for a detailed discussion.

1. Impact of Repair vs. Replace

DOE estimated a fraction of consumer gas-fired instantaneous 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 gas-fired instantaneous water heater replacement shipments, but also the energy use from continuing to use the existing consumer gas-fired instantaneous 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 gas-fired instantaneous water heater or a suitable water heating alternative).

For details on DOE's shipments analysis 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.¹⁴² ("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 gas-fired instantaneous 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 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.12 summarizes the inputs and methods DOE used for the NIA analysis for the final rule. Discussion of these inputs and methods follows the table. See chapter 10 of the final rule TSD for further details.

TABLE IV.12—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model.
Compliance Date of Standard	2030.

¹⁴¹ 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 August 29, 2024).

¹⁴² The NIA accounts for impacts in the United States and U.S. territories.

TABLE IV.12—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS—Continued

Inputs	Method
Efficiency Trends	No-new-standards case: Based on historical data. <i>Standard cases:</i> 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.
Annual Energy Cost per Unit	Incorporates projection of future product prices based on historical data. 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	<i>AEO2023</i> projections (to 2050) and extrapolation thereafter.
Energy Site-to-Primary and FFC Conversion.	A time-series conversion factor based on <i>AEO2023</i> .
Discount Rate	Three and seven percent.
Present Year	2024.

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 the year of anticipated compliance with an amended standard. To project the trend in efficiency absent amended standards for consumer gas-fired instantaneous 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 final rule 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 current consumer gas-fired instantaneous 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. Using historical BRG shipments data and ENERGY STAR criteria, DOE estimated the annual increase in market share for

condensing units between 2015–2022 and assumed the increasing trend would continue would continue over the shipments projection period. DOE notes that at present, most gas-fired instantaneous water heater models already achieve EL 2 or higher.

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*. For natural gas, primary energy is the same as site energy. 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.¹⁴³ This

¹⁴³ 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

review concluded that the econometric and quasi-experimental studies suggest a mean value for the direct rebound effect for household water heating of around 10 percent. DOE also examined a 2012 ACEEE paper¹⁴⁴ and a 2013 paper by Thomas and Azevedo.¹⁴⁵ Both of these publications examined the same studies that were reviewed by Sorrell, as well as Greening *et al.*,¹⁴⁶ 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 that could not afford to adequately heat their homes prior to weatherization. DOE applied a rebound effect of 10 percent for consumer gas-fired instantaneous 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

S0301421508007131 (last accessed August 29, 2024).

¹⁴⁴ 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 August 29, 2024).

¹⁴⁵ 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 August 29, 2024).

¹⁴⁶ 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 August 29, 2024).

Modeling System (“NEMS”) for residential and commercial water heating and is consistent with other recent energy conservation standards rulemakings.^{147 148 149 150} 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 gas-fired instantaneous water heaters usage, as described in section IV.H.3 of this document.

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 sector¹⁵¹ that EIA uses to prepare its *Annual Energy Outlook*. The FFC factors in corporate 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 final rule TSD.

Rinnai claimed that DOE has not adequately explained how national energy savings at the proposed level increased to 0.52 quads in the July 2024 NODA from 0.4 quads in the NOPR. (Rinnai, No. 1443 at p. 8)

For the July 2023 NOPR, DOE incorporated RECS 2015 as the basis of the building sample development and energy use determination, while for July 2024 NODA, DOE incorporated RECS 2020 as the basis of the building sample development and energy use determination and updated the analyses accordingly (see section IV.E of this document). The updated RECS includes a much larger sample size and higher water usage and energy consumption estimates on average for consumer gas-fired instantaneous water heaters. Using RECS 2020 for the sample development and energy use determination therefore results in larger differences in annual energy consumption between higher efficiency levels and lower efficiency levels. Because the estimates of national energy savings are based on the differences in annual energy consumption between higher efficiency levels and lower efficiency levels, the estimated national primary energy savings increased from approximately 0.45 quads to approximately 0.52 quads. Rinnai claims the national energy savings and associated emission reductions are overstated because DOE did not properly account for consumers switching to gas-fired storage water heaters as a response to the standard which would increase overall energy consumption of water heaters. Rinnai projects that an additional savings of 0.61 quads and reductions of 39 million metric tons in CO₂ emissions are possible if non-condensing gas-fired instantaneous water heaters are allowed to stay on the market. Rinnai requested DOE analyze product substitution and the impact of various scenarios on energy savings and emission reductions (Rinnai, No. 1443 at pp. 8–9, 26) Rinnai believes that would-be purchasers of non-condensing gas-fired instantaneous water heaters would likely purchase gas-fired storage water heaters rather than condensing gas-fired instantaneous water heaters. Rinnai states that if 30 percent of would-be purchasers opted for gas-fired storage water heaters instead, there would be no energy savings by the standard. Rinnai believes that fewer people are purchasing gas-fired instantaneous water heater in 2023 due to inflation, implying that gas-fired instantaneous water heater purchasers

are price-sensitive. (also Rinnai, No. 1435, at p. 2, 4, 10–11, 14–15)

DOE estimates that it is highly unlikely that consumers would switch from gas-fired instantaneous water heaters to gas-fired storage water heaters specifically as a result of the incremental costs of an energy conservation standard because the differential costs between the two products will remain similar (see section IV.F.10 for an expanded discussion). Therefore, product switching as a result of the proposed standards is likely to be negligible. DOE’s estimates of national energy savings and associated emission reductions appropriately reflect current data and market trends. Any potential energy savings that might occur from consumers switching from gas-fired storage water heaters to gas-fired instantaneous water heaters, in the absence of new standards, is already incorporated into the no-new-standards case. And because DOE estimates that switching is unlikely to be impacted as a result of amended standards, these potential energy savings are present in both the standards and no-new-standards cases. The commenter’s projection of additional energy savings and emissions reduction if non-condensing gas-fired instantaneous water heaters are allowed to stay on the market is a misunderstanding of DOE’s estimates of national energy savings and associated emission reductions.

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 used constant prices as the default price assumption to project future consumer gas-fired instantaneous water heater prices. However, DOE also developed consumer gas-fired instantaneous water heater price trends based on historical PPI data. 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 gas-

¹⁴⁷ See www.eia.gov/outlooks/aeo/nems/documentation/ (last accessed August 29, 2024).

¹⁴⁸ 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 August 29, 2024).

¹⁴⁹ 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 August 29, 2024).

¹⁵⁰ 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 August 29, 2024).

¹⁵¹ For more information on NEMS, refer to *The National Energy Modeling System: An Overview 2018*, DOE/EIA–0581(2019), April 2019. Available at www.eia.gov/outlooks/aeo/nems/documentation/ (last accessed August 29, 2024).

fired instantaneous water heaters. In addition to the default constant price trend, DOE considered two product price sensitivity cases: (1) a price decline case and (2) 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 final rule TSD.

The operating cost savings are energy cost savings, which are calculated using the estimated energy savings in each year and the projected price of the appropriate form of energy. To estimate energy prices in future years, DOE multiplied the average regional energy prices by the projection of annual national-average residential energy price changes in the Reference case from *AEO2023*, which has an end year of 2050. To estimate price trends after 2050, the 2046–2050 average was used for all years. As part of the NIA, DOE also analyzed scenarios that used inputs from variants of the *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 10C of the final rule 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 final rule TSD for details on DOE's treatment of the monetary valuation 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 final rule, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget ("OMB") to Federal agencies on the development of regulatory analysis.¹⁵² 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 final rule, 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 2020 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 of the final rule TSD describes the consumer subgroup analysis.

1. Low-Income Households

Low-income households, as defined by the poverty thresholds from the U.S. Bureau of the Census, are significantly more likely to be renters or live in subsidized housing units and less likely to be homeowners. DOE notes that in these cases, the landlord purchases the equipment and may pay the gas bill as well. RECS 2020 includes data on whether a household pays for the gas bill, allowing DOE to categorize households appropriately in the analysis.¹⁵³ 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. By contrast, for the main LCC results for the whole consumer sample, all costs and benefits are accrued by the user of the product.

DOE finds no evidence that significant rental cost increases would occur due to an amended standard. Rental prices are largely dictated by supply and demand of housing in individual locations, not the sum of equipment costs in those rentals, such that two similar rentals could have widely differing prices. Furthermore, a landlord would be responsible for replacing an end-of-life gas-fired instantaneous water heater in the no-new-standards case as well yet the rent is unlikely to increase simply because of this regular maintenance. The installation costs estimated in the LCC already include any potential replacement of venting for gas-fired instantaneous water heaters. Finally, even if a landlord were to fully pass on the incremental costs due to amended standards, those costs would presumably be spread out over a monthly rent spanning many years, possibly the lifetime of the water heater, resulting in relatively small monthly rent increases. It is for these reasons that the low-income subgroup analyzes impacts assuming renters do not bear installation and equipment costs. However, as described in section IV.F, for the overall LCC analysis, DOE makes the simplifying assumption that all installation and equipment costs are paid for by the consumer of the equipment, including renters. Therefore, the main LCC results do assume that landlords pass on all costs and yet the analysis still finds that the rule is economically justified. The main LCC and the consumer subgroup analysis are therefore two boundary conditions with respect to costs and benefits accrued by renters.

The majority of low-income households that experience a net cost at higher efficiency levels are homeowner households, as opposed to renters. These households typically have 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 gas-fired instantaneous water heater may change before the

¹⁵² U.S. Office of Management and Budget. *Circular A-4: Regulatory Analysis*. Available at www.whitehouse.gov/omb/information-for-agencies/circulars (last accessed Mar. 5, 2024). DOE used the prior version of Circular A-4 (September 17, 2003) in accordance with the effective date of the November 9, 2023 version. Available at www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf (last accessed August 29, 2024).

¹⁵³ RECS 2020 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.

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 gas-instantaneous 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. 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.

Responding to the July 2023 NOPR, Atmos Energy argued the elimination of non-condensing instantaneous water heaters will cause consumers to switch to less efficient options. Atmos Energy and ECSC argued that non-condensing instantaneous water heaters require less space and changing to a condensing alternative (or electric alternatives) will cost significantly more. Atmos Energy and ECSC argued that this elimination will impact low-income/multi-family/small home consumers disproportionately. (Atmos Energy, No. 1183 at pp. 2–3; ECSC, No. 1185 at pp. 1–2) As DOE has discussed in section IV.F.10 of this document, it is very unlikely that consumers would switch from existing non-condensing instantaneous water heaters to storage water heaters in response to amended standards. The costs to do so would exceed the costs of simply installing a standards-compliant condensing instantaneous water heater. Furthermore, both a standards-compliant instantaneous water heater and a non-condensing instantaneous water heater require less space compared to a storage water heater.

Additionally, DOE does not expect the existing market trends of consumers switching from storage to instantaneous water heaters (in the no-new-standards case) would be impacted by an amended standard, as any incremental cost for a condensing instantaneous water heater would be small compared to the overall costs to switch from a storage to an instantaneous water heater.

Commenters from the U.S. House of Representatives stated that the proposed rulemaking imposes an unattainable standard for non-condensing, gas-fired tankless water heaters, and expressed concern that it would discourage budget-conscious consumers from investing in tankless models, negatively impacting Georgia manufacturing companies. (U.S. House of Representatives, No. 1205 at p. 1)

Commenters from the U.S. House of Representatives reiterated these comments in response to the July 2024 NODA. (U.S. House of Representatives, No. 1445 at p. 1)

In response to the affordability concerns, DOE acknowledges that the average installed cost of gas-fired instantaneous water heaters at EL 2 is estimated to increase by \$231 compared to current baseline efficiency levels. However, as discussed in chapter 11 of the TSD, low-income households make up only 3.2 percent of the market for gas-fired instantaneous water heaters, and of these approximately 38 percent are renters who would likely benefit from the increased efficiency through energy savings without bearing the full burden of installation costs. DOE estimates that at EL 2 low-income consumers of gas-fired instantaneous water heaters will experience on average lifecycle cost savings of \$248, with only 6.5 percent of low-income consumers experiencing a net cost. DOE acknowledges that a small proportion of low-income homeowners may experience higher installation costs for condensing gas-fired instantaneous water heaters. However, DOE estimates that the energy savings benefits across the low-income subgroup outweigh these costs. See section V.B.1.b for detailed results.

2. Senior-Only Households

Senior-only households are households with occupants who are all at least 65 years of age. RECS 2020 includes information on the age range of household occupants, allowing for the identification of senior-only households from the sample Senior-only households comprised 23.5 percent of the country's households. In estimating the LCC impacts to senior-only households, it is assumed that any residual value of a long-lived product is capitalized in the value of the home.

3. Small Business Subgroup

DOE identified small businesses in CBECS 2018 using threshold levels for maximum number of employees within each building principal building activity.

GRA commented that the proposed standards will discourage restaurants from investing in tankless models and instead choose less efficient water heating solutions and add constraints for restaurant operating with limited space availability. GRA stated that many restaurants rely on gas-fired tankless water heaters due to their space saving attributes and the proposed standards would disproportionately limit the options of small businesses, resulting in

higher costs and reduced efficiency. (GRA, No. 449 at p. 1)

As DOE has discussed in section IV.F.10, it is very unlikely that businesses would switch from existing non-condensing instantaneous water heaters to storage water heaters in response to amended standards. The costs to do so would exceed the costs of simply installing a standards-compliant condensing instantaneous water heater. Additionally, DOE does not expect the existing market trends of businesses investing in or switching from storage to instantaneous water heaters (in the no-new-standards case) would be impacted by an amended standard, as any incremental cost for a condensing instantaneous water heater would be small compared to the overall costs to switch from a storage to an instantaneous water heater. If a business is considering investing in a tankless model, they are doing so for space-saving or energy saving reasons that remain valid with a condensing tankless water heater.

J. Manufacturer Impact Analysis

1. Overview

DOE performed an MIA to estimate the financial impacts of amended energy conservation standards on manufacturers of gas-fired instantaneous water heaters and to estimate the potential impacts of such standards on direct employment and manufacturing capacity. The MIA has both quantitative and qualitative aspects and includes analyses of projected industry cash flows, the INPV, investments in research and development (“R&D”) and manufacturing capital, and domestic manufacturing employment. Additionally, the MIA seeks to determine how amended energy conservation standards might affect manufacturing employment, capacity, and competition, as well as how standards contribute to overall regulatory burden. Finally, the MIA serves to identify any disproportionate impacts on manufacturer subgroups, including small business manufacturers.

The quantitative part of the MIA primarily relies on the GRIM, an industry cash flow model with inputs specific to this rulemaking. The key GRIM inputs include data on the industry cost structure, 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 between a no-new-standards case and the various standards cases (*i.e.*, “TSLs”). To capture the uncertainty relating to manufacturer pricing strategies following amended standards, the GRIM estimates a range of possible impacts under different manufacturer markup scenarios.

The qualitative part of the MIA addresses manufacturer characteristics and market trends. Specifically, the MIA considers such factors as a potential standard’s impact on manufacturing capacity, competition within the industry, the cumulative impact of other DOE and non-DOE regulations, and impacts on manufacturer subgroups. The complete MIA is outlined in chapter 12 of the final rule TSD.

DOE conducted the MIA for this rulemaking in three phases. In Phase 1 of the MIA, DOE prepared a profile of the gas-fired instantaneous water heater manufacturing industry based on the market and technology assessment, preliminary manufacturer interviews, and publicly-available information. This included a top-down analysis of gas-fired instantaneous water heater 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 gas-fired instantaneous water heater manufacturing industry, including company filings of form 10-K from the SEC,¹⁵⁴ corporate annual reports, the U.S. Census Bureau’s *Quarterly Survey of Plant Capacity Utilization*,¹⁵⁵ U.S. Census Bureau’s *Annual Survey of Manufactures* (“ASM”),¹⁵⁶ and reports from D&B Hoovers.¹⁵⁷

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 gas-fired instantaneous 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.

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. As part of Phase 3, DOE also evaluated subgroups of manufacturers that may be disproportionately impacted by amended standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash flow analysis. Such manufacturer subgroups may include small business manufacturers, low-volume manufacturers, niche players, and/or manufacturers exhibiting a cost structure that largely differs from the industry average. DOE identified one subgroup for a separate impact analysis: small business manufacturers. The small business subgroup is discussed in section VI.B of this document, “Review under the Regulatory Flexibility Act” and in chapter 12 of the final rule TSD.

2. Government Regulatory Impact Model and Key Inputs

DOE uses the GRIM to quantify the changes in cash flow due to new or amended standards that result in a higher or lower industry value. The GRIM uses a standard, annual discounted cash-flow analysis that

incorporates manufacturer costs, manufacturer markups, shipments, and industry financial information as inputs. The GRIM models changes in costs, distribution of shipments, investments, and manufacturer margins that could result from an amended energy conservation standard. The GRIM spreadsheet uses the inputs to arrive at a series of annual cash flows, beginning in 2024 (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 gas-fired instantaneous water heaters, DOE used a real discount rate of 9.6 percent, which was derived from industry financials and then modified according to feedback received during manufacturer interviews.

The GRIM calculates cash flows using standard accounting principles and compares changes in INPV between the no-new-standards case and each standards case. The difference in INPV between the no-new-standards case and a standards case represents the financial impact of the new or amended energy conservation standard on manufacturers. As discussed previously, DOE developed critical GRIM inputs using a number of sources, including publicly available data, results of the engineering analysis, results of the shipments analysis, and information gathered from industry stakeholders during the course of manufacturer interviews. The GRIM results are presented in section V.B.2 of this document. Additional details about the GRIM, the discount rate, and other financial parameters can be found in chapter 12 of the final rule TSD.

a. Manufacturer Production Costs

Manufacturing more efficient products is typically more expensive than manufacturing baseline products due to the use of more complex components, which are typically more costly than baseline components. The changes in the MPCs of covered products can affect the revenues, gross margins, and cash flow of the industry.

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 gas-fired instantaneous 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. In this final rule, DOE developed efficiency levels

¹⁵⁴ U.S. Securities and Exchange Commission. Company Filings. Available at www.sec.gov/search/filings (last accessed August 29, 2024).

¹⁵⁵ The U.S. Census Bureau. *Quarterly Survey of Plant Capacity Utilization*. (2007–2019). Available at www.census.gov/programs-surveys/qpc/data/tables.html (last accessed August 29, 2024).

¹⁵⁶ U.S. Census Bureau’s *Annual Survey of Manufactures*. (2021). Available at: www.census.gov/programs-surveys/asm/data/tables.html (last accessed January 18, 2024).

¹⁵⁷ The D&B Hoovers login is available at app.dnbhoovers.com (last accessed August 29, 2024).

with a combination of the efficiency-level and design-option approaches. DOE requested comments from stakeholders and conducted interviews with manufacturers in advance of the July 2023 NOPR concerning these initial efficiency levels, which have been updated based on the feedback DOE received. For a complete description of the MPCs, *see* section IV.C.1 of this document and chapter 5 of the final rule TSD.

b. Shipments Projections

The GRIM estimates manufacturer revenues based on total unit shipment projections and the distribution of those shipments by efficiency level. Changes in sales volumes and efficiency mix over time can significantly affect manufacturer finances. For this analysis, the GRIM uses the NIA's annual shipment projections derived from the shipments analysis from 2024 (the base year) to 2059 (the end year of the analysis period). *See* section IV.G of this document and chapter 9 of the final rule TSD for additional details.

c. Capital and Product Conversion Costs

New or amended energy conservation standards could cause manufacturers to incur conversion costs to bring their production facilities and product designs into compliance. DOE evaluated the level of conversion-related expenditures that would be needed to comply with each considered efficiency level for gas-fired instantaneous water heaters. For the MIA, DOE classified these conversion costs into two major groups: (1) capital conversion costs, and (2) product conversion costs. Capital conversion costs are investments in property, plant, and equipment necessary to adapt or change existing production facilities such that new compliant product designs can be fabricated and assembled. Product conversion costs are investments in research, development, testing, marketing, and other non-capitalized costs necessary to make product designs comply with new or amended energy conservation standards.

In the July 2023 NOPR and the July 2024 NODA, DOE relied on manufacturer feedback to evaluate the level of capital and product conversion costs that gas-fired instantaneous water heater manufacturers would likely incur to meet each analyzed efficiency level. 88 FR 49058, 49127–49128; 89 FR 59692, 59699–59700. During confidential interviews, DOE asked manufacturers to estimate the capital conversion costs (*e.g.*, changes in production processes, equipment, and tooling), needed to meet the various

efficiency levels. DOE also asked manufacturers to estimate the redesign effort and engineering resources required at various efficiency levels to quantify the product conversion costs. DOE then estimated industry-level conversion costs by scaling feedback from OEMs by the estimated number of manufacturers that would need to make these investments at each TSL.

At lower TSLs, manufacturer feedback and a review of the market indicate that most manufacturers already have sufficient condensing production capacity and offer range of models that meet the required efficiency levels. Thus, DOE modeled low-levels of capital and product conversion costs for most manufacturers at TSL 1 and TSL 2. As TSLs increase in stringency, DOE expects most manufacturers would need to add production capacity as fewer shipments currently meet the required levels and product designs increase in complexity. DOE also expects product conversion costs would increase at higher TSLs since fewer manufacturers currently offer fewer models that meet the efficiency levels required. For the July 2024 NODA, DOE refined its conversion cost estimates to reflect feedback submitted by Rinnai in response to the July 2023 NOPR. (Rinnai, No. 1186 at p. 23) DOE incorporated Rinnai's estimate of \$15 million¹⁵⁸ required to retrofit its Griffin, GA factory to produce condensing gas-fired instantaneous water heaters into its conversion cost estimates at TSL 1 and modeled additional incremental investments to reach higher TSLs, consistent with manufacturer feedback from confidential interviews. DOE incorporated Rinnai's estimate to convert its U.S. production facility in its analysis to avoid underestimating the potential investments required to meet potential amended standards. Alternatively, Rinnai could choose to maintain condensing capabilities in its existing facilities in Japan, in which case industry conversion costs would be lower.

For this final rule, DOE updated its conversion cost estimates from 2022\$ to 2023\$ but otherwise maintained its conversion cost methodology used in the July 2024 NODA.

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 amended standard. The conversion cost figures used in the GRIM can be found in section V.B.2 of this document. For additional information on the estimated capital and product conversion costs, *see* chapter 12 of the final rule 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 efficiency level. Modifying these manufacturer markups in the standards case yields different sets of impacts on manufacturers. For the MIA, DOE modeled two standards-case manufacturer 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 manufacturer markup values that, when applied to the MPCs, result in varying revenue and cash flow impacts.

Under the preservation of gross margin percentage scenario, DOE applied a single uniform "gross margin percentage" 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 MPCs increase with efficiency, this scenario implies that the per-unit dollar profit will increase. DOE estimated a gross margin percentage of 31 percent for gas-fired instantaneous water heaters.¹⁵⁹ 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 scenario, DOE modeled a situation in which manufacturers are not able to increase per-unit operating profit in proportion to increases in MPCs. In the preservation of operating

¹⁵⁸ Rinnai's public comment in response to the July 2023 NOPR (Rinnai No. 1186 at p. 23 and p. 51, which corresponds to p. 13 of Attachment A) cited two different estimates: \$15 million (p. 23) and a range of \$3 and \$9 million (p. 51). To avoid underestimating potential investments, DOE incorporated the higher estimate of \$15 million provided by Rinnai.

¹⁵⁹ The gross margin percentage of 31 percent is based on a manufacturer markup of 1.45.

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.

3. Discussion of MIA Comments

In response to the July 2023 NOPR, Rinnai stated that DOE's review of manufacturer impacts did not account for the direct impact of the rulemaking on Rinnai's manufacturing facility located in Griffin, Georgia, which is tooled and optimized for production of non-condensing gas-fired instantaneous water heaters. Rinnai commented that the Griffin facility cost \$70 million to build. Rinnai estimates that should the Griffin plant close, it would lead to a loss of gross profit between \$30 million to \$36 million, annually, and a write-off of \$2 million in capital expenditures that could not be repurposed. Rinnai asserted that it would require more than \$15 million¹⁶⁰ to repurpose its Griffin facility to produce condensing gas-fired instantaneous water heaters, which may be cost prohibitive given current product capacity in Japan. Additionally, Rinnai asserted that it was not contacted by DOE as part of this rulemaking. Rinnai commented that the levels proposed in the July 2023 NOPR would make its new Griffin production facility largely obsolete and lead to eliminating 122 jobs. (Rinnai No. 1186 at pp. 22–23) Rinnai noted that of its roughly 72 gas-fired instantaneous models on the market, 32 meet the proposed 0.91 UEF standard for gas-fired instantaneous water heaters, meaning that more than half of its models would be eliminated from the market. (Rinnai, No. 1186 at pp. 4–5)

In response to the July 2024 NODA, Rinnai questioned DOE's assumption

that it would convert its Griffin, Georgia manufacturing facility to produce condensing gas-fired instantaneous water heaters. Rinnai restated that it has overseas manufacturing capacity for condensing gas-fired instantaneous water heaters, and the need to expand that capacity would depend on an assessment of market demand. Rinnai commented that under a condensing-level standard, it is not realistic to assume Rinnai would maintain current sales levels (*i.e.*, prospective purchasers may choose condensing products from competitors rather than Rinnai). Rinnai requested that DOE publish a GRIM to support and substantiate its MIA. (Rinnai No. 1443 at pp. 21–22)

The Governor of Georgia stated that the standards proposed in the July 2023 NOPR could negatively impact the non-condensing gas-fired instantaneous water heater industry in the State of Georgia and could harm domestic manufacturing jobs. (Governor of Georgia, No. 1157 at pp. 1–3) The Attorney General of GA stated that the standards proposed in the July 2023 NOPR, if adopted, would have a negative economic impact on the State of Georgia, which is host to a large new facility optimized for manufacturing non-condensing units. The Attorney General of GA added that the proposed rulemaking could eliminate manufacturing jobs in Georgia, particularly jobs held by female and minority workers. (Attorney General of GA, No. 1026 at pp. 1–2) Commenters from the U.S. House of Representatives added that the proposed rulemaking would have a negative economic impact on the State of Georgia, which is home to the largest domestic assembly facility for non-condensing gas-fired instantaneous water heaters. (U.S. House of Representatives, No. 1205 at p. 1) Commenters from the U.S. House of Representatives reiterated this comment in response to the July 2024 NODA. (U.S. House of Representatives, No. 1445 at p. 1)

CNGC noted that investments made by Rinnai, a member of its coalition, would be put at risk if the standards were adopted as proposed in the July 2023 NOPR. (CNGC No. 648 at p. 1) Gas Association Commenters further highlighted Rinnai's concerns, citing Rinnai's recently opened facility in Griffin, Georgia, which exclusively makes non-condensing gas-fired instantaneous water heaters, as potentially being off-shored.

Regarding the potential impact to domestic production employment due to amended standards, DOE understands that Rinnai recently invested approximately \$70 million to

develop its new Georgia manufacturing facility dedicated to non-condensing gas-fired instantaneous water heaters.¹⁶¹ DOE acknowledges that converting the manufacturing facility to produce condensing gas-fired instantaneous water heaters is feasible but would require additional investment. Currently, Rinnai imports their condensing gas-fired instantaneous water heaters from Japan, while producing only the non-condensing models domestically. Rinnai's decision of whether to repurpose its Georgia facility likely depends on a range of factors, such as its parent company's (Rinnai Corporation) willingness to make further capital investments, the role of the U.S. water heater market in Rinnai Corporation's overall business strategy, and U.S. demand for gas-fired instantaneous water heaters. A review of Rinnai Corporation's public financial statements indicates that it has invested approximately \$823 million in capital expenditures globally in fiscal year 2021 through fiscal year 2024, projecting a further outlay of approximately \$148 million in capital expenditures globally in fiscal year 2025.¹⁶² Based on information detailed in Rinnai's corporate annual report, Rinnai identifies the United States as a key foreign market for growth.¹⁶³ In fiscal year 2024, U.S. water heater sales accounted for nearly 20 percent of Rinnai Corporation's worldwide water heater sales.¹⁶⁴ Consistent with historical trends and market data cited by stakeholders,¹⁶⁵ DOE projects that the domestic gas-fired instantaneous water heater market will continue to

¹⁶¹ Rinnai cites a total investment of \$70 million in the Georgia facility in its public comment in response to the July 2023 NOPR (Rinnai, No. 1186 at p. 23), stating the facility opened in 2022 (*Id.* at p. 1). Construction of the Georgia facility began in 2020. Press Release available at: www.rinnai.us/announcements/rinnai-america-breaks-ground-on-new-factory (last accessed August 6, 2024).

¹⁶² Rinnai Corporation's public financial statements are available at: www.rinnai.co.jp/en/ir/ (last accessed September 27, 2024). DOE converted these values from Japanese Yen to U.S. Dollars using the U.S. Department of the Treasury's exchange rate as of June 30, 2024, available at: <https://fiscaldata.treasury.gov/datasets/treasury-reporting-rates-exchange/treasury-reporting-rates-of-exchange> (last accessed September 27, 2024).

¹⁶³ Rinnai's Medium-Term Business Plan 2021–2025 is available at: www.rinnai.co.jp/en/ir/document/pdf/202103outlook.pdf. (p. 15) (last accessed August 6, 2024).

¹⁶⁴ Rinnai Corporation's "Financial Results of Fiscal 2024, ended March 31, 2024 Reference Data" is available at: www.rinnai.co.jp/en/ir/document/pdf/202403reference.pdf. (p. 4) (May 9, 2024) (Last accessed September 27, 2024).

¹⁶⁵ Rinnai commented in response to the July 2024 NODA "Since their introduction in 2004, gas tankless water heaters have grown to 10 percent of the water heater market in the U.S. and are projected to grow to 12 percent by 2027." (*See* Rinnai, No. 1443 at p. 1)

¹⁶⁰ Rinnai's submission (Rinnai No. 1186 at p. 23 and p. 51, which corresponds to p. 13 of Attachment A) cited two different estimates: \$15 million (p. 23) and a range of \$3 and \$9 million (p. 51). To avoid underestimating potential investments, DOE references the higher estimate provided by Rinnai.

grow in the no-new-standards and standards cases. Furthermore, DOE expects that the portion of condensing gas-fired instantaneous water heater will increase. In 2024 (the reference year), DOE estimates that domestic gas-fired instantaneous water heater shipments totaled 1.26 million (representing approximately 12 percent of the overall domestic consumer water heater market), with condensing gas-fired instantaneous water heaters accounting for 67 percent of shipments. In 2030 (the compliance year), in the absence of the amended standards, DOE expects that shipments of gas-fired instantaneous water heaters would total 1.43 million (representing approximately 14 percent of the overall domestic consumer water heater market), with condensing gas-fired instantaneous water heaters accounting for 70 percent of shipments. In 2030, with the amended standards in place (*i.e.*, TSL 2), DOE expects that shipments of gas-fired instantaneous water heaters would still total approximately 1.43 million, with the share of condensing gas-fired instantaneous water heaters rising to 100 percent. As discussed in section IV.F.10 of this document, DOE did not include any product switching with respect to gas-fired instantaneous water heaters in its analysis as DOE determined that any product switching as a result of the adopted standards is likely to be minimal. As discussed in section IV.G.1 of this document, DOE's shipments analysis accounts for the fraction of consumers that would choose to repair their gas-fired instantaneous water heater rather than replace their gas-fired instantaneous water heater in the standards cases.

DOE previously analyzed the potential changes in direct employment in the July 2023 NOPR. 88 FR 49058, 49145–49147. For the July 2024 NODA, DOE revised its direct employment analysis to account for Rinnai's new domestic production facility dedicated to manufacturing gas-fired instantaneous water heaters. 89 FR 59692, 59697. (*See* Rinnai, No. 1186 at p. 1) DOE is not currently aware of other domestic production facilities of gas-fired instantaneous water heaters. Therefore, in the July 2024 NODA, DOE estimated that approximately 20 percent of gas-fired instantaneous water heaters are currently produced in the United States. DOE derived this value by using its shipments analysis and market share feedback from Rinnai's comments to the July 2023 NOPR.¹⁶⁶ (*Id.*) DOE

maintained the 20 percent estimate for this final rule analysis. For the July 2024 NODA, DOE relied on the employment figures provided in Rinnai's comments in response to the July 2023 NOPR to estimate the potential range of direct employment impacts in 2030 (the analyzed compliance year) at higher efficiency levels. In the July 2024 NODA, DOE modeled the domestic employment impacts ranging from a reduction of 128 production workers to an increase of 75 production workers at TSL 1 through TSL 4 in 2030. Based on revised employment estimates provided by Rinnai in response to the July 2024 NODA, DOE updated its estimate of domestic production workers from 128 to 190¹⁶⁷ in 2030 but otherwise maintained its direct employment methodology. (Rinnai No. 1443 at p. 1) Therefore, for this final rule, DOE models a lower-bound decrease of 190 domestic production workers and an upper-bound increase in domestic direct employment of 62 percent (an increase of approximately 117 production workers, for a total of 307 domestic production workers) at TSL 1 through TSL 4 in 2030. DOE notes that the direct employment analysis is intended to establish a realistic range of potential impacts to domestic employment under amended standards, given the best public information available at this time. As Rinnai noted in their comment, if Rinnai does not maintain current sales levels under a condensing-level standard, the change in employment may be lower than the maximum increase estimated. *See* section V.B.2.b of this document for additional details on the direct employment analysis.

Regarding the potential investment required to convert Rinnai's newly built domestic production facility, DOE incorporated Rinnai's feedback provided in response to the July 2023 NOPR into its conversion cost model for the July 2024 NODA and this final rule. Although DOE cannot be certain whether or not Rinnai would invest in repurposing its U.S. manufacturing facility, DOE incorporated Rinnai's feedback into its industry conversion cost estimates to avoid underestimating

condensing. In response to the July 2023 NOPR, Rinnai commented that its domestic market share of non-condensing gas-fired instantaneous water heaters is 60 percent: $(60\% \times 0.41 \text{ million}) \div 1.22 \text{ million} = 20\%$.

¹⁶⁷ Rinnai commented that it currently employs 183 full-time employees and 49 temporary employees at its Griffin, Georgia plant. DOE's shipments analysis indicates shipments of non-condensing gas-fired instantaneous water heaters in the no-new-standards case will increase by approximately 4 percent from 2024 to 2030 (the compliance year). $(183 \text{ employees} \times 1.04) = 190 \text{ employees}$.

the potential investments industry would incur as a result of amended standards. Should Rinnai choose to maintain condensing capabilities in its existing facilities in Japan, the industry conversion costs would be lower. DOE updated its conversion cost estimates from 2022\$ to 2023\$ for this final rule but otherwise maintained its methodology from the July 2024 NODA. *See* section IV.J.2.c and section V.B.2.a of this document and chapter 12 of the final rule TSD for additional information on conversion costs.

Regarding Rinnai's assertion that it was not contacted to provide feedback in advance of the July 2023 NOPR, DOE notes that manufacturer outreach and interviews are conducted by DOE's contractors under nondisclosure agreements. As such, information surrounding manufacturer outreach and participation is kept as confidential by DOE's contractors and cannot be disclosed.

Regarding Rinnai's request to review the GRIM, DOE notes that a copy of the GRIM developed for this final rule analysis is available for download at: www.regulations.gov/docket/EERE-2017-BT-STD-0019/document.

In response to the July 2023 NOPR, AHRI stated that it supported the inclusion of amortization of product conversion costs under standards into the projected MSP in a recent rulemaking for microwave ovens, and urges DOE to use this methodology in all rulemakings.¹⁶⁸ AHRI further asked DOE to explain the justification for amortizing conversion costs in one instance but not in all. (AHRI, No. 1167 at pp. 20–21)

DOE models different manufacturer markup scenarios to assess the potential impacts on prices and profitability for manufacturers following the implementation of amended energy conservation standards. The analyzed scenarios lead to different manufacturer markup values that, when applied to the manufacturer production costs, result in varying revenue and cash flow impacts. These scenarios are meant to reflect the potential range of financial impacts for manufacturers of the specific covered product or equipment. The analyzed manufacturer markup scenarios vary by rulemaking because they are informed by manufacturer feedback and reflect the market for the specific product type.

For the July 2023 NOPR and the July 2024 NODA, DOE applied a preservation of gross margin percentage

¹⁶⁸ Technical Support Document: Energy Efficiency Program For Commercial And Industrial Equipment: Microwave Ovens. Available at www.regulations.gov/document/EERE-2017-BT-STD-0023-0022.

¹⁶⁶ In 2023, DOE estimates that approximately 0.41 million out of the 1.22 million gas-fired instantaneous water heater unit shipments are non-

scenario to reflect an upper bound to industry profitability under amended standards and a preservation of operating profit scenario to reflect a lower bound of industry profitability under amended standards. 88 FR 49058, 49128; 89 FR 59692, 59700. For gas-fired instantaneous water heaters, manufacturing more efficient products is generally more expensive than manufacturing baseline or minimally efficient products, as reflected by the MPCs estimated in the engineering analysis (*see* section IV.C.1 of this document). Under the preservation of gross margin scenario for gas-fired instantaneous water heaters, incremental increases in MPCs at higher efficiency levels result in an increase in per-unit dollar profit per unit sold. As shown in table V.6, under the preservation of gross margin scenario, the standards case INPV *increases* relative to the no-new-standards case INPV at all analyzed TSLs, resulting in a *positive* change in INPV at TSL 1–TSL 4. This implies that the increase in cashflow from the higher MSP outweighs the estimated conversion costs at each of the considered TSLs. In other words, under the preservation of gross margin scenario, the gas-fired instantaneous water heater industry more than recovers conversion costs incurred as a result of amended standards. The approach used in the microwave ovens rulemaking (*i.e.*, a conversion cost recovery scenario) modeled a scenario in which manufacturers recover investments such that INPV in the standards cases are *equal* to the INPV in the no-new-standards case, resulting in no change in INPV at the considered TSLs. 88 FR 39912, 39935. Thus, if DOE applied a conversion cost recovery scenario in this rulemaking, the potential change in INPV at each considered TSL would be within the range of estimated impacts resulting from the preservation of gross margin scenario and preservation of operating profit scenario. As such, DOE maintained the two standards-case manufacturer markup scenarios used in the July 2023 NOPR for this final rule as they most appropriately reflect the upper (least severe) and lower (more severe) impacts to manufacturer profitability under amended standards.

In response to the July 2023 NOPR, AHRI submitted written comments regarding cumulative regulatory burden. AHRI urged DOE to consider the high volume of regulatory activity that directly affects manufacturers of consumer water heaters, including gas-fired instantaneous water heaters, and expressed concern that DOE was

rushing to publish recent rulemakings, risking significant revision that will prolong uncertainty, confuse consumers, and potentially undermine broader policy goals. AHRI cited standards and test procedure rulemakings for other covered products and equipment, as well as low and zero NOx actions by California Air Resources Board (“CARB”) and individual air quality management districts. (AHRI, No. 1167 at pp. 7–9)

In response to the July 2023 NOPR, BWC commented that the impact of cumulative regulatory burden experienced by manufacturers is not limited to conversion costs, but also to the preparations manufacturers must undergo in order to respond to proposed rules. BWC further stated that DOE has promulgated several major rulemakings that will directly impact the products that BWC manufactures, in addition to actions undertaken by other governments and programs, and that the ability of manufacturers to draw on outside resources for assistance will be severely limited by the concurrent needs of many manufacturers across rulemakings, particularly in the case of third-party laboratories. BWC stated that due to the burden this rulemaking will place on third-party laboratories, as well as the general burden of multiple concurrent ongoing regulatory actions, BWC strongly disagreed with DOE’s decision not to consider test rulemakings as part of its analysis. (BWC, No. 1164 at pp. 24–26) BWC also stated that, due to concurrent regulatory actions regarding energy efficiency at both the State and Federal levels, it disagreed with DOE’s conclusion in section VI.B.5 of the July 2023 NOPR that there are no rules or regulations that duplicate, overlap, or conflict with this proposed rule and encouraged DOE to account for all of these issues, ideally allowing manufacturers more time to review and respond to DOE rulemakings when requested. (BWC, No. 1164 at p. 24)

With respect to comments regarding the regulatory burden, DOE recognizes that the gas-fired instantaneous water heater industry is subject to regulations from Federal, State, and local entities. DOE analyzes and considers the impact on manufacturers of multiple product/equipment-specific Federal regulatory actions. Specifically, DOE analyzes cumulative regulatory burden pursuant to section 13(g) of appendix A. 10 CFR part 430, subpart C, appendix A, section 13(g); 10 CFR 431.4. DOE notes that regulations that are not yet finalized are not considered as cumulative regulatory burden, as the timing, cost, and impacts of unfinalized rules are speculative.

However, to aid stakeholders in identifying potential cumulative regulatory burden, DOE does list rulemakings that have proposed rules, which have tentative compliance dates, compliance levels, and compliance cost estimates. The results of this analysis can be found in section V.B.2.e of this document.

Regarding AHRI’s comment about ultra-low NOx and zero NOx regulations, DOE notes that in its analysis of cumulative regulatory burden, DOE considers Federal, product specific regulations that have compliance dates within 3 years of one another. DOE is not aware of any Federal or State ultra-low NOx or zero NOx regulations specific to gas-fired instantaneous water heaters with compliance dates within the 7-year cumulative regulatory burden timeframe (2027–2033).¹⁶⁹ DOE notes that certain localities (*i.e.*, California Air Districts) have adopted regulations requiring ultra-low NOx consumer water heaters. DOE accounts for the portion of ultra-low NOx shipments in its analysis. DOE notes that two California Air Districts—the Bay Area¹⁷⁰ and South Coast¹⁷¹ Air Quality Management Districts have adopted amendments to eliminate NOx emissions from certain gas-fired instantaneous water heaters beginning in 2031 and 2026, respectively. There are currently no natural gas-fired instantaneous water heaters on the market that would meet the zero NOx standards, though manufacturers may choose to develop them.

Regarding BWC’s request that DOE not discount the costs for stakeholders to review rulemakings, although DOE appreciates that monitoring and responding to rulemakings does impose costs for stakeholders, DOE believes that this is outside the scope of analysis for individual product rulemakings. Because EPCA requires DOE to establish and maintain the energy conservation program for consumer products and to

¹⁶⁹ CARB has stated that it is committed to explore developing and proposing zero-emission CHG standards for new space and water heaters sold in California as part of the 2022 State Strategy for the State Implementation Plan adopted in September 2022. However, at the time of issuance, CARB has not adopted such standards for gas-fired instantaneous water heaters. Additional information is available at: <https://www2.arb.ca.gov/our-work/programs/building-decarbonization/zero-emission-space-and-water-heater-standards/meetings-workshops>. (Last accessed Aug. 7, 2024).

¹⁷⁰ Available at: www.baaqmd.gov/~media/dotgov/files/rules/reg-9-rule-4-nitrogen-oxides-from-fan-type-residential-central-furnaces/2021-amendments/documents/20230315_rg0906-pdf.pdf?rev=436fcd037324b0b8f0c981d869e684d&sc_lang=en. (Last accessed Aug. 7, 2024).

¹⁷¹ Available at: www.aqmd.gov/docs/default-source/rule-book/recent-rules/r1146_2-060724.pdf?sfvrsn=8 (Last accessed Aug. 29, 2024).

periodically propose new and amended standards (or propose that standards for products do not need to be amended) and test procedures, DOE considers this rulemaking activity to be part of the analytical baseline (*i.e.*, in the no-new-standards case and the standards case). That is, these activities (*e.g.*, reviewing proposed rules or proposed determinations) would exist regardless of the regulatory option that DOE adopts through a rulemaking and would be independent from the conversion costs required to adapt product designs and manufacturing facilities to meet an amended standard.

In response to the July 2024 NODA, Rheem stated that they agreed with a 70 percent market share estimate for condensing gas-fired instantaneous water heaters and gradual shift towards condensing models. Rheem indicated that most manufacturers already possess the design and manufacturing capabilities necessary to produce products across the full range of efficiencies. Rheem stated that while a condensing-level standard at EL 2 or EL 3 would require manufactures to repurpose and retool assembly lines, a standard consistent with EL 2 (*i.e.*, TSL 2) would be less disruptive compared to higher efficiency levels, which would require a fully modulating burner design and higher investment. Rheem generally agreed with the conclusions of the manufacturer impact analysis but stated that they did not believe the additional energy savings at EL 3 compared to EL 2 were great enough to justify the greater cost to manufacturers. (Rheem No. 1436 at p. 3)

Regarding the need for manufacturers to repurpose and retool assembly lines, DOE accounted for the capital and product conversion costs associated with increasing production of condensing gas-fired instantaneous water heaters in its analysis. Consistent with Rheem's comment, DOE's analysis estimates that conversion costs would be higher at EL 3 and EL 4 compared to EL 2. *See* section IV.J.2.c and section V.B.2.a of this document and chapter 12 of the final rule TSD for additional information on conversion costs. In this final rule, DOE is adopting TSL 2. *See* section V.C of this document for a discussion of the benefits and burdens of the TSLs considered.

The Joint Advocates commented that DOE's analysis for the July 2024 NODA shows that the potential impacts on gas-fired instantaneous water heater manufacturers at EL 2 and higher would be modest and that, specifically, the potential impact on INPV at EL 2 ranges from a loss of 2.7 percent to a gain of 3.2 percent. (Joint Advocates, No. 1444

at pp. 1–2) The Joint Advocates commented that the proposed standards for gas-fired instantaneous water heaters could increase U.S. manufacturing jobs because the labor content required to produce a condensing gas-fired instantaneous water heater is approximately 59 percent more than that required to produce a non-condensing gas-fired instantaneous water heater. (Joint Advocates, No. 1444 at p. 2)

Regarding the potential impacts on gas-fired instantaneous water heater manufacturers, for this final rule, the estimated change in INPV at TSL 2 ranges from a loss of 2.8 percent to a gain of 3.4 percent. *See* section V.B.2.a of this document for additional information on the MIA results. Regarding the potential impacts to direct employment, for this final rule, DOE models a lower-bound decrease of 190 production workers and an upper-bound increase in domestic direct employment of 62 percent (an increase of approximately 117 production workers, for a total of 307 domestic production workers) at TSL 1 through TSL 4 in 2030. *See* section V.B.2.b of this document for additional information on DOE's direct employment analysis.

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 CO₂, NO_x, SO₂, and Hg. The second component estimates the impacts of potential standards on emissions of two additional greenhouse gases, CH₄ and N₂O, as well as the reductions in emissions of other gases due to "upstream" activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion.

The analysis of electric power sector emissions of CO₂, NO_x, SO₂, and Hg uses emissions 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 final rule TSD. The analysis presented in this final rule uses projections from AEO2023. Power sector emissions of CH₄ and N₂O from fuel combustion are estimated using

Emission Factors for Greenhouse Gas Inventories published by the EPA.¹⁷²

The on-site operation of consumer gas-fired instantaneous water heaters involves combustion of fossil fuels and results in emissions of CO₂, NO_x, SO₂, CH₄, and N₂O where these products are used. Site emissions of these gases were estimated using Emission Factors for Greenhouse Gas Inventories and, for NO_x and SO₂, emissions intensity factors from an EPA publication.¹⁷³

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 CH₄ and CO₂, are estimated based on the methodology described in chapter 15 of the final rule TSD.

The emissions intensity factors are expressed in terms of physical units per MWh or MMBtu of site energy savings. For power sector emissions, specific emissions intensity factors are calculated by sector and end use. Total emissions reductions are estimated using the energy savings calculated in the national impact analysis.

1. Air Quality Regulations Incorporated in DOE's Analysis

DOE's no-new-standards case for the electric power sector reflects the AEO, which incorporates the projected impacts of existing air quality regulations on emissions. AEO2023 reflects, to the extent possible, laws and regulations adopted through mid-November 2022, including the emissions control programs discussed in the following paragraphs the emissions control programs discussed in the following paragraphs, and the Inflation Reduction Act.¹⁷⁴

SO₂ 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 SO₂ for affected EGUs in the 48 contiguous States and the District of Columbia ("DC"). (42 U.S.C. 7651 *et*

¹⁷² Available at www.epa.gov/sites/production/files/2021-04/documents/emission-factors_apr2021.pdf (last accessed August 29, 2024).

¹⁷³ 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/air-emissions-factors-and-quantification/ap-42-compilation-air-emissions-factors#Proposed/ (last accessed August 29, 2024).

¹⁷⁴ 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 August 29, 2024).

seq.) SO₂ emissions from numerous States in the eastern half of the United States are also limited under the Cross-State Air Pollution Rule (“CSAPR”). 76 FR 48208 (Aug. 8, 2011). CSAPR requires these States to reduce certain emissions, including annual SO₂ emissions, and went into effect as of January 1, 2015.¹⁷⁵ The AEO incorporates implementation of CSAPR, including the update to the CSAPR ozone season program emission budgets and target dates issued in 2016. 81 FR 74504 (Oct. 26, 2016). Compliance with CSAPR is flexible among EGUs and is enforced through the use of tradable emissions allowances. Under existing EPA regulations, for states subject to SO₂ emissions limits under CSAPR, any excess SO₂ emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO₂ emissions by another regulated EGU.

However, beginning in 2016, SO₂ emissions began to fall as a result of the Mercury and Air Toxics Standards (“MATS”) for power plants.¹⁷⁶ 77 FR 9304 (Feb. 16, 2012). The final rule establishes power plant emission standards for mercury, acid gases, and non-mercury metallic toxic pollutants. Because of the emissions reductions under the MATS, it is unlikely that excess SO₂ emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO₂ emissions by another regulated EGU. Therefore, energy conservation standards that decrease electricity generation will generally reduce SO₂ emissions. DOE estimated SO₂ 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. Depending on the configuration of the power sector in the different regions and the need for allowances, however, NO_x emissions might not remain at the limit in the case of lower electricity demand. That would mean that standards might reduce NO_x emissions in covered States. Despite this possibility, DOE has chosen to be conservative in its analysis and has maintained the assumption that standards will not reduce NO_x emissions in States covered by CSAPR. Standards would be expected to reduce NO_x emissions in the States not covered by CSAPR. DOE used 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 final rule, for the purpose of complying with the requirements of Executive Order 12866, DOE considered the estimated monetary benefits from the reduced emissions of CO₂, CH₄, N₂O, NO_x, and SO₂ 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 during 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 final rule.

1. Monetization of Greenhouse Gas Emissions

To monetize the benefits of reducing GHG emissions, the July 2023 NOPR used the interim social cost of greenhouse gases (“SC–GHG”) 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 SC–GHG (“IWG”) (“2021 Interim SC–GHG estimates”). As a member of the IWG involved in the development of the February 2021 SC–GHG TSD, DOE agreed that the 2021 interim SC–GHG estimates represented the most appropriate estimate of the SC–GHG until revised estimates were developed reflecting the latest, peer-reviewed science. See 87 FR 78382, 78406–78408 for discussion of the development and details of the 2021 interim SC–GHG estimates. The IWG has continued working on updating the interim estimates, but has not published final estimates.

Accordingly, in the regulatory analysis of its December 2023 Final Rule, “Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review,” the EPA estimated climate benefits using a new, updated set of SC–GHG estimates (“2023 SC–GHG estimates”). EPA documented the methodology underlying the new estimates in the RIA for the December 2023 Final Rule and in greater detail in a technical report entitled “Report on the Social Cost of Greenhouse Gases: Estimates Incorporating Recent Scientific Advances” that was presented as Supplementary Material to the RIA.¹⁷⁷ The 2023 SC–GHG estimates incorporate recent research addressing recommendations of the Natural Academies of Science, Engineering, and Medicine (National Academies), responses to public comments on an earlier sensitivity analysis using draft SC–GHG estimates included in EPA’s December 2022 proposal in the oil and natural gas sector standards of performance rulemaking, and comments from a 2023 external peer review of the accompanying technical report.¹⁷⁸

On December 22, 2023, the IWG issued a memorandum directing that when agencies “consider applying the SC–GHG in various contexts . . . agencies should use their professional judgment to determine which estimates of the SC–GHG reflect the best available evidence, are most appropriate for particular analytical contexts, and best facilitate sound decision-making”

¹⁷⁵ CSAPR requires States to address annual emissions of SO₂ 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–Sept.) emissions of NO_x, a precursor to the formation of ozone pollution, in order to address the interstate transport of ozone pollution with respect to the 1997 ozone NAAQS. 76 FR 48208 (Aug. 8, 2011). EPA subsequently issued a supplemental rule that included an additional five States in the CSAPR ozone season program; 76 FR 80760 (Dec. 27, 2011) (Supplemental Rule), and EPA issued the CSAPR Update for the 2008 ozone NAAQS. 81 FR 74504 (Oct. 26, 2016).

¹⁷⁶ In order to continue operating, coal power plants must have either flue gas desulfurization or dry sorbent injection systems installed. Both technologies, which are used to reduce acid gas emissions, also reduce SO₂ emissions.

¹⁷⁷ https://www.epa.gov/system/files/documents/2023-12/eo12866_oil-and-gas-nsp-eg-climate-review-2060-av16-final-rule-20231130.pdf; https://www.epa.gov/system/files/documents/2023-12/epa_scghg_2023_report_final.pdf (last accessed July 3, 2024).

¹⁷⁸ https://www.epa.gov/system/files/documents/2023-12/epa_scghg_2023_report_final.pdf (last accessed July 3, 2024).

consistent with OMB Circular A–4 and applicable law.¹⁷⁹

DOE has been extensively involved in the IWG process and related work on the SC–GHGs for over a decade. This involvement includes DOE’s role as the federal technical monitor for the seminal 2017 report on the SC–GHG issued by the National Academies, which provided extensive recommendations on how to strengthen and update the SC–GHG estimates.¹⁸⁰ DOE has also participated in the IWG’s work since 2021. DOE technical experts involved in this work reviewed the 2023 SC–GHG methodology and report in light of the National Academies’ recommendations and DOE’s understanding of the state of the science.

Based on this review, in the July 2024 NODA, DOE proposed for public comment its preliminary determination that the updated 2023 SC–GHG estimates, including the approach to discounting, represent a significant improvement in estimating the SC–GHG through incorporating the most recent advancements in the scientific literature and by addressing recommendations on prior methodologies. That NODA presented climate benefits using both the 2023 SC–GHG values and the 2021 interim SC–GHG estimates. 89 FR 59693, 59700. In this final rule, DOE has not made a final decision regarding that preliminary assessment or adoption of the updated 2023 SC–GHG estimates, as such a decision is not necessary for purposes of this rule. DOE will continue to decide, for each particular analytical context, whether to rely on, present for presentation purposes, or use in some other way, the updated 2023 SC–GHG values, the 2021 interim SC–GHG estimates, or both. In this final rule, DOE is presenting estimates using both the updated 2023 SC–GHG values and the 2021 interim SC–GHG estimates, as DOE believes it is appropriate to give the public more complete information regarding the benefits of this rule. DOE notes, however, that the adopted standards would be economically justified using either set of SC–GHG values, and even without inclusion of the estimated monetized benefits of reduced GHG emissions. In future rulemakings, DOE will continue to evaluate the applicability in context and

use our professional judgment to apply the SC–GHG estimates that are most appropriate to use at that time.

The 2023 EPA technical report presents SC–GHG values for emissions years through 2080; therefore, DOE did not monetize the climate benefits of GHG emissions reductions occurring after 2080 when using the 2023 estimates for the SC–GHG. DOE expects additional climate impacts to accrue from GHG emissions changes post 2080, but due to a lack of readily available SC–GHG estimates for emissions years beyond 2080 and the relatively small emission effects expected from those years, DOE has not monetized these additional impacts in this analysis. Similarly, the interim 2021 interim SC–GHG estimates include values through 2070. DOE expects additional climate benefits to accrue for products still operating after 2070, but a lack of available SC–GHG estimates published by the IWG for emissions years beyond 2070 prevents DOE from monetizing these potential benefits in this analysis.

The overall climate benefits are generally greater when using the higher, updated 2023 SC–GHG estimates, compared to the climate benefits using the older 2021 interim SC–GHG estimates, which were used in the July 2023 NOPR. The net benefits of the rule are positive, however, under either SC–GHG calculation methodology; in fact, the net benefits of the rule are positive without including any monetized climate benefits at all. The adopted standards would be economically justified even without inclusion of the estimated monetized benefits of reduced GHG emissions using either methodology, therefore the conclusions of the analysis (as presented in section V.C of this document) are not dependent on which set of estimates of the SC–GHG are used in the analysis or on the use of the SC–GHG at all. The adopted standard level would remain the same under either SC–GHG calculation methodology (or without using the SC–GHG at all).

DOE received several comments regarding its preliminary determination on the use of the 2023 SC–GHG methodologies in the July 2024 NODA. As noted above, DOE is not making a final determination regarding which of the two sets of SC–GHG is most appropriate to apply here or across all DOE analyses. Accordingly, DOE is not addressing in this rule comments regarding such a final determination. Because DOE is presenting results using both sets of estimates, however, to the extent that commenters raised concerns about any reference to the 2023 SC–

GHG methodologies, DOE is responding to that limited set of comments here.

AHRI disagreed with DOE’s use of 2023 SC–GHG estimates in its analysis to justify proposed energy conservation standards. AHRI stated that adoption of 2023 SC–GHG methodologies introduces complexity, uncertainty, and traceability issues. AHRI recommended that DOE provide guidance on how 2023 SC–GHG methodologies were applied and offer comparison to the analysis performed in the July 2023 NOPR (AHRI, No. 1437 p. 3).

Rinnai disagreed with DOE’s preliminary decision to adopt 2023 SC–GHG methodologies, which they claim introduce challenges regarding the traceability of the data, the complexity and uncertainty of the new estimates, validation of the long-term costs and benefits of GHG emissions and the ability to compare the July 2024 NODA and July 2023 NOPR results. Rinnai further states that if the DOE updates the SC–GHG methodology, the update should be performed for all water heater product classes to reflect a fair comparison. (Rinnai, No. 1443 at p. 10)

In response, DOE reiterates that it would promulgate the same standards in this final rule even in the absence of the benefits of the GHG reductions achieved by the rule because the adopted standards for gas-fired instantaneous water heaters are economically justified even without including such benefits. DOE would also promulgate the same standards in this final rule using either the 2021 interim SC–GHG estimates or the 2023 SC–GHG estimates. In this rule, DOE is presenting SC–GHG results using both the interim 2021 SC–GHG estimates and the updated 2023 SC–GHG estimates.

In the July 2024 NODA, DOE preliminarily agreed with EPA’s assessment that the updates implemented in the 2023 SC–GHG estimates reflect the best available science and address recommendations from the National Academies. DOE acknowledges commenters’ concerns regarding uncertainty of the new estimates, but notes that the 2021 interim SC–GHG estimates are also uncertain and that uncertainty is inherent in all complex cost estimates that quantify physical impacts and translate them into dollar values.

DOE further notes that EPA accounted for uncertainty in various aspects of the 2023 SC–GHG estimates in each of the modules and comprehensively discussed these sources of uncertainty in the Final SC–GHG Report and supporting literature. (See, e.g., EPA Report at p. 77; EPA RTC A–1–7). According to EPA, the updated

¹⁷⁹ <https://www.whitehouse.gov/wp-content/uploads/2023/12/IWG-Memo-12.22.23.pdf> (last accessed July 3, 2024).

¹⁸⁰ Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide | The National Academies Press. (available at: nap.nationalacademies.org/catalog/24651/valuing-climate-damages-updating-estimation-of-the-social-cost-of) (last accessed July 3, 2024).

approaches taken in the methodology behind the 2023 SC-GHG estimates were specifically chosen because they allow for a more explicit representation of uncertainty. Moreover, the treatment of uncertainty was a key focus of the peer review process. Several peer reviewers commended EPA on its comprehensive approach to incorporating uncertainty (EPA Peer Review Summary Report, pgs. 26, 31, 33, etc.). and EPA responded to peer review comments on remaining questions about uncertainty by expanding and clarifying the discussion around uncertainty in each module (throughout section 2) and added appendix A.8 and table A.8.1 to further account for uncertainty.

Because, in this rule, DOE is presenting both the interim 2021 SC-GHG estimates and the 2023 SC-GHG estimates, the comment contending that the updated 2023 SC-GHG estimates are less traceable or less transparent than the 2021 interim SC-GHG estimates are no longer relevant. Insofar as this comment objects to DOE even referring to the 2023 SC-GHG methodologies and using them for presentation purposes, however, we note that EPA developed these estimates through a process that included an initial draft with sensitivity analyses, independent peer review, responses to peer review and comments, available documentation associated with the underlying inputs and a public docket that includes all the studies and reports cited in the analysis. (See *e.g.*, EPA’s “Report on the Social Cost of Greenhouse Gases: Estimates Incorporating Recent Scientific Advances” | US EPA; EPA RTC A-7-4).

Because, in this rule, DOE is presenting both the interim 2021 SC-GHG estimates and the 2023 SC-GHG estimates, the comments that adding an additional, updated estimate of the SC-GHG benefits impairs the public or the industry’s ability to compare the July 2024 NODA and July 2023 NOPR results with the final rule are not relevant.

Finally, the commenter asserted that DOE should update the SC-GHG values for all water heater product classes to reflect a fair comparison. As stated above, because DOE is presenting both the interim 2021 SC-GHG estimates and the 2023 SC-GHG estimates for this rule, this comment is not relevant.

BWC stated that the 2023 SC-GHG estimates are a significant step forward in quantifying the social cost of greenhouse gases. BWC further commented that given the permanence

of any minimum energy conservation standards that are established by DOE under EPCA, it is essential that the Department first finalize a robust, consistent, and objective approach towards accurately calculating SC-GHG before allowing this metric to economically justify more stringent standards that would otherwise not yield a positive net present value. BWC also questioned the consistency of the methodologies going forward and the extent that peer experts were able to review and participate in the process. (BWC, No. 1441 at p. 3-4)

DOE appreciates commenter’s statement that the 2023 SC-GHG estimates are an important step forward in the monetization of greenhouse gas emissions.

With respect to the commenter’s concerns about peer review, DOE notes again that the 2023 SC-GHG estimates were subjected to independent peer review in line with EPA’s Peer Review Handbook 4th Edition, 2015. This process was conducted by an independent contractor and involved two separate comment periods for outside experts. EPA reported that the peer reviewers commended the agency on its development of this update and labeled it a much-needed improvement in estimating the SC-GHG. (EPA Report at p. 3; EPA RTC A-7-11).

Regarding the commenter’s concerns about the consistency of the methodologies going forward (BWC, No. 1441 at p. 3-4), DOE reiterates that it is presenting climate benefits using both sets of SC-GHG estimates and that, in future rulemakings, DOE will continue to evaluate the applicability in context and use its professional judgment to apply the SC-GHG estimates that are most appropriate to use at that time.

Finally, DOE reiterates that it would promulgate the same standards in this final rule even in the absence of the benefits of the GHG reductions achieved by the rule. DOE would also promulgate the same standards in this final rule, using either the 2021 interim SC-GHG estimates, rather than the 2023 SC-GHG estimates. Thus, DOE did not, in fact, rely on either the 2023 SC-GHG estimates or the 2021 interim SC-GHG estimates “to economically justify more stringent standards that would otherwise not yield a positive net present value,” as the commenter suggests because the adopted standards for gas-fired instantaneous water heaters are economically justified even without including such benefits.

DOE’s derivations of the SC-CO₂, SC-N₂O, and SC-CH₄ values used for this final rule are discussed in the following sections, and the results of DOE’s analyses estimating the benefits of the reductions in emissions of these GHGs are presented in section V.B.6 of this document.

a. Social Cost of Carbon

The SC-CO₂ values used for this final rule are presented using two sets of SC-GHG estimates. One set is the 2023 SC-GHG estimates published by the EPA, which are shown in table IV.13 in 5-year increments from 2020 to 2050. The set of annual values that DOE used is presented in appendix 14A of the final rule TSD. These estimates include values out to 2080. DOE expects additional climate benefits to accrue for products still operating after 2080, but a lack of available SC-CO₂ estimates for emissions years beyond 2080 prevents DOE from monetizing these potential benefits in this analysis.

TABLE IV.13—ANNUAL SC-CO₂ VALUES BASED ON 2023 SC-GHG ESTIMATES, 2020–2050
[2020\$ per Metric Ton CO₂]

Emissions year	Near-term Ramsey discount rate		
	2.5%	2.0%	1.5%
2020	117	193	337
2025	130	212	360
2030	144	230	384
2035	158	248	408
2040	173	267	431
2045	189	287	456
2050	205	308	482

DOE also presents results using interim SC-CO₂ values based on the values developed for the February 2021 SC-GHG TSD, which are shown in table IV.14 in 5-year increments from 2020 to 2050. The set of annual values that DOE used, which was adapted from estimates published by EPA in 2021,¹⁸¹ is presented in appendix 14A of the final rule TSD. These estimates are based on methods, assumptions, and parameters identical to the estimates published by the IWG (which were based on EPA modeling), and include values for 2051 to 2070.

¹⁸¹ 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 Dec. 03, 2024).

TABLE IV.14—ANNUAL SC-CO₂ VALUES BASED ON 2021 INTERIM SC-GHG ESTIMATES, 2020–2050
[2020\$ per Metric Ton CO₂]

Year	Discount rate and statistic			
	5% average	3% average	2.5% average	3% 95th percentile
2020	14	51	76	152
2025	17	56	83	169
2030	19	62	89	187
2035	22	67	96	206
2040	25	73	103	225
2045	28	79	110	242
2050	32	85	116	260

DOE multiplied the CO₂ emissions reduction estimated for each year by the SC-CO₂ value for that year in all of the cases. DOE adjusted the values to 2023\$ 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 all of the cases using the specific discount rate that had been used to obtain the SC-CO₂ values in each case.

b. Social Cost of Methane and Nitrous Oxide

The SC-CH₄ and SC-N₂O values used for this final rule are presented using

two sets of SC-GHG estimates. One set is the 2023SC-GHG estimates published by the EPA. table IV.15 shows the updated sets of SC-CH₄ and SC-N₂O estimates in 5-year increments from 2020 to 2050. The full set of annual values used is presented in appendix 14A of the final rule TSD. These estimates include values out to 2080.

TABLE IV.15—ANNUAL SC-CH₄ AND SC-N₂O VALUES BASED ON 2023 SC-GHG ESTIMATES, 2020–2050
[2020\$ per Metric Ton]

Emissions year	SC-CH ₄			SC-N ₂ O		
	Near-term Ramsey discount rate			Near-term Ramsey discount rate		
	2.5%	2.0%	1.5%	2.5%	2.0%	1.5%
2020	1,257	1,648	2,305	35,232	54,139	87,284
2025	1,590	2,025	2,737	39,972	60,267	95,210
2030	1,924	2,403	3,169	44,712	66,395	103,137
2035	2,313	2,842	3,673	49,617	72,644	111,085
2040	2,702	3,280	4,177	54,521	78,894	119,032
2045	3,124	3,756	4,718	60,078	85,945	127,916
2050	3,547	4,231	5,260	65,635	92,996	136,799

DOE also presents results using interim SC-CH₄ and SC-N₂O values based on the values developed for the February 2021 SC-GHG TSD. Table

IV.16 shows the updated sets of SC-CH₄ and SC-N₂O estimates from the latest interagency update in 5-year increments from 2020 to 2050. The full set of

annual unrounded values used in the calculations is presented in appendix 14A of the final rule TSD. These estimates include values out to 2070.

TABLE IV.16—ANNUAL SC-CH₄ AND SC-N₂O VALUES BASED ON 2021 INTERIM SC-GHG ESTIMATES, 2020–2050
[2020\$ per Metric Ton]

Year	SC-CH ₄				SC-N ₂ O			
	Discount rate and statistic				Discount rate and statistic			
	5% average	3% average	2.5% average	3% 95th percentile	5% average	3% average	2.5% average	3% 95th percentile
2020	670	1,500	2,000	3,900	5,800	18,000	27,000	48,000
2025	800	1,700	2,200	4,500	6,800	21,000	30,000	54,000
2030	940	2,000	2,500	5,200	7,800	23,000	33,000	60,000
2035	1,100	2,200	2,800	6,000	9,000	25,000	36,000	67,000
2040	1,300	2,500	3,100	6,700	10,000	28,000	39,000	74,000
2045	1,500	2,800	3,500	7,500	12,000	30,000	42,000	81,000
2050	1,700	3,100	3,800	8,200	13,000	33,000	45,000	88,000

DOE multiplied the CH₄ and N₂O emissions reduction estimated for each year by the SC-CH₄ and SC-N₂O estimates for that year in each of the cases. DOE adjusted the values to 2023\$

using the implicit price deflator for GDP from the Bureau of Economic Analysis. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the

cases using the specific discount rate

that had been used to obtain the SC-CH₄ and SC-N₂O estimates in each case.

2. Monetization of Other Emissions Impacts

For the final rule, DOE estimated the monetized value of NO_x and SO₂ emissions reductions from electricity generation using benefit-per-ton estimates for that sector from the EPA's Benefits Mapping and Analysis Program.¹⁸² Table 5 of the EPA TSD provides a summary of the health impact endpoints quantified in the analysis. DOE used EPA's values for PM_{2.5}-related benefits associated with NO_x and SO₂ and for ozone-related benefits associated with NO_x for 2025, 2030, 2035, and 2040, calculated with discount rates of 3 percent and 7 percent. DOE used linear interpolation to define values for the years not given in the 2025 to 2040 period; for years beyond 2040, the values are held constant (rather than extrapolated) to be conservative. DOE combined the EPA regional benefit-per-ton estimates with regional information on electricity consumption and emissions from AEO2023 to define weighted-average national values for NO_x and SO₂ (see appendix 14B of the final rule TSD).

DOE also estimated the monetized value of NO_x and SO₂ emissions reductions from site use of natural gas in consumer gas-fired instantaneous 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.¹⁸³ The EPA document provides high and low estimates for 2025 and 2030 at 3- and 7-percent discount rates.¹⁸⁴ DOE used the same linear interpolation and extrapolation as it did with the values for electricity generation.

¹⁸² U.S. Environmental Protection Agency. *Estimating the Benefit per Ton of Reducing Directly-Emitted PM_{2.5}, PM_{2.5} Precursors and Ozone Precursors from 21 Sectors*. Available at www.epa.gov/benmap/estimating-benefit-ton-reducing-directly-emitted-pm25-pm25-precursors-and-ozone-precursors (last accessed August 29, 2024).

¹⁸³ "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.

¹⁸⁴ "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.

DOE multiplied the site emissions reduction (in tons) in each year by the associated \$/ton values, and then discounted each series using discount rates of 3 percent and 7 percent as appropriate.

M. Utility Impact Analysis

The utility impact analysis estimates the changes in installed electrical capacity and generation projected to result for each considered TSL. The analysis is based on published output from the NEMS associated with 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 chapter 15 of the final rule TSD.

The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of electricity savings calculated in the NIA to provide estimates of selected utility impacts of potential new or amended energy conservation standards. The utility analysis also estimates the impact on gas utilities in terms of projected changes in natural gas deliveries to consumers for each TSL.

BWC expressed concerns that DOE overestimated the impact of this metric in the analysis presented in the July 2024 NODA pointing to table III.9, which demonstrates electric utility impact results indicating a substantial decrease in electric load for both installed capacity, as well as electric generation. BWC contended that since gas-fired instantaneous water heaters utilize very little electric energy, they question how adopting more stringent energy conservation standards for these products could impact electric load demand to such a significant extent. (BWC, No. 1441 at p. 4)

In response, DOE notes that the changes listed in table III.9 of the July 2024 NODA in installed capacity and generation are significantly smaller than total US electric capacity which is over a million Megawatts. Additionally, DOE notes that results for EL 1 through 3 results in an increase in installed capacity as denoted by parentheses.

N. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a standard. Employment impacts from new or amended energy conservation standards include both direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the products subject to standards. 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.¹⁸⁵ Bureau of Economic Analysis input-output multipliers also show a lower labor intensity per million dollars of activity for utilities as compared to other industries.¹⁸⁶ 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

¹⁸⁵ See U.S. Bureau of Labor Statistics. *Industry Output and Employment*. Available at: www.bls.gov/emp/data/industry-out-and-emp.htm (last accessed August 19, 2024).

¹⁸⁶ See U.S. Department of Commerce—Bureau of Economic Analysis. *Regional Input-Output Modeling System (RIMS II) User's Guide*. Available at: www.bea.gov/resources/methodologies/RIMSII-user-guide (last accessed Jan. 18, 2024).

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, these 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 final rule using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 4 (“ImSET”).¹⁸⁷ 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 there are 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 (2030–2034), where these uncertainties are reduced. For more details on the employment impact analysis, see chapter 16 of the final rule TSD.

V. Analytical Results and Conclusions

The following section addresses the results from DOE’s analyses with respect to the considered energy conservation standards for consumer gas-fired instantaneous 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 gas-fired instantaneous water heaters, and the standards levels that DOE is adopting in this final rule. Additional details regarding DOE’s analyses are contained in the final rule TSD supporting this document.

A. Trial Standard Levels

In general, DOE typically evaluates potential new or 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 price elasticity of consumer purchasing decisions that

may change when different standard levels are set.

In the analysis conducted for this final rule, DOE analyzed the benefits and burdens of four TSLs for consumer gas-fired instantaneous water heaters. These TSLs are equivalent to each of the ELs analyzed by DOE with results presented in this document. TSL 1 represents a transition from non-condensing to condensing technology (*i.e.*, through the addition of a secondary condensing heat exchanger). TSL 2 represents an intermediate condensing efficiency which can be achieved using larger heat exchangers. TSL 3 represents a further improvement by the use of a heat exchanger with even more surface area, such as a flat-plate heat exchanger design, and is the efficiency level required to meet the EPA’s ENERGY STAR specification criteria. Finally, TSL 4 represents the max-tech efficiency, which may be achieved by use of fully modulating burners and further improvements to the heat exchanger. DOE presents the results for the TSLs in this document, while the results for all efficiency levels that DOE analyzed are in the final rule TSD. Table V.1 presents the TSLs and the corresponding efficiency levels that DOE has identified for potential amended energy conservation standards for consumer gas-fired instantaneous water heaters.

TABLE V.1—TRIAL STANDARD LEVELS FOR CONSUMER GAS-FIRED INSTANTANEOUS WATER HEATERS

Product class	Trial standard level			
	1	2	3	4
	Efficiency level			
Gas-fired Instantaneous Water Heaters ($V_{\text{eff}} < 2$ gal, Rated Input $> 50,000$ Btu/h)	1	2	3	4

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on consumer gas-fired instantaneous water heaters 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 final rule TSD provides detailed information on the LCC and PBP analyses.

Table V.2 and table V.3 show the LCC and PBP results for the TSLs considered. In the first table, the simple payback is measured relative to the baseline product. In the second table, the 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

¹⁸⁷ 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’s Guide.

2015. Pacific Northwest National Laboratory: Richland, WA. PNNL–24563.

standard at a given TSL. Those who already purchase a product with

efficiency at or above a given TSL are not affected. Consumers for whom the

LCC increases at a given TSL experience a net cost.

TABLE V.2—AVERAGE LCC AND PBP RESULTS FOR GAS-FIRED INSTANTANEOUS WATER HEATERS

[V_{eff} <2 gal, rated input >50,000 Btu/h]

Efficiency level	Average costs 2023\$				Simple payback (years)	Average lifetime (years)
	Installed cost	First year's operating cost	Lifetime operating cost	LCC		
0	2,087	303	4,571	6,659	.....	20.0
1	2,304	285	4,339	6,644	12.6	20.0
2	2,318	277	4,210	6,528	8.9	20.0
3	2,334	273	4,154	6,487	8.3	20.0
4	2,424	270	4,107	6,531	10.3	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.3—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]

Trial standard level	Efficiency level	Life-cycle cost savings	
		Average LCC savings* (2023)	Percent of consumers that experience net cost
1	1	(1)	17.5
2	2	112	15.2
3	3	90	25.0
4	4	39	56.2

* The savings represent the average LCC for affected consumers. Parentheses indicate negative (-) values.

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.4

compares the average LCC savings and PBP at each efficiency level for the consumer subgroups with similar metrics for the entire consumer sample for consumer gas-fired instantaneous water heaters. 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 final rule TSD presents the complete LCC and PBP results for the subgroups.

TABLE V.4—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]

TSL	Low-income households	Senior-only households	Small businesses	All households
Average LCC Savings (2023\$)				
1	141	(38)	(158)	(1)
2	248	80	(51)	112
3	152	75	10	90
4	123	18	(44)	39
Simple Payback Period (years)				
1	9.9	13.5	10.2	12.6
2	7.1	9.6	7.2	8.9
3	6.6	8.9	6.6	8.3
4	7.9	10.9	7.8	10.3
Consumers with Net Cost (%)				
1	8.2	20.0	24.5	17.5
2	6.5	16.6	25.7	15.2

TABLE V.4—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]

TSL	Low-income households	Senior-only households	Small businesses	All households
3	11.0	26.4	43.1	25.0
4	31.8	57.5	67.0	56.2
Consumers with Net Benefit (%)				
1	17.1	8.9	7.1	12.5
2	26.2	21.4	17.1	22.5
3	67.0	57.5	44.9	59.9
4	55.0	33.7	27.6	35.6

Note: Numbers in parentheses indicate a negative number.

c. Rebuttable Presumption Payback

As discussed in section III.F.2 of this document, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for 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 procedures for consumer gas-fired instantaneous water heaters. In contrast, the PBPs presented in section V.B.1.a of this document use averages that were calculated using distributions that reflect the range of energy use in the field.

Table V.5 presents the rebuttable-presumption payback periods for the considered TSLs for consumer gas-fired instantaneous water heaters. While DOE examined the rebuttable-presumption criterion, it considered whether the

standard levels considered for this rule are economically justified through a more detailed analysis of the economic impacts of those levels, pursuant to 42 U.S.C. 6295(o)(2)(B)(i), that considers the full range of impacts to the consumer, manufacturer, Nation, and environment. The results of that analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level, thereby supporting or rebutting the results of any preliminary determination of economic justification.

TABLE V.5—REBUTTABLE-PRESUMPTION PAYBACK PERIODS

TSL	1	2	3	4
	(years)			
Gas-fired Instantaneous Water Heaters	11.0	7.9	7.4	9.2

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of amended energy conservation standards on manufacturers of gas-fired instantaneous water heaters. The next section describes the expected impacts on manufacturers at each considered TSL. Chapter 12 of the final rule TSD explains the analysis in further detail.

a. Industry Cash Flow Analysis Results

In this section, DOE provides GRIM results from the analysis, which examines changes in the industry that would result from a standard. The following tables summarize the estimated financial impacts (represented by changes in INPV) of potential amended energy conservation standards on manufacturers of gas-fired instantaneous water heaters, as well as the conversion costs that DOE estimates manufacturers of gas-fired instantaneous 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 gas-fired instantaneous water heater industry: (1) the preservation of gross margin percentage scenario and (2) the preservation of operating profit scenario. 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 per-unit dollar profit would also increase. DOE assumed a “gross margin percentage” of 31 percent for gas-fired instantaneous water heaters.¹⁸⁸ This gross margin percentage (and the corresponding manufacturer markup) is the same as the one that DOE used 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 amended energy conservation standards.

The preservation of operating profit scenario reflects manufacturers’ concerns about their inability to maintain margins as MPCs increase to reach more-stringent efficiency levels. In this scenario, while manufacturers make the necessary investments required to convert their facilities to produce compliant 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 2024 through 2059. To provide perspective on the short-run cash flow impact, DOE

¹⁸⁸ The gross margin percentage of 31 percent is based on a manufacturer markup of 1.45.

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 amended standards are required.

TABLE V.6—MANUFACTURER IMPACT ANALYSIS FOR GAS-FIRED INSTANTANEOUS WATER HEATERS UNDER THE PRESERVATION OF GROSS MARGIN SCENARIO

	Units	No-new-standards case	Trial standard level *			
			1	2	3	4
INPV	2023\$ millions	1,193.9	1,234.0	1,234.4	1,217.6	1,275.2
Change in INPV	2023\$ millions		40.1	40.5	23.7	81.2
	%		3.4	3.4	2.0	6.8
Free Cash Flow (2029)	2023\$ millions	91.7	84.6	82.9	65.2	65.2
Change in Free Cash Flow (2029).	2023\$ millions		(7.1)	(8.8)	(26.5)	(26.5)
	%		(7.8)	(9.6)	(28.9)	(28.9)
Product Conversion Costs ..	2023\$ millions		2.5	3.7	4.8	4.8
Capital Conversion Costs ...	2023\$ millions		13.9	16.7	55.3	55.3
Total Investment Re-quired **.	2023\$ millions		16.5	20.4	60.1	60.1

* Numbers in parentheses indicate a negative number.

** Numbers may not sum exactly due to rounding.

TABLE V.7—MANUFACTURER IMPACT ANALYSIS FOR GAS-FIRED INSTANTANEOUS WATER HEATERS UNDER THE PRESERVATION OF OPERATING PROFIT SCENARIO

	Units	No-new-standards case	Trial standard level *			
			1	2	2	4
INPV	2023\$ millions	1,193.9	1,171.1	1,160.2	1,132.1	1,119.5
Change in INPV	2023\$ millions		(22.9)	(33.7)	(61.8)	(74.5)
	%		(1.9)	(2.8)	(5.2)	(6.2)
Free Cash Flow (2029)	2023\$ millions	91.7	84.6	82.9	65.2	65.2
Change in Free Cash Flow (2029).	2023\$ millions		(7.1)	(8.8)	(26.5)	(26.5)
	%	(7.8)	(9.6)	(28.9)	(28.9)	
Product Conversion Costs ..	2023\$ millions		2.5	3.7	4.8	4.8
Capital Conversion Costs ...	2023\$ millions		13.9	16.7	55.3	55.3
Total Investment Re-quired **.	2023\$ millions		16.5	20.4	60.1	60.1

* Numbers in parentheses indicate a negative number.

** Numbers may not sum exactly due to rounding.

At TSL 1, DOE estimates that impacts on INPV would range from –\$22.9 million to \$40.1 million, or a change in INPV of –1.9 percent to 3.4 percent. At TSL 1, industry free cash flow is \$84.6 million, which is a decrease of \$7.1 million, or a drop of 7.8 percent, compared to the no-new-standards case value of \$91.7 million in 2029, the year leading up to the standards year. Approximately 70 percent of gas-fired instantaneous water heater shipments are expected to meet TSL 1 by the analyzed 2030 compliance date in the no-new-standards case.

TSL 1 would set the energy conservation standard for gas-fired instantaneous water heaters at EL 1. Compared to the non-condensing design considered at baseline, the design options analyzed at TSL 1 includes a tube design condensing heat exchanger. Out of the 12 gas-fired instantaneous

water heater OEMs identified, 11 offer models that meet TSL 1. These 11 manufacturers currently offer 84 unique basic models, accounting for 61 percent of model listings, that meet this TSL. Based on feedback from manufacturer interviews and a review of the market, DOE does not expect that most manufacturers would need to add production capacity or incur significant capital conversion costs to meet this level. However, in response to the July 2023 NOPR, one manufacturer commented that its U.S. production facility is currently optimized to produce non-condensing models. Converting this U.S. production facility to produce condensing gas-fired instantaneous water heaters would require significant investment. To avoid underestimating the potential investments required to meet levels that may necessitate condensing technology

(i.e., TSL 1 through TSL 4), DOE incorporated the expected investments required to convert its U.S. production facility to accommodate production of condensing gas-fired instantaneous water heaters. DOE does not expect that there would be notable product conversion costs at this TSL since most manufacturers offer a range of models that already meet this level. DOE estimates that industry would incur approximately \$13.9 million in capital conversion costs and \$2.5 million in product conversions at TSL 1. Industry conversion costs total \$16.5 million.

At TSL 1, the shipment-weighted average MPC for gas-fired instantaneous water heaters increases by 9.4 percent relative to the no-new-standards case shipment-weighted average MPC for gas-fired instantaneous water heaters in 2030. In the preservation of gross margin percentage scenario, the increase

in cashflow from the higher MSP outweighs the \$16.5 million in conversion costs, causing a positive change in INPV at TSL 1 under this scenario.

Under the preservation of operating profit scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the manufacturer markup decreases in 2030. This reduction in the manufacturer markup and the \$16.5 million in conversion costs incurred by manufacturers cause a slightly negative change in INPV at TSL 1 under the preservation of operating profit scenario. See section IV.J.2.d of this document for a discussion of the manufacturer markup scenarios.

At TSL 2, DOE estimates that impacts on INPV would range from $-\$33.7$ million to $\$40.5$ million, or a change in INPV of -2.8 percent to 3.4 percent. At TSL 2, industry free cash flow is $\$82.9$ million, which is a decrease of $\$8.8$ million, or a drop of 9.6 percent compared to the no-new-standards case value of $\$91.7$ million in 2029, the year leading up to the standards year. Approximately 62 percent of gas-fired instantaneous water heater shipments are expected to meet TSL 2 by the analyzed 2030 compliance date in the no-new-standards case.

TSL 2 would set the energy conservation standard for gas-fired instantaneous water heaters at EL 2. The design options analyzed at TSL 2 include increasing the tube design condensing heat exchanger area relative to TSL 1. Of the 12 gas-fired instantaneous water heater OEMs, 10 manufacturers offer models that meet TSL 2. These 10 OEMs currently offer 71 unique basic models, accounting for 51 percent of model listings, that meet this TSL. As with TSL 1, DOE does not expect that most manufacturers would need to add production capacity (or incur notable capital conversion costs) to meet this level. However, the larger condensing heat exchanger that manufacturers may implement to meet TSL 2 could necessitate some capital investments to optimize production lines. Similar to TSL 1, DOE does not expect that there would be significant product conversion costs at this level since most manufacturers already offer a range of models that meet TSL 2. DOE estimates that industry would incur approximately $\$16.7$ million in capital conversion costs and $\$3.7$ million in product conversions at TSL 2. Industry conversion costs total $\$20.4$ million.

At TSL 2, the shipment-weighted average MPC for gas-fired instantaneous

water heaters increases by 9.8 percent relative to the no-new-standards case shipment-weighted average MPC for gas-fired instantaneous water heaters in 2030. In the preservation of gross margin percentage scenario, the increase in cashflow from the higher MSP outweighs the $\$20.4$ million in conversion costs, causing a positive change in INPV at TSL 2 under this scenario.

Under the preservation of operating profit scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the manufacturer markup decreases in 2030. This reduction in the manufacturer markup and the $\$20.4$ million in conversion costs incurred by manufacturers cause a slightly negative change in INPV at TSL 2 under the preservation of operating profit scenario.

At TSL 3, DOE estimates that impacts on INPV would range from $-\$61.8$ million to $\$23.7$ million, or a change in INPV of -5.2 percent to 2.0 percent. At TSL 3, industry free cash flow is $\$65.2$ million, which is a decrease of $\$26.5$ million, or a drop of 28.9 percent, compared to the no-new-standards case value of $\$91.7$ million in 2029, the year leading up to the standards year. Approximately 16 percent of gas-fired instantaneous water heater shipments are expected to meet TSL 3 by the analyzed 2030 compliance date in the no-new-standards case.

TSL 3 would set the energy conservation standard for gas-fired instantaneous water heaters at EL 3. The design options analyzed at TSL 3 include a more efficient heat exchanger design (*i.e.*, replacing a tube condensing heat exchanger with a flat plate condensing heat exchanger) and increasing the condensing heat exchanger area relative to TSL 2. Of the 12 gas-fired instantaneous water heater OEMs, 10 manufacturers offer models that meet TSL 3. These 10 manufacturers currently offer 48 unique basic models, accounting for 34 percent of model listings, that meet this TSL. Based on feedback from manufacturer interviews and public comments, DOE understands that implementing the larger, improved condensing heat exchanger technology would increase the complexity of the manufacturing process compared to the tube design condensing heat exchanger technology analyzed at TSL 1 and TSL 2.

At this level, most manufacturers would need to add additional assembly lines to meet demand, which would require a large capital investment. The

investment required to add production capacity would vary by manufacturer as it depends on floor space availability in and around existing manufacturing plants. Compared to TSL 1 and TSL 2, manufacturers offer fewer models that meet the required efficiency levels. Manufacturers without any models that meet TSL 3 would need to develop new gas-fired instantaneous water heater products with more complex, efficient condensing heat exchanger designs. Manufacturers with gas-fired instantaneous water heaters that meet TSL 3 may need to allocate technical resources to provide a full range of product offerings since most manufacturers currently only offer a handful of models that meet TSL 3. DOE estimates that manufacturers would incur approximately $\$55.3$ million in capital conversion costs and $\$4.8$ million in product conversions at TSL 3. Industry conversion costs total $\$60.1$ million.

At TSL 3, the shipment-weighted average MPC for gas-fired instantaneous water heaters increases by 11.2 percent relative to the no-new-standards case shipment-weighted average MPC for gas-fired instantaneous water heaters in 2030. In the preservation of gross margin percentage scenario, the increase in cashflow from the higher MSP outweighs the $\$60.1$ million in conversion costs, causing a slightly positive change in INPV at TSL 3 under this scenario.

Under the preservation of operating profit scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the manufacturer markup decreases in 2030. This reduction in the manufacturer markup and the $\$60.1$ million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 3 under the preservation of operating profit scenario.

At TSL 4, DOE estimates that impacts on INPV would range from $-\$74.5$ million to $-\$81.2$ million, or a change in INPV of -6.2 percent to 6.8 percent. At TSL 4, industry free cash flow is $\$65.2$ million, which is a decrease of $\$26.5$ million, or a drop of 28.9 percent, compared to the no-new-standards case value of $\$91.7$ million in 2029, the year leading up to the standards year. Approximately 8 percent of gas-fired instantaneous water heater shipments are expected to meet TSL 4 by the analyzed 2030 compliance date in the no-new-standards case.

TSL 4 would set the energy conservation standard for gas-fired

instantaneous water heaters at EL 4 (*i.e.*, max-tech). The design options analyzed at TSL 4 include replacing the step-modulating burner with a fully modulating burner and increasing the condensing heat exchanger area relative to TSL 3. Of the 12 gas-fired instantaneous water heaters, five manufacturers offer models that meet this TSL. These five manufacturers currently offer 19 unique basic models, accounting for 14 percent of model listings, that meet this TSL. As with TSL 3, DOE understands that implementing the larger, improved condensing heat exchanger design would add a significant amount of complexity to the manufacturing process compared to the tube design condensing heat exchanger technology at TSL 1 and TSL 2. As such, DOE expects similar capital conversion costs at TSL 3 and TSL 4. At max-tech, fewer manufacturers offer fewer models that meet the required efficiencies compared to TSL 3. DOE estimates that manufacturers would incur approximately \$55.3 million in capital conversion costs and \$4.8 million in product conversions at TSL 4. Industry conversion costs total \$60.1 million.

At TSL 4, the shipment-weighted average MPC for gas-fired instantaneous water heaters increases by 20.1 percent relative to the no-new-standards case shipment-weighted average MPC for gas-fired instantaneous water heaters in 2030. The increase in cashflow from the higher MSP outweighs the \$60.1 million in conversion costs, causing a positive change in INPV at TSL 4 under this scenario.

Under the preservation of operating profit scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards, but manufacturers do not earn additional profit from their investments. In this scenario, the manufacturer markup decreases in 2030. This reduction in the manufacturer markup and the \$60.1 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 4 under the preservation of operating profit scenario.

b. Direct Impacts on Employment

To quantitatively assess the potential impacts of amended energy conservation standards on direct employment in the gas-fired instantaneous water heater industry, DOE used feedback from stakeholder comments, the engineering analysis, and shipments analysis 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.

In the July 2023 NOPR, DOE estimated that approximately 70 percent of consumer water heaters subject to the proposed amended standards were produced domestically. Of that 70 percent, DOE estimated that all gas-fired instantaneous water heaters, which currently account for 12 percent of the overall consumer water heater market, were produced outside of the United States. For the July 2024 NODA, DOE revised its direct employment analysis to account for Rinnai's new domestic production facility dedicated to manufacturing non-condensing gas-fired instantaneous water heaters. In the July 2024 NODA, DOE estimated that approximately 20 percent of gas-fired instantaneous water heaters were produced domestically. DOE derived this value by using its shipments analysis and public market share feedback.¹⁸⁹ (Rinnai No. 1186 at p. 1) DOE maintained the 20 percent estimate from the July 2024 NODA for this final rule.

In addition to Rinnai's market share feedback, DOE relied on the employment figures provided in Rinnai's comments in response to the July 2023 NOPR to estimate the potential range of direct employment impacts in 2030 (the analyzed compliance year) in the July 2024 NODA. Rinnai's comments indicated that there were 122 domestic production workers dedicated to manufacturing non-condensing gas-fired instantaneous water heaters in 2023. (Rinnai No. 1186 at p. 1) Using results of the shipments analysis, DOE projected that there would be approximately 128 domestic production workers in 2030 (the analyzed compliance year) in the no-new-standards case.

To establish a conservative lower bound, DOE assumed domestic manufacturers would shift production to foreign countries at efficiency levels that would likely necessitate condensing technology. The upper bound domestic direct employment estimate corresponds to a potential 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 (*i.e.*, 20 percent of gas-fired instantaneous water heater

shipments continue to be manufactured domestically). Results of DOE's engineering and product teardown analyses indicate that additional labor is required (on a per-unit basis) to produce a condensing gas-fired instantaneous water heater compared to a non-condensing gas-fired instantaneous water heater. As such, DOE modeled an increase in domestic direct employment in the upper bound scenario.

For this final rule, DOE updated its estimate of domestic production workers of gas-fired instantaneous water heaters from 128 to 190¹⁹⁰ in 2030 based on stakeholder comments in response to the July 2024 NODA but otherwise maintained its direct employment methodology. (Rinnai No. 1443 at p. 1) DOE estimates that in the absence of new or amended energy conservation standards for consumer water heaters there would be 3,859 domestic production employees for the *overall* consumer water heater market in 2030.¹⁹¹

For the conservative lower bound of direct employment impacts for this final rule, DOE models a decrease of domestic direct employment of 190 production workers at TSL 1 through TSL 4 in 2030. This lower bound reflects the scenario where Rinnai chooses to continue to source condensing gas-fired instantaneous water heaters from Japan. In response to the July 2023 NOPR and July 2024 NODA, Rinnai commented that due to the large upfront investment required to repurpose its Georgia facility to accommodate production of condensing gas-fired instantaneous water heaters and its current production capacity of condensing gas-fired instantaneous water heaters in Japan, it is possible that manufacturing could shift overseas. (Rinnai No. 1186 at p. 23; Rinnai No. 1443 at pp. 21–22)

For the upper bound of direct employment impacts, using a shipment-weighted average, DOE estimates that the labor content required to produce a

¹⁹⁰ Rinnai commented that it currently employs 183 full-time employees and 49 temporary employees at its Griffin, Georgia plant. DOE's shipments analysis indicates shipments of non-condensing gas-fired instantaneous water heaters in the no-new-standards case will increase by approximately 4 percent from 2024 to 2030 (the compliance year).

¹⁹¹ In support of the May 2024 Final Rule, DOE estimated that the total domestic direct employment for gas-fired storage, oil-fired storage, and electric storage water heaters would be 4,110 in 2030 in the no-new-standards case, representing 3,669 production workers and 441 non-production workers. 89 FR 37778, 37900–37901. See the May 2024 Final Rule GRIM available for download at: www.regulations.gov/document/EERE-2017-BT-STD-0019-1422. $(3,669 + 190 = 3,859$ domestic production workers in 2030, absent standards).

¹⁸⁹ In 2023, DOE estimates that approximately 0.41 million out of the 1.22 million gas-fired instantaneous water heater unit shipments are non-condensing. In response to the July 2023 NOPR, Rinnai commented that its domestic market share of non-condensing gas-fired instantaneous water heaters is 60 percent: $(60\% \times 0.41 \text{ million}) \div 1.22 \text{ million} = 20\%$.

condensing gas-fired instantaneous water heater is approximately 62 percent more than the labor content required to produce a non-condensing gas-fired instantaneous water heater. See chapter 12 of the final rule TSD for the estimated labor content by efficiency level. Therefore, DOE models an upper-bound increase in domestic direct employment of 62 percent (an increase of approximately 117 production workers, for a total of 307 domestic production workers) at TSL 1 through TSL 4 in 2030.

Additional details on the analysis of direct employment, as well as the estimated labor content for each efficiency level, can be found in chapter 12 of the final rule TSD. Additionally, the employment impacts discussed in this section are independent of the employment impacts from the broader U.S. economy, which are documented in chapter 16 of the final rule TSD.

c. Impacts on Manufacturing Capacity

Nearly all gas-fired instantaneous water heater OEMs currently offer condensing gas-fired instantaneous water heater models. Of the 12 manufacturers identified, 11 manufacturers already offer a range of condensing gas-fired instantaneous water heater models that meet TSL 1. DOE estimates that condensing gas-fired instantaneous water heaters account for 67 percent of current shipments. For a condensing-level standard, most manufacturers would have to repurpose and retool assembly lines to produce only condensing models since the manufacturing processes (e.g., production of secondary heat exchangers) differ between condensing and non-condensing gas-fired instantaneous water heater models. Manufacturer feedback indicates that most manufacturers could meet TSL 1 and TSL 2 without adding new production lines. However, at TSL 3 and

TSL 4, DOE expects most manufacturers would have to add production lines due to increased complexity and incorporation of a larger, more efficient heat exchanger design. Additionally, while most shipments already meet TSL 2, fewer shipments meet TSL 3 or TSL 4. Currently, 60 percent of shipments meet TSL 2 whereas 15 percent and 8 percent of shipments meet TSL 3 and TSL 4, respectively. However, at TSL 2 (the adopted level), DOE expects that manufacturers would be able to add capacity and adjust product designs in the five-year period between the announcement year of the amended standard and the compliance year of the amended standard.

d. Impacts on Subgroups of Manufacturers

As discussed in section IV.J 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 U.S. 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 North American Industry Classification System (“NAICS”) code 335220, “Major Household Appliance Manufacturing,”

a gas-fired instantaneous 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 did not identify any manufacturers that qualify as a domestic small business.

The small business subgroup analysis is discussed in more detail in chapter 12 of the final rule TSD. DOE examines the potential impacts of this final rule on small business manufacturers in section VI.B of this document.

e. Cumulative Regulatory Burden

One aspect of assessing manufacturer burden involves looking at the cumulative impact of multiple DOE standards and the regulatory actions of other Federal agencies and States 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. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

For the cumulative regulatory burden analysis, DOE examined Federal, product-specific regulations that could affect gas-fired instantaneous water heater manufacturers and that take effect approximately 3 years before or after the estimated compliance date (2027 to 2033). This information is presented in table V.8.

TABLE V.8—COMPLIANCE DATES AND EXPECTED CONVERSION EXPENSES OF FEDERAL ENERGY CONSERVATION STANDARDS AFFECTING GAS-FIRED INSTANTANEOUS WATER HEATER ORIGINAL EQUIPMENT MANUFACTURERS

Federal Energy Conservation Standard	Number of OEMs *	Number of OEMs affected by today’s rule **	Approx. standards compliance year	Industry conversion costs (\$ millions)	Industry conversion costs/ equipment revenue ***
Consumer Pool Heaters 88 FR 34624 (May 30, 2023)	20	3	2028	48.4 (2021\$)	1.5
Consumer Boilers† 88 FR 55128 (August 14, 2023)	24	8	2030	98.0 (2022\$)	3.6
Commercial Refrigerators, Refrigerator-Freezers, and Freezers† 88 FR 70196 (October 10, 2023)	83	1	2028	226.4 (2022\$)	1.6
Dehumidifiers† 88 FR 76510 (November 6, 2023)	20	1	2028	6.9 (2022\$)	0.4
Consumer Furnaces 88 FR 87502 (December 18, 2023)	14	3	2029	162.0 (2022\$)	1.8

TABLE V.8—COMPLIANCE DATES AND EXPECTED CONVERSION EXPENSES OF FEDERAL ENERGY CONSERVATION STANDARDS AFFECTING GAS-FIRED INSTANTANEOUS WATER HEATER ORIGINAL EQUIPMENT MANUFACTURERS—Continued

Federal Energy Conservation Standard	Number of OEMs *	Number of OEMs affected by today's rule **	Approx. standards compliance year	Industry conversion costs (\$ millions)	Industry conversion costs/equipment revenue ***
Refrigerators, Refrigerator-Freezers, and Freezers 89 FR 3026 (January 17, 2024)	63	2	‡ 2029 and 2030	830.3 (2022\$)	1.3
Consumer Conventional Cooking Products 89 FR 11434 (February 14, 2024)	35	1	2028	66.7 (2022\$)	0.3
Consumer Clothes Dryers 89 FR 18164 (March 12, 2024)	19	2	2028	180.7 (2022\$)	1.4
Residential Clothes Washers 89 FR 19026 (March 15, 2024)	22	2	2028	320.0 (2022\$)	1.8
Dishwashers 89 FR 31398 (April 24, 2024)	21	2	2027	126.9 (2022\$)	2.1
Consumer Water Heaters 89 FR 37778 (May 6, 2024)	16	4	2029	239.8 (2022\$)	1.9
Miscellaneous Refrigeration Products 89 FR 38762 (May 7, 2024)	49	1	2029	130.7 (2022\$)	2.9
Air-Cooled Unitary Air Conditioners and Heat Pumps 89 FR 44052 (May 20, 2024)	9	1	2029	288.0 (2022\$)	2.1
Walk-in Coolers and Freezers ††	87	1	2028	91.5 (2023\$)	0.6

* This column presents the total number of OEMs identified in the energy conservation standard rule that is contributing to cumulative regulatory burden.

** This column presents the number of OEMs producing gas-fired instantaneous water heaters that are also listed as OEMs in the identified energy conservation standard that is 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 timeframe over which conversion costs are made and lasts from the publication year of the final rule to the compliance year of the energy conservation standard. The conversion period typically ranges from 3 to 5 years, depending on the rulemaking.

† These rulemakings are at the NOPR stage, and all values are subject to change until finalized through publication of a final rule.

‡ For the refrigerators, refrigerator-freezers, and freezers energy conservation standards direct final rule, the compliance year (2029 or 2030) varies by product class.

†† At the time of issuance of the final rule, the WICFs final rule has been issued and is pending publication in the FEDERAL REGISTER. Once published, the final rule pertaining to WICFs will be available at: www.regulations.gov/docket/EERE-2017-BT-STD-0009.

3. National Impact Analysis

This section presents DOE's estimates of the NES and the NPV of consumer benefits that would result from each of the TSLs considered as potential amended standards.

a. National Energy Savings

To estimate the energy savings attributable to potential amended

standards for consumer gas-fired instantaneous 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 during the 30-year period that begins in the year of anticipated compliance with amended

standards (2030–2059). Table V.9 presents DOE's projections of the NES for each TSL considered for consumer gas-fired instantaneous water heaters. The savings were calculated using the approach described in section IV.H.2 of this document.

TABLE V.9—CUMULATIVE NATIONAL ENERGY SAVINGS FOR CONSUMER GAS-FIRED INSTANTANEOUS WATER HEATERS; 30 YEARS OF SHIPMENTS [2030–2059]

	Trial standard level			
	1	2	3	4
	<i>quads</i>			
Primary Energy				
Gas-fired Instantaneous Water Heaters	0.32	0.52	0.76	0.97
FFC Energy				
Gas-fired Instantaneous Water Heaters	0.35	0.58	0.85	1.07

OMB Circular A–4¹⁹² 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.¹⁹³ The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to consumer gas-fired instantaneous 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.10. The impacts are counted over the lifetime of consumer gas-fired instantaneous water heaters purchased during the period 2030–2038.

TABLE V.10—CUMULATIVE NATIONAL ENERGY SAVINGS FOR CONSUMER GAS-FIRED INSTANTANEOUS WATER HEATERS; 9 YEARS OF SHIPMENTS
[2030–2038]

	Trial standard level			
	1	2	3	4
	<i>quads</i>			
Primary Energy				
Gas-fired Instantaneous Water Heaters	0.10	0.16	0.21	0.27
FFC Energy				
Gas-fired Instantaneous Water Heaters	0.11	0.17	0.24	0.30

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 gas-fired instantaneous water heaters. In accordance with OMB Circular A–4, DOE calculated NPV using both a 7-

percent and a 3-percent real discount rate. Table V.11 shows the consumer NPV results with impacts counted over the lifetime of products purchased during the period 2030–2059.

TABLE V.11—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR CONSUMER GAS-FIRED INSTANTANEOUS WATER HEATERS; 30 YEARS OF SHIPMENTS
[2030–2059]

Discount rate	Trial standard level			
	1	2	3	4
	billion 2023\$			
3 percent discount rate				
Gas-fired Instantaneous Water Heaters	1.26	3.06	4.89	4.50
7 percent discount rate				
Gas-fired Instantaneous Water Heaters	0.24	0.87	1.45	0.98

The NPV results based on the aforementioned 9-year analytical period are presented in table V.12. The impacts are counted over the lifetime of

products purchased during the period 2030–2038. 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.

¹⁹² U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis*. Available at: www.whitehouse.gov/omb/information-for-agencies/circulars (last accessed August 29, 2024). DOE used the prior version of Circular A–4 (September 17, 2003) in accordance with the effective date of the November 9, 2023 version. Available at: [www.whitehouse.gov/wp-content/](http://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf)

[uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf](http://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf) (last accessed August 29, 2024).

¹⁹³ 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. (42 U.S.C. 6295(m)) While

adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6-year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some products, the compliance period is 5 years rather than 3 years.

TABLE V.12—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR CONSUMER GAS-FIRED INSTANTANEOUS WATER HEATERS; 9 YEARS OF SHIPMENTS
[2030–2038]

Discount rate	Trial standard level			
	1	2	3	4
	billion 2023\$			
3 percent discount rate				
Gas-fired Instantaneous Water Heaters	0.44	1.09	1.66	1.50
7 percent discount rate				
Gas-fired Instantaneous Water Heaters	0.10	0.41	0.66	0.43

The previous results reflect the use of a default trend to estimate the change in price for consumer gas-fired instantaneous 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 lower rate of price decline than the reference case and one scenario with a higher rate of price decline than the reference case. The results of these alternative cases are presented in appendix 10C of the final rule TSD. In the high-price-decline case, the NPV of consumer benefits is higher than in the default case. In the low-price-decline case, the NPV of consumer benefits is lower than in the default case.

c. Indirect Impacts on Employment

DOE estimates that amended energy conservation standards for consumer gas-fired instantaneous water heaters will 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 (2030–2034), where these uncertainties are reduced.

The results suggest that the adopted standards are 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 final rule TSD presents detailed results regarding anticipated indirect employment impacts.

4. Impact on Utility or Performance of Products

As discussed in section III.F.1.d of this document, DOE has concluded that the standards adopted in this final rule will not lessen the utility or performance of the gas-fired instantaneous water heaters under consideration in this rulemaking. Manufacturers of these products currently offer units that meet or exceed the adopted standards.

5. Impact of Any Lessening of Competition

DOE considered any lessening of competition that would be likely to result from new or amended standards. As discussed in section III.F.1.e of this document, EPCA directs the Attorney General of the United States (“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 in writing 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. To assist the Attorney General in making this determination, DOE provided the Department of Justice (“DOJ”) with copies of the NOPR and the TSD for

review. In its assessment letter responding to DOE, DOJ concluded that the proposed energy conservation standards for gas-fired instantaneous water heaters are unlikely to substantially lessen competition. DOE is publishing the Attorney General’s assessment at the end of this final rule.

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. Chapter 15 in the final rule TSD presents the estimated impacts on electricity-generating capacity, relative to the no-new-standards case, for the TSLs that DOE considered in this rulemaking.

Energy conservation resulting from potential energy conservation standards for gas-fired instantaneous water heaters is expected to yield environmental benefits in the form of reduced emissions of certain air pollutants and GHG. Table V.13 provides DOE’s estimate of cumulative emissions reductions expected to result from the TSLs considered in this rulemaking. In the case of mercury, negative values (denoted in parenthesis) indicate a slight increase in emissions due to slightly higher electricity use at those TSLs. The emissions were calculated using the multipliers discussed in section IV.K of this document. DOE reports annual emissions reductions for each TSL in chapter 13 of the final rule TSD.

TABLE V.13—CUMULATIVE EMISSIONS REDUCTION FOR GAS-FIRED INSTANTANEOUS WATER HEATERS SHIPPED DURING THE PERIOD 2030–2059

	Trial standard level			
	1	2	3	4
Electric Power Sector and Site Emissions				
CO ₂ (million metric tons)	17	28	40	47
CH ₄ (thousand tons)	0.3	0.6	0.8	1.1
N ₂ O (thousand tons)	0.03	0.06	0.08	0.11
SO ₂ (thousand tons)	0.04	0.10	0.17	0.75
NO _x (thousand tons)	15	25	35	41
Hg (tons)	(0.0004)	(0.0004)	(0.0003)	0.0035
Upstream Emissions				
CO ₂ (million metric tons)	2	4	6	7
CH ₄ (thousand tons)	244	397	575	669
N ₂ O (thousand tons)	0.00	0.01	0.01	0.01
SO ₂ (thousand tons)	0.01	0.02	0.03	0.04
NO _x (thousand tons)	38	62	89	104
Hg (tons)	(0.0000)	(0.0000)	(0.0000)	0.0000
Total FFC Emissions				
CO ₂ (million metric tons)	19	32	46	54
CH ₄ (thousand tons)	244	398	576	671
N ₂ O (thousand tons)	0.04	0.06	0.09	0.12
SO ₂ (thousand tons)	0.05	0.12	0.20	0.79
NO _x (thousand tons)	53	86	125	145
Hg (tons)	(0.0004)	(0.0004)	(0.0003)	0.0035

Note: Totals may not equal sums due to rounding. Negative values refer to an increase in emissions.

As part of the analysis for this rule, DOE estimated monetary benefits likely to result from the reduced emissions of CO₂ that DOE estimated for each of the considered TSLs for gas-fired

instantaneous water heaters. Section IV.L of this document discusses the estimated SC–CO₂ values that DOE used. Table V.14 and table V.15 present the value of CO₂ emissions reduction at

each TSL for each of the SC–CO₂ cases. The time-series of annual values is presented for the selected TSL in chapter 14 of the final rule TSD.

TABLE V.14—PRESENT VALUE OF CO₂ EMISSIONS REDUCTION FOR GAS-FIRED INSTANTANEOUS WATER HEATERS SHIPPED DURING THE PERIOD 2030–2059
[2023 estimates of SC–GHG]

TSL	Near-term Ramsey discount rate		
	2.5%	2.0%	1.5%
	(billion 2023\$)		
1	2.2	3.8	6.8
2	3.5	6.1	11.0
3	5.1	8.8	15.9
4	6.0	10.3	18.7

TABLE V.15—PRESENT VALUE OF CO₂ EMISSIONS REDUCTION FOR GAS-FIRED INSTANTANEOUS WATER HEATERS SHIPPED DURING THE PERIOD 2030–2059
[2021 interim SC–GHG estimates]

TSL	SC–CO ₂ Case			
	Discount rate and statistics			
	5% Average	3% Average	2.5% Average	3% 95th percentile
	(billion 2023\$)			
1	0.2	0.7	1.1	2.2
2	0.3	1.2	1.8	3.5
3	0.4	1.7	2.6	5.1

TABLE V.15—PRESENT VALUE OF CO₂ EMISSIONS REDUCTION FOR GAS-FIRED INSTANTANEOUS WATER HEATERS SHIPPED DURING THE PERIOD 2030–2059—Continued

[2021 interim SC–GHG estimates]

TSL	SC–CO ₂ Case			
	Discount rate and statistics			
	5% Average	3% Average	2.5% Average	3% 95th percentile
	<i>(billion 2023\$)</i>			
4	0.4	2.0	3.1	5.9

As discussed in section IV.L.2, DOE estimated the climate benefits likely to result from the reduced emissions of methane and N₂O that DOE estimated for each of the considered TSLs for gas-

fired instantaneous water heaters. Table V.16 and table V.17 present the value of the CH₄ emissions reduction at each TSL, and table V.18 and table V.19 present the value of the N₂O emissions

reduction at each TSL. The time-series of annual values is presented for the selected TSL in chapter 14 of the final rule TSD.

TABLE V.16—PRESENT VALUE OF METHANE EMISSIONS REDUCTION FOR GAS-FIRED INSTANTANEOUS WATER HEATERS SHIPPED DURING THE PERIOD 2030–2059

[2023 estimates of SC–GHG]

TSL	Near-term Ramsey discount rate		
	2.5%	2.0%	1.5%
	<i>(billion 2023\$)</i>		
1	0.4	0.6	0.9
2	0.7	1.0	1.4
3	1.0	1.4	2.0
4	1.2	1.6	2.4

TABLE V.17—PRESENT VALUE OF METHANE EMISSIONS REDUCTION FOR GAS-FIRED INSTANTANEOUS WATER HEATERS SHIPPED DURING THE PERIOD 2030–2059

[2021 Interim SC–GHG estimates]

TSL	SC–CH ₄ Case			
	Discount rate and statistics			
	5% Average	3% Average	2.5% Average	3% 95th percentile
	<i>(billion 2023\$)</i>			
1	0.1	0.3	0.4	0.8
2	0.2	0.5	0.7	1.3
3	0.2	0.7	1.0	1.8
4	0.3	0.8	1.1	2.1

TABLE V.18—PRESENT VALUE OF NITROUS OXIDE EMISSIONS REDUCTION FOR GAS-FIRED INSTANTANEOUS WATER HEATERS SHIPPED DURING THE PERIOD 2030–2059

[2023 estimates of SC–GHG]

TSL	Near-term Ramsey discount rate		
	2.5%	2.0%	1.5%
	<i>(billion 2023\$)</i>		
1	0.001	0.002	0.003
2	0.002	0.003	0.006
3	0.003	0.005	0.008
4	0.004	0.006	0.011

TABLE V.19—PRESENT VALUE OF NITROUS OXIDE EMISSIONS REDUCTION FOR GAS-FIRED INSTANTANEOUS WATER HEATERS SHIPPED DURING THE PERIOD 2030–2059

[2021 Interim SC-GHG estimates]

TSL	SC-N ₂ O Case			
	Discount rate and statistics			
	5% Average	3% Average	2.5% Average	3% 95th percentile
	(billion 2023\$)			
1	0.0001	0.0005	0.0008	0.0014
2	0.0002	0.0008	0.0013	0.0022
3	0.0003	0.0012	0.0019	0.0032
4	0.0004	0.0016	0.0025	0.0043

DOE is well aware that scientific and economic knowledge about the contribution of CO₂ 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 CO₂ 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, however, that the adopted standards would be economically justified even without inclusion of monetized benefits of reduced GHG emissions.

DOE also estimated the monetary value of the economic benefits associated with NO_x and SO₂ emissions reductions anticipated to result from the considered TSLs for gas-fired instantaneous water heaters. The dollar-per-ton values that DOE used are

discussed in section IV.L of this document. Table V.20 presents the present value for NO_x emissions reduction for each TSL calculated using 7-percent and 3-percent discount rates, and table V.21 presents similar results for SO₂ 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 selected TSL in chapter 14 of the final rule TSD.

TABLE V.20—PRESENT VALUE OF NO_x EMISSIONS REDUCTION FOR GAS-FIRED INSTANTANEOUS WATER HEATERS SHIPPED DURING THE PERIOD 2030–2059

TSL	7% Discount rate	3% Discount rate
	(million 2023\$)	
1	554	1,650
2	892	2,675
3	1,260	3,830
4	1,468	4,481

TABLE V.21—PRESENT VALUE OF SO₂ EMISSIONS REDUCTION FOR GAS-FIRED INSTANTANEOUS WATER HEATERS SHIPPED DURING THE PERIOD 2030–2059

EL	7% Discount rate	3% Discount rate
	(million 2023\$)	
1	0.04	0.22
2	0.9	2.9
3	1.9	5.9
4	12.9	39.1

Not all the public health and environmental benefits from the reduction of GHG, NO_x, and SO₂ are captured in the values above, and additional unquantified benefits from the reductions of those pollutants as well as from the reduction of direct PM and other co-pollutants may be significant. DOE has not included monetary impact of the change in Hg

emissions because the change is very small.

7. Other Factors

The Secretary, 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.22 and table V.23 present the NPV values that result from adding the estimates of the economic benefits resulting from reduced GHG and NO_x and SO₂ 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 products and are measured for the lifetime of products shipped during the period

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 gas-fired instantaneous water heaters shipped during the period 2030–2059.

TABLE V.22—CONSUMER NPV COMBINED WITH PRESENT VALUE OF CLIMATE BENEFITS AND HEALTH BENEFITS
[2023 SC–GHG estimates]

Category of climate benefits	TSL 1	TSL 2	TSL 3	TSL 4
Using 3% Discount Rate for Consumer NPV and Health Benefits (billion 2023\$)				
2.5% Near-term Ramsey DR	5.5	10.0	14.8	16.2
2.0% Near-term Ramsey DR	7.3	12.8	18.9	21.0
1.5% Near-term Ramsey DR	10.6	18.2	26.7	30.1
Using 7% Discount Rate for Consumer NPV and Health Benefits (billion 2023\$)				
2.5% Near-term Ramsey DR	3.4	6.0	8.8	9.6
2.0% Near-term Ramsey DR	5.1	8.9	12.9	14.4
1.5% Near-term Ramsey DR	8.4	14.2	20.7	23.5

TABLE V.23—CONSUMER NPV COMBINED WITH PRESENT VALUE OF CLIMATE BENEFITS AND HEALTH BENEFITS
[2021 Interim SC–GHG estimates]

Category of climate benefits	TSL 1	TSL 2	TSL 3	TSL 4
Using 3% Discount Rate for Consumer NPV and Health Benefits (billion 2023\$)				
5% Average SC–GHG case	3.2	6.2	9.3	9.7
3% Average SC–GHG case	3.9	7.4	11.1	11.8
2.5% Average SC–GHG case	4.5	8.3	12.3	13.3
3% 95th percentile SC–GHG case	5.9	10.6	15.6	17.1
Using 7% Discount Rate for Consumer NPV and Health Benefits (billion 2023\$)				
5% Average SC–GHG case	1.1	2.2	3.3	3.2
3% Average SC–GHG case	1.8	3.4	5.1	5.2
2.5% Average SC–GHG case	2.4	4.3	6.3	6.7
3% 95th percentile SC–GHG case	3.8	6.6	9.6	10.5

C. Conclusion

When considering new or amended energy conservation standards, the standards that DOE adopts for any type (or class) of covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)).

For this final rule, DOE considered the impacts of amended standards for gas-fired instantaneous 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 forgo the purchase of a product in the standards case, this decreases sales for product manufacturers, and the impact on manufacturers attributed to lost revenue is included in the MIA. 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 final rule 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.¹⁹⁴

While DOE is not prepared at present to provide a fuller quantifiable framework for estimating the benefits and costs of changes in consumer purchase decisions due to an energy conservation standard, DOE is

committed to developing a framework that can support empirical quantitative tools for improved assessment of the consumer welfare impacts of appliance standards. DOE has posted a paper that discusses the issue of consumer welfare impacts of appliance energy conservation standards, and potential enhancements to the methodology by which these impacts are defined and estimated in the regulatory process.¹⁹⁵ 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. General considerations for consumer welfare and preferences as well as the special cases of complementary goods are areas DOE plans to explore in a forthcoming RFI related to the agency's updates to its overall analytic framework.

1. Benefits and Burdens of TSLs Considered for Gas-fired Instantaneous Water Heater Standards

Table V.24 and table V.25 summarize the quantitative impacts estimated for

each TSL for gas-fired instantaneous water heaters with effective storage volumes less than 2 gallons and with rated inputs greater than or equal to 50,000 Btu/h. The national impacts are measured over the lifetime of gas-fired instantaneous water heaters purchased during 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. DOE is presenting monetized benefits of GHG emissions reductions in accordance with the applicable Executive Orders, and DOE would reach the same conclusion presented in this final rule in the absence of the estimated benefits from reductions in GHG emissions, including the estimates published by EPA in December 2023 or the Interim Estimates presented by the Interagency Working Group in 2021. The efficiency levels contained in each TSL are described in section V.A of this document.

TABLE V.24—SUMMARY OF ANALYTICAL RESULTS FOR GAS-FIRED INSTANTANEOUS WATER HEATERS TSLs: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4
Cumulative FFC National Energy Savings				
Quads	0.35	0.58	0.85	1.07
Cumulative FFC Emissions Reductions				
CO ₂ (million metric tons)	19	32	46	54
CH ₄ (thousand tons)	244	398	576	671
N ₂ O (thousand tons)	0.04	0.06	0.09	0.12
SO ₂ (thousand tons)	0.05	0.12	0.20	0.79
NO _x (thousand tons)	53	86	125	145
Hg (tons)	(0.0004)	(0.0004)	(0.0003)	0.0035
Present Value of Benefits and Costs (3% discount rate, billion 2023\$)				
Consumer Operating Cost Savings	2.6	4.5	6.7	8.6
Climate Benefits * (2023 SC–GHG estimates)	4.4	7.1	10.2	12.0
Climate Benefits * (2021 interim SC–GHG estimates)	1.0	1.7	2.4	2.8
Health Benefits **	1.6	2.7	3.8	4.5
Total Benefits † (2023 SC–GHG estimates)	8.6	14.3	20.8	25.1
Total Benefits † (2021 interim SC–GHG estimates)	5.3	8.9	12.9	15.9
Consumer Incremental Product Costs ‡	1.4	1.5	1.8	4.1
Consumer Net Benefits	1.3	3.1	4.9	4.5
Total Net Benefits † (2023 SC–GHG estimates)	7.3	12.8	18.9	21.0
Total Net Benefits † (2021 interim SC–GHG estimates)	3.9	7.4	11.1	11.8
Present Value of Benefits and Costs (7% discount rate, billion 2023\$)				
Consumer Operating Cost Savings	1.0	1.7	2.4	3.1
Climate Benefits * (2023 SC–GHG estimates)	4.4	7.1	10.2	12.0
Climate Benefits * (2021 interim SC–GHG estimates)	1.0	1.7	2.4	2.8
Health Benefits **	0.6	0.9	1.3	1.5

¹⁹⁴ 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.

¹⁹⁵ Sanstad, A. H. *Notes on the Economics of Household Energy Consumption and Technology Choice*. 2010. Lawrence Berkeley National Laboratory. Available at: www1.eere.energy.gov/buildings/appliance_standards/pdfs/consumer_ee_theory.pdf (last accessed September 12, 2024).

TABLE V.24—SUMMARY OF ANALYTICAL RESULTS FOR GAS-FIRED INSTANTANEOUS WATER HEATERS TSLs: NATIONAL IMPACTS—Continued

Category	TSL 1	TSL 2	TSL 3	TSL 4
Total Benefits † (2023 SC–GHG estimates)	5.9	9.6	13.9	16.5
Total Benefits † (2021 interim SC–GHG estimates)	2.5	4.2	6.0	7.3
Consumer Incremental Product Costs ‡	0.7	0.8	1.0	2.1
Consumer Net Benefits	0.2	0.9	1.5	1.0
Total Net Benefits † (2023 SC–GHG estimates)	5.1	8.9	12.9	14.4
Total Net Benefits † (2021 interim SC–GHG estimates)	1.8	3.4	5.1	5.2

Note: This table presents the costs and benefits associated with gas-fired instantaneous water heaters shipped during the period 2030–2059. These results include benefits to consumers which accrue after 2059 from the products shipped during the period 2030–2059. Parentheses indicate negative (-) values.

* Climate benefits are calculated using different estimates of the SC–CO₂, SC–CH₄ and SC–N₂O. Climate benefits are estimated using two separate sets of estimates of the social cost for each greenhouse gas, an updated set published in 2023 by the Environmental Protection Agency (EPA) (“2023 SC–GHG”) and the interim set of estimates used in the NOPR which were published in 2021 by the Interagency Working Group on the SC–GHG (IWG) (“2021 Interim 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 2-percent near-term Ramsey discount rate are shown for the 2023 SC–GHG estimates, and the climate benefits associated with the average SC–GHG at a 3 percent discount rate are shown for the 2021 interim SC–GHG estimates.

** Health benefits are calculated using benefit-per-ton values for NO_x and SO₂. DOE is currently only monetizing (for NO_x and SO₂) 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 5 of the EPA’s *Estimating the Benefit per Ton of Reducing PM_{2.5} Precursors from 21 Sectors* TSD provides a summary of the health impact endpoints quantified in the analysis. 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 2-percent near-term Ramsey discount rate for the 2023 estimate and the average SC–GHG with 3-percent discount rate for the 2021 interim SC–GHG estimate.

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

TABLE V.25—SUMMARY OF ANALYTICAL RESULTS FOR GAS-FIRED INSTANTANEOUS WATER HEATER TSLs: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4
Manufacturer Impacts				
Industry NPV (million 2023\$) (No-new-standards case INPV = 1,193.9)	1,171.1 to 1,234.0	1,160.2 to 1,234.4	1,132.1 to 1,217.6	1,119.5 to 1,275.2
Industry NPV (% change)	(1.9) to 3.4	(2.8) to 3.4	(5.2) to 2.0	(6.2) to 6.8
Consumer Average LCC Savings (2023\$)				
Gas-fired Instantaneous Water Heater	(1)	112	90	39
Consumer Simple PBP (years)				
Gas-fired Instantaneous Water Heater	12.6	8.9	8.3	10.3
Percent of Consumers that Experience a Net Cost				
Gas-fired Instantaneous Water Heater	17.5	15.2	25.0	56.2

Parentheses indicate negative (-) values.

DOE first considered TSL 4, which represents the max-tech efficiency level analyzed for gas-fired instantaneous water heaters with current UEF-based standards. At TSL 4, the design option pathway includes the use of high-efficiency flat-plate condensing heat exchangers and fully modulating burners. TSL 4 would require extensive changes to the way manufacturers currently produce gas-fired instantaneous water heaters. At TSL 4, approximately 8 percent of shipments are expected to meet the required efficiency levels by 2030 in the no-new-standards case; therefore, a significant ramp-up in manufacturing capacity

would be needed to support the market transition.

TSL 4 would save an estimated 1.07 quads of energy, an amount DOE considers significant. Under TSL 4, the NPV of consumer benefit would be \$0.98 billion using a discount rate of 7 percent, and \$4.50 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 54 Mt of CO₂, 671 thousand tons of CH₄, 0.12 thousand tons of N₂O, 145 thousand tons of NO_x, 0.79 thousand tons of SO₂, and 0.0035 tons of Hg. The estimated monetary value of the climate benefits from reduced GHG emissions at TSL 4 is \$12.0 billion

(associated with the average SC–GHG at a 2-percent near Ramsey discount rate using the 2023 SC–GHG estimates) or \$2.8 billion (associated with the average SC–GHG at a 3-percent discount rate using the 2021 interim SC–GHG estimates). The estimated monetary value of the health benefits from reduced SO₂ and NO_x emissions at TSL 4 is \$1.5 billion using a 7-percent discount rate and \$4.5 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO₂ and NO_x emissions, and the 2-percent near-term Ramsey discount rate case or the 3-

percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 4 is \$14.4 billion (using the 2023 SC–GHG estimates) or \$5.2 billion (using the 2021 interim SC–GHG estimates). Using a 3-percent discount rate for consumer benefits and costs and health benefits from reduced NO_x and SO₂ emissions, and the 2-percent near-term Ramsey discount rate case or the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 4 is \$21.0 billion (using the 2023 SC–GHG estimates) or \$11.8 billion (using the 2021 interim SC–GHG estimates). The estimated total NPV is provided for additional information, however DOE primarily relies upon the NPV of consumer benefits when determining whether a proposed standard level is economically justified.

At TSL 4, consumers will experience an average LCC savings of \$39, which includes the cost of purchasing and installing a more expensive model with fully modulating burner technology. The fraction of consumers experiencing a net LCC cost is 56.2 percent.

At TSL 4, the projected change in INPV ranges from a decrease of \$74.5 million to an increase of \$81.2 million, which corresponds to a decrease of 6.2 percent and an increase of 6.8 percent, respectively. The range of impacts is driven primarily by the ability of manufacturers to recover their investments. DOE estimates that industry would need to invest \$60.1 million to comply with standards set at TSL 4. At this level, given the greater complexity and assembly time of max-tech models, most manufacturers would need to add production lines to meet demand, which would require large capital investments and updates to the factory floor. The investment required to add production capacity would vary by manufacturer as it depends on floor space availability in and around existing manufacturing plants. Manufacturers would also need to upgrade their facilities to accommodate the production of models with large, high-efficiency condensing heat exchangers and fully modulating burners. DOE understands that implementing larger, improved condensing heat exchanger designs would add a significant amount of complexity to the manufacturing process. Feedback from confidential interviews and public comments indicate that it would require notable investment to incorporate fully modulating burners into their gas-fired instantaneous water heater designs. Of the 12 gas-fired instantaneous water heater OEMs, five OEMs offer 19 models

that meet TSL 4 (which represents approximately 14 percent of gas-fired instantaneous water heater basic model listings).

The Secretary concludes that at TSL 4 for gas-fired instantaneous water heaters, the benefits of energy savings, positive NPV of consumer benefits, emissions reductions, and estimated monetary value of the emissions reductions would be outweighed by economic impacts to manufacturers (driven by the ramp-up in scale and offerings needed to support max-tech efficiencies), and a majority of consumers would experience a net cost (56.2 percent). At TSL 4, most manufacturers would need to add production lines to meet demand, which would require large capital expenditures. DOE projects that only 8 percent of shipments would meet TSL 4 efficiencies by 2030 in the no-new-standards case. Consequently, the Secretary has concluded that TSL 4 is not economically justified.

DOE then considered TSL 3, which represents the next highest efficiency level analyzed for gas-fired instantaneous water heaters with current UEF-based standards and represents efficiencies that can meet the current ENERGY STAR specification. At TSL 3, the design option pathway includes the use of high-efficiency flat-plate condensing heat exchangers. TSL 3 may also require changes to the way manufacturers currently produce gas-fired instantaneous water heaters since many designs on the market today use tube heat exchangers. At TSL 3, approximately 16 percent of shipments are expected to meet the required efficiency levels by 2030 in the no-new-standards case.

TSL 3 would save an estimated 0.85 quads of energy, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefit would be \$1.45 billion using a discount rate of 7 percent, and \$4.89 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 46 Mt of CO₂, 576 thousand tons of CH₄, 0.09 thousand tons of N₂O, 125 thousand tons of NO_x, 0.20 thousand tons of SO₂, and an increase of 0.0003 tons of Hg. The estimated monetary value of the climate benefits from reduced GHG emissions at TSL 3 is \$10.2 billion (associated with the average SC–GHG at a 2-percent near-term Ramsey discount rate using the 2023 SC–GHG estimates) or \$2.4 billion (associated with the average SC–GHG at a 3-percent discount rate using the 2021 interim SC–GHG estimates). The estimated monetary value of the health benefits from reduced SO₂ and NO_x

emissions at TSL 3 is \$1.3 billion using a 7-percent discount rate and \$3.8 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO₂ and NO_x emissions, and the 2-percent near-term Ramsey discount rate case or the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 3 is \$12.9 billion (using the 2023 SC–GHG estimates) or \$5.1 billion (using the 2021 interim SC–GHG estimates). Using a 3-percent discount rate for consumer benefits and costs and health benefits from reduced NO_x and SO₂ emissions, and the 2-percent near-term Ramsey discount rate case or the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 3 is \$18.9 billion (using the 2023 SC–GHG estimates) or \$11.1 billion (using the 2021 interim SC–GHG estimates). 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, consumers will experience an average LCC savings of \$90, which includes the cost of purchasing and installing a more expensive condensing model. The fraction of consumers experiencing a net LCC cost is 25.0 percent.

At TSL 3, the projected change in INPV ranges from a decrease of \$61.8 million to an increase of \$23.7 million, which corresponds to a decrease of 5.2 percent and an increase of 2.0 percent, respectively. As with TSL 4, the range of impacts is driven primarily by the ability of manufacturers to recover their investments. DOE estimates that industry must invest \$60.1 million to comply with standards set at TSL 3. At this level, DOE expects manufacturers would implement the same high-efficiency heat exchanger design as at max-tech and increase the condensing heat exchanger area relative to lower efficiency levels but not to the extent as required at max-tech. Given the greater complexity and assembly time of high-efficiency models, most manufacturers would need to add production lines to meet demand, which would require capital investments and potential updates to the factory floor. The investment required to add production capacity would vary by manufacturer as it depends on floor space availability in and around existing manufacturing plants. Manufacturers would also need to upgrade their facilities to accommodate the production of models

with high-efficiency condensing heat exchangers. Additionally, while TSL 3 is technologically feasible using traditional step-modulating burner designs, DOE received information from several manufacturers indicating that, at this efficiency level, some manufacturers may opt to redesign their models to take advantage of alternative burner configurations (e.g., down-firing) or even fully-modulating designs—designs which may provide a benefit of better condensate management at such a high efficiency.

The Secretary concludes that at TSL 3 for gas-fired instantaneous water heaters, the benefits of energy savings, positive NPV of consumer benefits, emissions reductions, and estimated monetary value of the emissions reductions would be outweighed by economic impacts to manufacturers (driven by the potential conversion costs for production equipment and tooling, as well as the ramp-up in production necessary for all model lines to meet this efficiency). At TSL 3, most manufacturers would need to add production lines to meet demand. Consequently, the Secretary has concluded that TSL 3 is not economically justified.

DOE then considered TSL 2, which represents the next highest efficiency level analyzed for gas-fired instantaneous water heaters with current UEF-based standards. TSL 2 also aligns with the Joint Stakeholder Recommendation efficiency level. At TSL 2, the design option pathway includes the use of condensing heat exchangers. At TSL 2, approximately 62 percent of shipments are expected to meet the required efficiency levels by 2030 in the no-new-standards case, which is a significant increase from TSL 3 and TSL 4.

TSL 2 would save an estimated 0.58 quads of energy, an amount DOE considers significant. Under TSL 2, the NPV of consumer benefit would be \$0.87 billion using a discount rate of 7 percent, and \$3.06 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 2 are 32 Mt of CO₂, 398 thousand tons of CH₄, 0.06 thousand tons of N₂O, 86 thousand tons of NO_x, 0.12 thousand tons of SO₂, and an increase of 0.0004 tons of Hg. The estimated monetary value of the climate benefits from reduced GHG emissions at TSL 2 is \$7.1 billion (associated with the average SC-GHG at a 2-percent near-term Ramsey discount rate using the 2023 SC-GHG estimates) or \$1.7 billion (associated with the average SC-GHG at a 3-percent discount rate using the 2021 interim SC-GHG estimates). The estimated

monetary value of the health benefits from reduced SO₂ and NO_x emissions at TSL 3 is \$0.9 billion using a 7-percent discount rate and \$2.7 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO₂ and NO_x emissions, and the 2-percent near-term Ramsey discount rate case or the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 2 is \$8.9 billion (using the 2023 SC-GHG estimates) or \$3.4 billion (using the 2021 interim SC-GHG estimates). Using a 3-percent discount rate for consumer benefits and costs and health benefits from reduced NO_x and SO₂ emissions, and the 2-percent near-term Ramsey discount rate case or the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 2 is \$12.8 billion (using the 2023 SC-GHG estimates) or \$7.4 billion (using the 2021 interim SC-GHG estimates). 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, consumers will experience an average LCC savings of \$112 which includes the cost of purchasing and installing a more expensive condensing model. The fraction of consumers experiencing a net LCC cost is 15.2 percent.

At TSL 2, the projected change in INPV ranges from a decrease of \$33.7 million to an increase of \$40.5 million, which corresponds to a decrease of 2.8 percent and an increase of 3.4 percent, respectively. DOE estimates that industry must invest \$20.4 million to comply with standards set at TSL 2.

At higher TSLs, the primary driver of high conversion costs is the required capital investment to meet market demand for high-efficiency condensing gas-fired instantaneous water heaters. However, at TSL 2, industry has extensive experience producing gas-fired instantaneous water heater models that meet this level, and, furthermore, this TSL was strongly supported by a coalition of industry stakeholders, including manufacturers. DOE believes that having major manufacturers and the industry trade association sign on to the Joint Stakeholder Recommendation is a testament to industry's ability to ramp up capacity to produce volumes necessary to support a transition to condensing efficiencies at TSL 2. Based on manufacturer feedback, DOE does not expect that most manufacturers

would need to add production lines at this level. All 12 gas-fired instantaneous water heater OEMs currently manufacture condensing gas-fired instantaneous water heater models. Of these 12 OEMs, 10 OEMs currently manufacture condensing gas-fired instantaneous water heater models that meet this level. Collectively, these 10 OEMs offer 71 unique basic models that meet TSL 2 (which represent approximately 51 percent of gas-fired instantaneous water heater basic model listings). Furthermore, these 10 OEMs account for the majority of gas-fired instantaneous water heater sales, representing over 95 percent of industry shipments.

After considering the analysis and weighing the benefits and burdens, the Secretary has concluded that standards set at TSL 2 for gas-fired instantaneous water heaters would be economically justified. At this TSL, the average LCC savings for consumers are expected to be positive. 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 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 \$7.1 billion in climate benefits (associated with the average SC-GHG at a 2-percent near-term Ramsey discount rate using the 2023 SC-GHG estimates) or \$1.7 billion in climate benefits (associated with the average SC-GHG at a 3-percent discount rate using the 2021 interim SC-GHG estimate), and \$0.9 billion (using a 7-percent discount rate) or \$2.7 billion (using a 3-percent discount rate) in health benefits—the rationale becomes stronger still. In addition, DOE considered that TSL 2 is representative of the Joint Stakeholder Recommendation. More specifically, DOE believes the Joint Stakeholder agreement from a cross-section group of stakeholders provides DOE with a good indication of stakeholder views on this rulemaking and some assurance that industry can transition to these levels. And, as indicated by DOE's analysis, the market will see significant benefits at this efficiency level.

Accordingly, the Secretary has concluded that TSL 2 would offer the maximum improvement in efficiency that is technologically feasible and economically justified, and would result in significant conservation of energy. Lastly, TSL 2 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 stated, DOE conducts the walk-down analysis to determine the TSL that represents the maximum improvement in energy efficiency that is technologically feasible and economically justified as required under EPCA. The walk-down is not a comparative analysis, as a comparative analysis would result in the maximization of net benefits instead of energy savings that are technologically

feasible and economically justified, which would be contrary to the statute. 86 FR 70892, 70908. Although DOE has not conducted a comparative analysis to select the amended energy conservation standards, DOE notes that at higher TSLs, larger fractions of consumers experience increased costs greater than operating savings, and manufacturer investments to meet consumer demand would be significantly higher.

Therefore, based on the above considerations, DOE adopts 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 adopts converted standards in the UEF metric based on the amended appendix E test procedure. The amended energy conservation standards for gas-fired instantaneous water heaters, which are expressed as UEF, are shown in table V.26.

TABLE V.26—AMENDED ENERGY CONSERVATION STANDARDS FOR GAS-FIRED INSTANTANEOUS WATER HEATERS

Product class	Effective storage volume (V_{eff}) * and input rating	Draw pattern	UEF *
Gas-fired Instantaneous 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	$0.2534 - (0.0018 \times V_{\text{eff}})$.
		Low	$0.5226 - (0.0022 \times V_{\text{eff}})$.
		Medium	$0.5919 - (0.0020 \times V_{\text{eff}})$.
		High	$0.6540 - (0.0017 \times V_{\text{eff}})$.

* V_{eff} is the Effective Storage Volume (in gallons), as determined pursuant to 10 CFR 429.17.

2. Annualized Benefits and Costs of the Adopted Standards

The benefits and costs of the adopted standards can also be expressed in terms of annualized values. The annualized net benefit is: (1) the annualized national economic value (expressed in 2023\$) of the benefits from operating products that meet the adopted 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.

Table V.27 shows the annualized values for gas-fired instantaneous water heaters analyzed under TSL 2, expressed in 2023\$. 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 a 2-percent near-term Ramsey discount rate case or the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated cost of the adopted standards for gas-fired instantaneous water heaters is \$88 million per year in increased equipment installed costs, while the estimated annual benefits are \$187 million from reduced equipment operating costs, \$349 million in climate benefits (using the 2023 SC-GHG estimates) or \$98 million in climate benefits (using the 2021 interim SC-GHG estimates), and \$101 million in health benefits. In this case, the net benefit amounts to \$549 million per year (using the 2023 SC-GHG estimates) or \$297 million per year (using the 2021 interim SC-GHG estimates).

Using a 3-percent discount rate for consumer benefits and costs and health

benefits from reduced NO_x and SO_2 emissions, and the 2-percent near-term Ramsey discount rate case or the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated cost of the adopted standards for gas-fired instantaneous water heaters is \$87 million per year in increased equipment costs, while the estimated annual benefits are \$268 million in reduced operating costs, \$349 million in climate benefits (using the 2023 SC-GHG estimates) or \$98 million in climate benefits (using the 2021 interim SC-GHG estimates), and \$158 million in health benefits. In this case, the net benefit amounts to \$689 million per year (using the 2023 SC-GHG estimates) or \$437 million per year (using the 2021 interim SC-GHG estimates).

TABLE V.27—ANNUALIZED BENEFITS AND COSTS OF THE ADOPTED ENERGY CONSERVATION STANDARDS FOR GAS-FIRED INSTANTANEOUS WATER HEATERS AT TSL 2 SHIPPED DURING THE PERIOD 2030–2059

[V_{eff} <2 gal, rated input >50,000 Btu/h]

	Million 2023\$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	268	249	288
Climate Benefits * (2023 SC–GHG estimates)	349	344	355
Climate Benefits * (2021 interim SC–GHG estimates)	98	96	100
Health Benefits **	158	156	161
Total Benefits † (2023 SC–GHG estimates)	776	749	804
Total Benefits † (2021 interim SC–GHG estimates)	525	502	548
Consumer Incremental Product Costs ‡	87	86	89
Net Benefits † (2023 SC–GHG estimates)	689	663	715
Net Benefits † (2021 interim SC–GHG estimates)	437	416	459
Change in Producer Cashflow (INPV) ‡‡	(3)–4	(3)–4	(3)–4
7% discount rate			
Consumer Operating Cost Savings	187	174	200
Climate Benefits * (2023 SC–GHG estimates)	349	344	355
Climate Benefits * (2021 interim SC–GHG estimates)	98	96	100
Health Benefits **	101	99	102
Total Benefits † (2023 SC–GHG estimates)	637	616	658
Total Benefits † (2021 interim SC–GHG estimates)	386	369	402
Consumer Incremental Product Costs ‡	88	87	90
Net Benefits † (2023 SC–GHG estimates)	549	530	568
Net Benefits † (2021 interim SC–GHG estimates)	297	283	312
Change in Producer Cashflow (INPV) ‡‡	(3)–4	(3)–4	(3)–4

Note: These results include consumer, climate, and health benefits that accrue after 2059 from the products shipped during the period 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.H.3 of this document. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

* Climate benefits are calculated using different estimates of the global SC–GHG (see section IV.L of this document). Climate benefits are estimated using two separate sets of estimates of the social cost for each greenhouse gas, an updated set published in 2023 by the Environmental Protection Agency (EPA) (“2023 SC–GHG”) and the interim set of estimates used in the NOPR which were published in 2021 by the Interagency Working Group on the SC–GHG (IWG) (“2021 Interim 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 2 percent near-term Ramsey discount rate are shown for the 2023 SC–GHG estimates, and the climate benefits associated with the average SC–GHG at a 3 percent discount rate are shown for the 2021 interim SC–GHG estimates.

** Health benefits are calculated using benefit-per-ton values for NO_x and SO₂. DOE is currently only monetizing (for SO₂ 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 5 of the EPA’s *Estimating the Benefit per Ton of Reducing PM_{2.5} Precursors from 21 Sectors* TSD provides a summary of the health impact endpoints quantified in the analysis. 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 2-percent near-term Ramsey discount rate for the 2023 estimate and the average SC–GHG with 3-percent discount rate for the 2021 interim SC–GHG 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 national impacts analysis 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 (i.e., MIA). See section IV.J of this document. 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 INPV. The change in INPV is the present value of all changes in industry cash flow, including changes in production costs, capital expenditures, and manufacturer profit margins. The annualized change in INPV is calculated using the industry weighted average cost of capital value of 9.6 percent that is estimated in the MIA (see chapter 12 of the final rule TSD for a complete description of the industry weighted average cost of capital). For gas-fired instantaneous water heaters, the annualized change in INPV ranges from –\$3 million to \$4 million. DOE accounts for that range of likely impacts in analyzing whether a TSL is economically justified. See section V.C of this document. DOE is presenting the range of impacts to the INPV under two manufacturer 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 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 annualized change in INPV in the above table, drawing on the MIA explained further in section IV.J of this document to provide additional context for assessing the estimated impacts of this final rule 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 INPV into the annualized net benefit calculation (2023 SC–GHG estimates) for this final rule, the annualized net benefits would range from \$686 million to \$693 million at 3-percent discount rate and would range from \$546 million to \$553 million at 7-percent discount rate. Parentheses indicate negative () values.

3. Compliance Dates

As discussed in section II.A of this document, DOE is conducting this rulemaking in satisfaction of the lookback review provisions and the UEF metric provisions in EPCA. *See* 42 U.S.C. 6295(m) and 6295(e)(5), respectively. Per EPCA, an amendment of standards prescribed under 42 U.S.C. 6295(m) is applicable to water heaters manufactured after the date that is 5 years after the publication of a final rule amending standards. (42 U.S.C. 6295(m)(4)(A)(ii)) Hence, the compliance date for amended standards pertaining to gas-fired instantaneous water heaters is 5 years from the publication of this final rule.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866, 13563, and 14094

Executive Order (“E.O.”) 12866, “Regulatory Planning and Review,” 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 has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this final regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit “significant regulatory actions” to OIRA for review. OIRA has determined that this final regulatory action constitutes a “significant regulatory action” within the scope of section 3(f)(1) of E.O. 12866, as amended by E.O. 14094. Accordingly, pursuant to section 6(a)(3)(C) of E.O. 12866, DOE has provided to OIRA an assessment, including the underlying analysis, of benefits and costs anticipated from the final regulatory action, together with, to the extent feasible, a quantification of those costs; and an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, and an explanation why the planned regulatory action is preferable to the identified potential alternatives. These assessments are summarized in this preamble and further detail can be found in the technical support document for this rulemaking.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (“IRFA”) and a final regulatory flexibility analysis (“FRFA”) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel’s website (www.energy.gov/gc/office-general-counsel).

DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE certifies that this final rule would not have a significant economic impact on a substantial number of small entities. As such, DOE has not prepared

a FRFA for the products that are the subject of this rulemaking. The factual basis of this certification is set forth in the following paragraphs.

For manufacturers of gas-fired instantaneous 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 gas-fired instantaneous 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. For manufacturers of gas-fired instantaneous 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 gas-fired instantaneous 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.

To estimate the number of companies that could be small business manufacturers of gas-fired instantaneous water heaters, DOE conducted a market survey using public information and subscription-based company reports to identify potential small business manufacturers. DOE reviewed DOE’s Compliance Certification Database,¹⁹⁶ Air-Conditioning, Heating, and Refrigeration Institute’s Directory of Certified Product Performance,¹⁹⁷

¹⁹⁶ U.S. Department of Energy’s Compliance Certification Database is available at regulations.doe.gov/certification-data (last accessed July 19, 2024).

¹⁹⁷ Air-Conditioning, Heating and Refrigeration Institute’s Directory of Certified Product Performance is available at <https://>

California Energy Commission's Modernized Appliance Efficiency Database System,¹⁹⁸ the ENERGY STAR Product Finder dataset,¹⁹⁹ and individual company websites, to create a list of companies that manufacture, produce, or import the products covered by this rulemaking. DOE then consulted publicly available data, such as manufacturer websites, manufacturer specifications and product literature, import/export logs (e.g., bills of lading from ImportYeti²⁰⁰), and basic model numbers, to identify original equipment manufacturers ("OEMs") of covered gas-fired instantaneous water heaters. DOE relied on public information and market research tools (e.g., reports from D&B Hoovers²⁰¹) to determine company structure, location, headcount, and annual revenue. DOE screened out companies that do not manufacture the equipment covered by this rulemaking, do not meet the SBA's definition of a "small business," or are foreign-owned and operated.

DOE identified 12 OEMs of gas-fired instantaneous water heaters subject to more stringent standards. Of these 12 OEMs, DOE did not identify any domestic OEMs that meet SBA's definition of a "small business." Given the lack of small, domestic OEMs with a direct compliance burden, DOE concludes that this final rule would not have "a significant impact on a substantial number of small entities."

DOE has transmitted the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

In response to the July 2023 NOPR, the Gas Association Commenters and NPGA, APGA, AGA, and Rinnai submitted comments noting that DOE identified only two small businesses, neither of which produce gas-fired water heaters. As a result, these commenters stated that DOE has no data on small businesses that produce gas-fired water heaters relative to redesign costs, product availability, or whether the proposed efficiency levels could cause small businesses to exit the market. (Gas Association Commenters

No. 1181, pp. 38–39; NPGA, APGA, AGA, and Rinnai, No. 441 at p. 5) NPGA, APGA, AGA, and Rinnai asserted that the July 2023 NOPR fails to comply with Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," and must be addressed. (NPGA, APGA, AGA, and Rinnai, No. 441 at p. 5)

For the IRFA conducted in support of the July 2023 NOPR, which proposed standards for covered consumer water heaters, DOE identified one small domestic OEM of oil-fired storage water heaters and one small domestic OEM of electric storage water heaters. For this certification, DOE refreshed its product database to include up-to-date information on gas-fired instantaneous water heaters marketed for the United States. Based on its comprehensive review of the gas-fired instantaneous water heater market, DOE maintains its finding from the IRFA that there are no small, domestic OEMs that manufacture gas-fired instantaneous water heaters. As such, DOE does not expect that the standards adopted in this final rule would directly impact small businesses that manufacture gas-fired instantaneous water heaters.

DOE did not receive written comments in response to the July 2024 NODA that specifically addressed the potential impacts on small businesses.

C. Review Under the Paperwork Reduction Act

Manufacturers of gas-fired instantaneous 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 gas-fired instantaneous 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 gas-fired instantaneous 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

Pursuant to the National Environmental Policy Act of 1969 ("NEPA"), DOE has analyzed this rule in accordance with NEPA and DOE's NEPA implementing regulations (10 CFR part 1021). DOE has determined that this rule qualifies for categorical exclusion under 10 CFR part 1021, subpart D, appendix B5.1 because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, none of the exceptions identified in B5.1(b) apply, no extraordinary circumstances exist that require further environmental analysis, and it meets the requirements for application of a categorical exclusion. See 10 CFR 1021.410. Therefore, DOE has determined that promulgation of this rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and does not require an environmental assessment or an environmental impact statement.

E. Review Under Executive Order 13132

E.O. 13132, "Federalism," 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and

[ahridirectory.org/search/searchhome?](http://ahridirectory.org/search/searchhome?Returnurl=%2f)

[Returnurl=%2f](http://ahridirectory.org/search/searchhome?Returnurl=%2f) (last accessed July 23, 2024).

¹⁹⁸ California Energy Commission's Modernized Appliance Efficiency Database System is available at cacertappliances.energy.ca.gov/Pages/Search/AdvancedSearch.aspx (last accessed July 19, 2024).

¹⁹⁹ ENERGY STAR Product Finder is available at www.energystar.gov/productfinder (last accessed July 22, 2024).

²⁰⁰ ImportYeti, LLC. ImportYeti is available at: www.importyeti.com/ (Last accessed July 30, 2024).

²⁰¹ The Dun & Bradstreet subscription login is available at app.dnbhoovers.com (last accessed July 30, 2024).

prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) 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 (February 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (“UMRA”) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that

estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE’s policy statement is also available at www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.

DOE has concluded that this final rule may require expenditures of \$100 million or more in any one year by the private sector. Such expenditures may include: (1) investment in research and development and in capital expenditures by gas-fired instantaneous water heater 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 gas-fired instantaneous 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 final rule. (2 U.S.C. 1532(c)) The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The preamble section of this document and the TSD for this final rule respond to those requirements.

Under section 205 of UMRA, DOE is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. (2 U.S.C. 1535(a)) DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law. As required by 42 U.S.C. 6295(m), this final rule establishes amended energy conservation standards for gas-fired instantaneous 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 sections 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 final 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 proposed rule or policy that may affect family well-being. When developing a Family Policymaking Assessment, agencies must assess whether: (1) the action strengthens or erodes the stability or safety of the family and, particularly, the marital commitment; (2) the action strengthens or erodes the authority and rights of parents in the education, nurture, and supervision of their children; (3) the action helps the family perform its functions, or substitutes governmental activity for the function; (4) the action increases or decreases disposable income or poverty of families and children; (5) the proposed benefits of the action justify the financial impact on the family; (6) the action may be carried out by State or local government or by the family; and whether (7) the action establishes an implicit or explicit policy concerning the relationship between the behavior and personal responsibility of youth, and the norms of society. In evaluating the above factors, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment as none of the above factors are implicated. Further, this proposed determination would not have any financial impact on families nor any impact on the autonomy or integrity of the family as an institution.

DOE has considered how the benefits of this final rule compare to the possible financial impact on a family (the only factor listed that is relevant to this proposed rule). As part of its rulemaking process, DOE must determine whether the energy conservation standards enacted in this final rule are economically justified. As discussed in section V.C.1 of this document, DOE has determined that the standards enacted in this final rule are economically justified because the benefits to consumers would far outweigh the costs to manufacturers. Families will also see LCC savings as a result of this final rule. Moreover, as discussed further in section V.B.1 of this document, DOE has determined that for low-income households, average LCC savings and

PBP at the considered efficiency levels are improved (*i.e.*, higher LCC savings and lower PBP) as compared to the average for all households. Further, the standards will also result in climate and health benefits for families.

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights,” 53 FR 8859 (March 18, 1988), DOE has determined that this rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB’s guidelines were published at 67 FR 8452 (February 22, 2002), and DOE’s guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf. DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any significant energy action. A “significant energy action” is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order, and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply,

distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has concluded that this regulatory action, which sets forth amended energy conservation standards for gas-fired instantaneous water heaters, is not a significant energy action because the 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 final rule.

L. Information Quality

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (“OSTP”), issued its Final Information Quality Bulletin for Peer Review (“the Bulletin”). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the Government’s scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are “influential scientific information,” which the Bulletin defines as “scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.” 70 FR 2664, 2667.

In response to OMB’s Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and prepared a report describing that peer review.²⁰² 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 DOE’s analyses. DOE is in the process of evaluating the resulting report.²⁰³

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that the Office of Information and Regulatory Affairs has determined that the rule meets the criteria set forth in 5 U.S.C. 804(2).

VII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, and Small businesses.

Signing Authority

This document of the Department of Energy was signed on December 16, 2024, by Jeffrey Marootian, Principal Deputy 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 December 16, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons set forth in the preamble, DOE amends part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

²⁰² The 2007 “Energy Conservation Standards Rulemaking Peer Review Report” is available at: energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0 (last accessed August 29, 2024).

²⁰³ The report is available at: www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Amend § 430.32 by revising paragraph (d)(3) and adding paragraph (d)(4) to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(d) * * *

(3) The uniform energy factor of water heaters manufactured on or after December 26, 2029 shall not be less than the following:

TABLE 15 TO PARAGRAPH (d)(3)

Product class	Effective storage volume (V_{eff}) * and input rating	Draw pattern	UEF *
Gas-fired Instantaneous Water Heater.	<2 gallons (“gal”) and ≤50,000 Btu/h.	Very Small	0.64.
		Low	0.64.
		Medium	0.64.
	<2 gal and >50,000 Btu/h	High	0.64.
		Very Small	0.89.
		Low	0.91.
	≥2 gal and ≤200,000 Btu/h	Medium	0.91.
		High	0.93.
		Very Small	$0.2534 - (0.0018 \times V_{\text{eff}})$.
		Low	$0.5226 - (0.0022 \times V_{\text{eff}})$.
		Medium	$0.5919 - (0.0020 \times V_{\text{eff}})$.
		High	$0.6540 - (0.0017 \times V_{\text{eff}})$.

* V_{eff} is the Effective Storage Volume (in gallons), as determined pursuant to § 429.17 of this chapter.

(4) The provisions of paragraph (d) of this section are separate and severable from one another. Should a court of competent jurisdiction hold any provision(s) of paragraph (d) of this section to be stayed or invalid, such action shall not affect any other provision of paragraph (d) of this section.

* * * * *

Note: The following letter will not appear in the Code of Federal Regulations.

October 12, 2023

U.S. Department of Justice: Antitrust Division, Ami Grace-Tardy, Assistant General Counsel for Legislation, Regulation and Energy Efficiency, U.S. Department of Energy, Washington, DC 20585, Re: Energy Conservation Standards for Consumer Water Heaters DOE Docket No. EERE–2017–BT–STD–0019

Dear Assistant General Counsel Grace-Tardy:

I am responding to your August 23, 2023 letter seeking the views of the Attorney General about the potential impact on competition of proposed

energy conservation standards for consumer water heaters.

Your request was submitted under section 325(o)(2)(B)(i)(V) of the Energy Policy and Conservation Act, as amended (ECPA), 42 U.S.C. 6295(o)(2)(B)(i)(V), which requires the Attorney General to determine the impact of any lessening of competition that is likely to result from the imposition of proposed energy conservation standards. The Attorney General’s responsibility for responding to requests from other departments about the effect of a program on competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 CFR 0.40(g). The Assistant Attorney General for the Antitrust Division has authorized me, as the Policy Director for the Antitrust Division, to provide the Antitrust Division’s views regarding the potential impact on competition of proposed energy conservation standards on his behalf.

In conducting its analysis, the Antitrust Division examines whether a proposed standard may lessen competition, for example, by

substantially limiting consumer choice, by placing certain manufacturers at an unjustified competitive disadvantage, or by inducing avoidable inefficiencies in production or distribution of particular products. A lessening of competition could result in higher prices to manufacturers and consumers.

We have reviewed the proposed standards contained in the notice of proposed rulemaking (“NOPR”) (88 FR 49058, July 28, 2023) and the related Technical Support Document. We have also reviewed public comments and information provided by industry participants and have reviewed the transcript and information presented at the Webinar of the Public Meeting held on September 13, 2023. Based on this review, we do not have an evidentiary basis to conclude that the proposed energy conservation standards for consumer water heaters are likely to substantially lessen competition.

Sincerely,

David G.B. Lawrence,

Policy Director.

[FR Doc. 2024–30369 Filed 12–23–24; 8:45 am]

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Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 201 and 314

Nonprescription Drug Product With an Additional Condition for
Nonprescription Use; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****21 CFR Parts 201 and 314****[Docket No. FDA-2021-N-0862]****RIN 0910-AH62****Nonprescription Drug Product With an Additional Condition for Nonprescription Use****AGENCY:** Food and Drug Administration, Department of Health and Human Services (HHS).**ACTION:** Final rule.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is issuing a final rule to establish requirements for a nonprescription drug product with an additional condition for nonprescription use (ACNU). A nonprescription drug product with an ACNU is a drug product that could be marketed without a prescription if an applicant implements an additional condition to ensure appropriate self-selection or appropriate actual use, or both, by consumers without the supervision of a practitioner licensed by law to administer such drug. The final rule is intended to increase options for applicants to develop and market safe and effective nonprescription drug products and increase consumer access to appropriate, safe, and effective drug products, which could improve public health.

DATES: This rule is effective January 27, 2025.

ADDRESSES: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and insert the docket number found in brackets in the heading of this final rule into the “Search” box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT:

With regard to the final rule: Myla Dellupac, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Silver Spring, MD 20993-0002, 301-837-7461.

With regard to the information collection: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A-12M, 11601 Landsdown St., North Bethesda, MD 20852, 301-796-8867, PRAStaff@fda.hhs.gov.

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I. Executive Summary**A. Purpose of the Final Rule**

FDA is finalizing this rule to establish requirements for a nonprescription drug product with an ACNU. A nonprescription drug product with an ACNU is a drug product that could be legally marketed without a prescription

if an applicant implements an additional condition to ensure appropriate self-selection or appropriate actual use, or both, by consumers without the supervision of a practitioner licensed by law to administer such drug. Without this rule, nonprescription drug products are limited to drug products that can be labeled with sufficient information for consumers to appropriately self-select and use the drug product without the supervision of a practitioner licensed by law to administer such drug. For certain drug products, labeling alone cannot adequately communicate the information needed for consumers to appropriately self-select or use the drug product without the supervision of a practitioner licensed by law to administer such drug. The final rule is intended to increase options for applicants¹ to develop and market safe and effective nonprescription drug products and increase consumer access to appropriate, safe, and effective drug products, which could improve public health.

B. Summary of the Major Provisions of the Final Rule

This final rule establishes requirements for a nonprescription drug product with an ACNU, including application, labeling, and postmarketing reporting requirements. In addition to applicable existing application requirements, the final rule establishes the specific requirements for a new drug application (NDA) or abbreviated new drug application (ANDA) for a nonprescription drug product with an ACNU. In circumstances where a prescription drug product is already approved, the rule requires an applicant to submit a separate application for the approval of a nonprescription drug product with an ACNU, rather than a supplement to the existing application for the approved prescription drug product. The final rule establishes specific labeling requirements, including the content and format of specific labeling statements. Additionally, the rule requires that an applicant submit a postmarketing report of an ACNU failure.

The final rule clarifies that an ACNU constitutes a meaningful difference²

¹ While we recognize that in certain circumstances “sponsor” is the correct term for the person who would be developing a nonprescription drug product with an ACNU, we used the term “applicant” throughout the final rule for consistency (see the definition for applicant in 21 CFR 314.3(b) and for sponsor in 21 CFR 312.3(b)).

² FDA has used the terms “meaningful difference” and “clinically meaningful difference” interchangeably. Both refer to the same scientific

between a prescription drug product and a nonprescription drug product that makes the nonprescription drug product safe and effective for use without the supervision of a practitioner licensed by law to administer such drug; therefore, a prescription drug product and a nonprescription drug product with an ACNU with the same active ingredient may be simultaneously marketed even if they do not have meaningful differences other than the ACNU, such as different indications or strengths.

The final rule specifies that FDA will refuse to approve an application for a nonprescription drug product with an ACNU if the application fails to meet applicable requirements.

The final rule exempts a nonprescription drug product with an ACNU from the requirement to be labeled with adequate directions for use, provided that certain labeling conditions are met and the ACNU is implemented by the applicant as approved by FDA.

Finally, the final rule explains certain circumstances in which a nonprescription drug product with an ACNU would be misbranded.

FDA received many comments supporting the proposed rule's intent to increase options for applicants to develop and market safe and effective nonprescription drug products and increase consumer access to appropriate, safe, and effective drug products. Additionally, we received comments expressing concerns about certain proposed requirements and the burden of those requirements for applicants. In response to several comments expressing concerns about the proposed postmarketing reporting requirements for nonprescription drug products with an ACNU, we are revising the proposed requirements to provide greater clarity for when a postmarketing report of ACNU failure must be submitted to FDA and to reduce the burden on applicants by decreasing any potential unnecessary reporting and ensuring consistency with existing postmarketing reporting requirements. In response to several comments about the proposed labeling statements on the principal display panel (PDP) and Drug Facts labeling (DFL), we are revising the proposed labeling requirements to allow FDA to approve an applicant's proposed labeling statements that vary somewhat from the labeling statements in the codified text, under certain circumstances. Additionally, we are revising the proposed labeling requirements to allow flexibility for the

placement of the labeling statement on the DFL depending on the purpose of the ACNU.

C. Legal Authority

This final rule, which establishes requirements for a nonprescription drug product with an ACNU, is authorized by sections 201(n), 502, 503(b), 505, and 701(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 321(n), 352, 353(b), 355, and 371(a)).

D. Benefits, Costs, and Transfers

The final rule establishes requirements for a nonprescription drug product with an ACNU. Compared to traditional nonprescription drug products, which consumers must be able to self-select and use based on their labeling, this approved ACNU, in addition to the labeling, will ensure the appropriate self-selection, the appropriate use, or both of a nonprescription drug product without the supervision of a practitioner licensed by law to administer such drug. We expect this rule will expand consumer access to certain drug products in a nonprescription setting and increase options for applicants to develop and market safe and effective nonprescription drug products.

We estimate a reduction in access costs to consumers who could transfer from a prescription to a nonprescription drug product with an ACNU. In our analysis, access costs include the time to see a doctor to obtain a prescription, including waiting time and other transportation costs. We also include co-pay and out-of-pocket costs in our estimate of access costs. We compare the baseline access costs to the access costs under potential scenarios with the final rule to estimate the potential benefits for each consumer purchase. In this analysis, we use the costs to obtain candidate prescription-only products as our baseline access cost. Our primary estimate of reduction in access costs is \$33.62 per consumer per purchase with a range of \$0 to \$67.23. We also quantify the value of the potential reduction in the number of meetings with applicants that will occur during the approval process. This estimate includes benefits to FDA and industry. Our primary estimate is \$68,773.11 per applicant with a range of \$56,332.65 to \$81,763.56. We do not monetize our estimates of benefits over a 10-year horizon because of the high uncertainty about the number of applicants, applications, potential approvals, and purchases that might occur; and consumer preferences to switch drug products. However, we present

estimates in the uncertainty section of this analysis.

Although an applicant will incur the costs to develop and submit an application for a nonprescription drug product with an ACNU, for this analysis, we assume that applicants submit applications only when they believe that the profits from the approval will exceed the costs of the application. We lack information to monetize these potential profits and costs over a 10-year horizon.

Monetized costs include a one-time cost of reading and understanding the rule per interested party in pursuing this path for their drug products. We do not monetize these estimates for more than one interested party because of the high uncertainty about the number of interested parties over this time horizon. The primary estimate equals \$1,156.74 with a range of \$533.88 to \$1,779.60.

Government-sponsored and commercial insurance payers may experience cost savings because the availability of nonprescription drug products with an ACNU may decrease insurance claims and, potentially, future medical costs. For example, access to drug products under this new paradigm will allow consumers to treat some medical conditions using nonprescription drug products with an ACNU without the supervision of a practitioner licensed by law to administer such drug. We do not estimate such cost savings due to lack of data.

II. Table of Abbreviations/Commonly Used Acronyms in This Document

Abbreviation/ acronym	What it means
ACNU	Additional Condition for Non-prescription Use
ANDA	Abbreviated New Drug Application
DFL	Drug Facts Labeling
FAERS	FDA Adverse Event Reporting System
FD&C Act	Federal Food, Drug, and Cosmetic Act
FDA	Food and Drug Administration
FTC	Federal Trade Commission
ICSR	Individual Case Safety Report
NDA	New Drug Application
NDC	National Drug Code
OMB	Office of Management and Budget
OTC	Over-the-Counter
PDP	Principal Display Panel
RLD	Reference Listed Drug

determination. See, e.g., 83 FR 13994 (April 2, 2018) and 87 FR 68702 (November 16, 2022).

III. Background

A. Need for the Regulation

Nonprescription drug products are important for the treatment of many conditions and diseases. Unlike prescription drug products, nonprescription drug products may be accessed and used safely and effectively by consumers without the supervision of a practitioner licensed by law to administer such drugs for their intended use. At present, the majority of nonprescription drug products are intended to provide temporary relief of minor symptoms or to treat self-limited conditions and diseases.

Nonprescription drug products are usually available for consumers to purchase at pharmacies, supermarkets, or other retail locations, and from online retailers.

FDA recognizes the potential benefit of providing consumers with access to additional types of nonprescription drug products, such as some drug products that are currently available only by prescription and that treat certain chronic diseases or conditions. This rule will increase options for applicants to develop and market safe and effective nonprescription drug products and increase consumer access to appropriate, safe, and effective drug products. The availability of nonprescription drug products with an ACNU may provide public health benefits by facilitating consumers' ability to care for themselves and access to appropriate medical treatment. For more information on the need for regulation, see 87 FR 38313 (June 28, 2022; 2022 proposed rule).

B. FDA's Regulatory Framework

There are two regulatory pathways to bring a nonprescription drug product to market in the United States: (1) the over-the-counter (OTC) drug review process under section 505G of the FD&C Act (21 U.S.C. 355h) and (2) the new drug application process under section 505 of the FD&C Act (21 U.S.C. 355). Under the OTC drug review process, a nonprescription drug product may be marketed without an approved NDA or ANDA under section 505 of the FD&C Act if the nonprescription drug product meets the requirements of section 505G of the FD&C Act, and other applicable requirements in the FD&C Act and implementing regulations.

FDA approves drugs as either prescription or nonprescription drug products under section 505 of the FD&C Act. A drug must be dispensed by prescription when it is not safe for use except under the supervision of a practitioner licensed by law to

administer such drug product because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use (see section 503(b)(1) of the FD&C Act). If the approved drug does not meet the criteria for prescription-only dispensing, it may be marketed as nonprescription. For more on FDA's regulatory framework for nonprescription drug products, see the 2022 proposed rule entitled "Nonprescription Drug Product With an Additional Condition for Nonprescription Use" (87 FR 38313).

C. History of the Rulemaking

In the 2022 proposed rule, FDA proposed requirements for a nonprescription drug product with an ACNU, a drug product that could be marketed without a prescription if an applicant implements an additional condition to ensure appropriate self-selection or appropriate actual use, or both, by consumers without the supervision of a healthcare practitioner. The proposed rule proposed additional application requirements, labeling requirements, and postmarketing reporting requirements for a nonprescription drug product with an ACNU. For more information on the history of rulemaking for the proposed rule, see 87 FR 38313.

D. Summary of Comments to the Proposed Rule

We received approximately 200 comments. Comments were submitted by different entities and individuals including private citizens, consumer groups, trade organizations, pharmaceutical industry, and public advocacy groups. We received comments on different topics including:

- General support for or opposition to the proposed rule;
- The applicability of the proposed rule and whether certain drug products are appropriate for development as a nonprescription drug product with an ACNU;
- The proposed definition of ACNU;
- The proposed requirements for an application for a nonprescription drug product with an ACNU, including specific application requirements such as the submission of a separate application, labeling, and postmarketing reports;
- The simultaneous marketing of prescription drug products and nonprescription drug products with an ACNU; and
- The role of the pharmacist with a nonprescription drug product with an ACNU.

E. General Overview of the Final Rule

FDA considered all comments received on the proposed rule, and in response, we have made changes for clarity and to reduce the burden on applicants in meeting certain requirements. The following is a summary of certain changes from the proposed rule:

- Revising the postmarketing reporting requirement to further clarify that a report must be submitted when there is an ACNU failure, and further explain the meaning of ACNU failure, to enhance consistency with current processes for the submission of other required postmarketing reports;
- Revising the requirements for required labeling statements on the PDP and DFL to permit applicants to propose revisions to the content of the required statements under certain circumstances;
- Revising the placement for the required labeling statement on the DFL depending on the purpose of the ACNU; and
- Clarifying certain circumstances when a nonprescription drug product with an ACNU would be misbranded by providing more detail about what it means when an ACNU is not implemented by the applicant as approved by FDA in the application.

IV. Legal Authority

We are issuing this final rule under sections 201(n), 502, 503(b), 505, and 701(a) of the FD&C Act. Section 502(f) of the FD&C Act deems a drug to be misbranded unless its labeling bears adequate directions for use and adequate warnings against use in those conditions where its use may be dangerous to health, as well as adequate warnings against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users. Section 502(f) also authorizes the issuing of regulations exempting a drug or device from the requirement to bear adequate directions for use upon a determination that such directions are not necessary for the protection of public health.

In addition, section 502(a) of the FD&C Act deems a drug to be misbranded if its labeling is false or misleading in any particular. Under section 201(n) of the FD&C Act, in determining whether labeling is misleading, there shall be taken into account (among other things), not only representations made or suggested, but also the extent to which the labeling fails to reveal facts material in the light of such representations or material with respect to consequences that may result

from the use of the drug under the conditions of use prescribed in the labeling or under usual or customary conditions of use.

In addition, under section 505 of the FD&C Act, FDA will approve an NDA only if the drug is shown to be both safe and effective for use under the conditions prescribed, recommended, or suggested in the proposed labeling for the drug. See section 505(c)(1) and (d) of the FD&C Act. If, for example, on the basis of information submitted as part of the NDA or on the basis of any other information before the Agency with respect to such drug, there is insufficient information to determine whether such drug is safe for use under such conditions, the Agency will not approve the drug. Section 505(j) of the FD&C Act describes the requirements for ANDAs. In particular, section 505(j)(2)(A) specifies the information that must be included in an ANDA, and section 505(j)(4) describes the approval standard for an ANDA.

In addition, section 503(b) of the FD&C Act contains provisions requiring that a drug product be dispensed by prescription when it is not safe for use except under the supervision of a practitioner licensed by law to administer such drug product because of toxicity or other potentiality for harmful effect, or the method of the drug product's use, or the collateral measures necessary to the drug product's use (see section 503(b)(1) of the FD&C Act). If a drug product does not require a prescription under these provisions, it can be marketed as nonprescription. Section 503(b) gives authority for the Secretary, which is delegated to FDA, to make certain decisions regarding a drug's applicable category (see, e.g., section 503(b)(1) and (b)(3); see also the FDA Staff Manual Guide 1410.10 (Delegations of Authority to the Commissioner of Food and Drugs), available at <https://www.fda.gov/about-fda/reports-manuals-forms/staff-manual-guides>).

Finally, section 701(a) of the FD&C Act authorizes FDA to issue regulations for the efficient enforcement of the FD&C Act.

V. Comments on the Proposed Rule and FDA Response

A. Introduction

We received approximately 200 comment letters on the proposed rule by the close of the comment period, each containing one or more comments on one or more issues. We received comments from entities and individuals including private citizens, consumer groups, trade organizations,

pharmaceutical industry, and public advocacy groups. The 120-day comment period was extended by an additional 30 days based on requests from members of the public.

We describe and respond to the comments in sections V.B through V.N of this document. We have numbered each comment to help distinguish between different comments. We have grouped similar comments together under the same number, and in some cases, we have separated different issues discussed in the same comment and designated them as distinct comments for purposes of our responses. The number assigned to each comment or comment topic is purely for organizational purposes and does not signify the comment's value or importance or the order in which comments were received.

B. Description of General Comments and FDA Responses

We received many general comments supporting and opposing the purpose, necessity, and appropriateness of the proposed rule. In the following paragraphs, we discuss and respond to these general comments. We did not make any changes to the final rule based on consideration of these general comments.

(Comment 1) Many comments generally support the proposed rule because it could broaden the types of nonprescription drug products available to consumers. For example, these commenters believe the proposed rule has the potential to improve consumer access, improve consumer autonomy, expand the market for companies, address undertreatment of many common and chronic conditions in the United States, and reduce the number of routine visits to a healthcare practitioner.

(Response 1) We appreciate the general support. The rule is intended to increase options for applicants to develop and market safe and effective nonprescription drug products and increase consumer access to appropriate, safe, and effective drug products, which could improve public health.

(Comment 2) We received a comment recommending that Congress, in conjunction with State boards of pharmacy, State health departments, and State/national pharmacist associations, is better positioned to increase options for the development and marketing of safe and effective nonprescription drug products through legislative changes, as compared to FDA acting through regulatory changes. The same comment sought clarity on

whether FDA has the legal authority to approve nonprescription drug products with ACNUs that restrict distribution and sales of the drug product.

(Response 2) As part of the statutory framework for regulation of drug products, Congress recognized the need for specific considerations and requirements for prescription drugs. As explained further in the response to comment 41, Congress amended section 503(b) of the FD&C Act in 1951 to reduce confusion and uncertainty in the market as to when a drug is safe for use without the supervision of a practitioner licensed by law to administer such drug, as well as to remove unnecessary restrictions on dispensing, and to protect public health from abuses in the sale of potent prescription drugs. Several provisions of the FD&C Act, including section 503(b), demonstrate that Congress envisioned that FDA would determine which drugs must be dispensed only upon a prescription and which drugs would not require a prescription. For example, section 503(b)(1) of the FD&C Act states, in relevant part, that a drug intended for human use that, "because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug," must be limited to prescription use. That section authorizes FDA, in approving an application under section 505 of the FD&C Act, to require the supervision of a practitioner licensed by law to administer such a drug. Conversely, FDA may approve drugs that do not fall within section 503(b)(1) of the FD&C Act for nonprescription use. In addition, section 503(b)(3) of the FD&C Act authorizes FDA to issue regulations to remove the prescription-only dispensing requirements from drugs when such requirements are not necessary for the protection of the public health. Congress explicitly delegated FDA authority to use its scientific judgement to determine which drugs should be prescription or nonprescription, within the statutory criteria.

Further, section 503(b)(1)(A) of the FD&C Act specifies certain identified features of a drug, such as its "toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary for its use," that are relevant to the determination of prescription or nonprescription status. The statute only states these factors in describing the prescription drug category, while leaving the nonprescription drug category described in opposition to the prescription

category. See section 503(b)(4)(A) and (B) (separately prescribing labeling requirements for “[a] drug that is subject to [section 503(b)(1)]” and, by contrast, “[a] drug to which [section 503(b)(1)] does not apply”). However, these factors are not unique to prescription drugs; all drugs have a “method of . . . use,” all or nearly all drugs have some level of “toxicity or other potentiality for harmful effect,” and many drugs require at least some “collateral measures” for safe use. Merriam-Webster defines the adjective “collateral” to mean, among other things, “accompanying as secondary or subordinate. . . . [and/or] serving to support or reinforce.”³ Thus the key distinction in the statute between prescription and nonprescription drugs is not that certain drugs have these factors while others do not; rather prescription drugs are those that, when considering these factors, are not safe for use except under the supervision of a practitioner licensed by law to administer such a drug.

Features of a drug that qualify as “collateral measures” vary from drug to drug, and can include, for example, things which a layperson, because of their lack of education, training, and experience, cannot do to safely manage the disease. These include, but are not limited to, taking a proper history, doing a physical exam, ordering appropriate laboratory tests, having a knowledge of the relevant diseases, integrating the results of the history, exam, and tests with this knowledge, making a diagnosis, designing a treatment plan, and carrying the plan through with proper continuing evaluation. If the collateral measures necessary for safe use of the drug require the supervision of a practitioner licensed by law to administer such drug, section 503(b)(1)(A) requires that it can only be dispensed pursuant to a prescription.

This rule recognizes that drugs approved with certain types of collateral measures do not require supervision of a practitioner licensed by law to administer such drug. Some such measures may be things that used to require a practitioner’s direct involvement, but that no longer require such supervision because of the availability of technological advancements. For example, with Drug X (see more information about Drug X, a fictitious nonprescription drug product with an ACNU, in the proposed rule (87 FR 38313 at 38319)), the ACNU requires all consumers to complete a questionnaire located on a secure website created by the applicant to

determine whether Drug X is appropriate for the consumer. Using a consumer’s answers to the questions, the underlying program or other operating information used by the secure website, not the consumer, calculates the risk score for a serious side effect and determines if the consumer has an acceptable disease-specific risk score to use Drug X and therefore purchase Drug X.

This type of collateral measure could also be accomplished through the direct involvement of a practitioner licensed by law to administer such drug, as the practitioner integrates their knowledge of the patient with their knowledge of the disease and the drug—but now, in certain cases, this has the potential to be done without a practitioner’s direct involvement because of the availability of technology that can conduct the necessary evaluation. By carefully evaluating whether such advancements in collateral measures mean that the drug “is *not safe for use except* under the supervision of a practitioner licensed by law to administer such drug . . .”, section 503(b)(1)(A) for the FD&C Act (emphasis added), FDA is implementing the statute’s direction to limit the burdens of dispensing drugs by prescription to only those drugs for which they are truly necessary.

More generally, as part of its broad authority to approve and regulate drug products, including to establish specific regulations for drug products, FDA is authorized to determine the conditions under which a drug is safe and effective for use without a prescription, including a determination that an ACNU is needed where labeling alone will not suffice (see, e.g., sections 505, 505G, and 701 of the FD&C Act). Until now, FDA’s approval of nonprescription drug products has been limited to those that can be labeled with sufficient information for consumers to appropriately self-select and use the drug product. These nonprescription drug products are generally available “over-the-counter” (e.g., on a retail shelf). However, nothing in the FD&C Act compels nonprescription drug products to be limited in this way, nor does the FD&C Act dictate a particular manner in which a nonprescription drug must be made available to consumers.

For certain drug products, labeling alone may not adequately communicate the information needed for consumers to appropriately self-select or use the drug product, but consumers may still be able to use the product safely and effectively without the supervision of a practitioner licensed by law to administer such drug under certain

conditions. Nonprescription drug products approved with ACNUs have an additional condition of use, beyond labeling, that allows consumers to appropriately self-select or use the drug product without the supervision of a practitioner licensed by law to administer such drug. Thus, a nonprescription drug product with an ACNU, although not an “over-the-counter” drug product, is a nonprescription drug product under section 503(b) of the FD&C Act, because, when approved with an ACNU, it is safe and effective for consumers to use without the supervision of a practitioner licensed by law to administer such drug.

Additionally, FDA disagrees with this comment’s suggestion that legislative change is needed to authorize this rule. As explained above, FDA has adequate statutory authority to issue this rule. See also the responses to comments 39 through 43 below. FDA has long determined which drug products are ones that consumers can appropriately self-select or use without the supervision of a practitioner licensed by law to administer such drug, and under what conditions, and these determinations are squarely within FDA’s scientific expertise and authority under the FD&C Act. Additionally, FDA has engaged the public in various ways throughout the development of this rule. For example, FDA held a public hearing and participated in a series of workshops convened by the Engelberg Center for Health Care Reform at the Brookings Institution (Brookings Institution) to solicit public input on expanding the approval of nonprescription drug products. FDA used stakeholder input from the public hearing and the workshops to develop the 2022 proposed rule (see 87 FR 38313). FDA also carefully considered public comments in developing the final rule.

(Comment 3) We received many comments on the role of a pharmacist in relation to nonprescription drug products with ACNUs. One comment suggests that nonprescription drug products with ACNUs be available only from State-licensed pharmacies, where there is a licensed pharmacist available to assist consumers. Many of these comments suggest that FDA require nonprescription drug products with ACNUs to be sold only after consultation with a pharmacist. The comments assert that pharmacists should: (1) assist with determining whether a nonprescription drug product with an ACNU is appropriate for the consumer; (2) ensure consumer fulfillment of the ACNU; and (3) provide a stopgap for consumer

³ <https://www.merriam-webster.com/dictionary/collateral>.

questions or concerns regarding the benefits and risks of the nonprescription drug product with an ACNU.

Additionally, we received many comments about the practice of pharmacy or medicine that are outside the scope for this rulemaking, including comments about reimbursement for pharmacist professional services, increased prescribing authority for pharmacists, pharmacy recordkeeping, documentation of nonprescription drug products in profiles for the consumer or drug history data repositories, State laws about sales of nonprescription drug products, and legal liability for pharmacists.

(Response 3) FDA disagrees that a nonprescription drug product with an ACNU should be available only from State-licensed pharmacies, where there is a licensed pharmacist available to assist consumers, or sold only after consultation with a pharmacist. The purpose of this rule is to increase options for applicants to develop and market safe and effective nonprescription drug products, which in turn may increase consumer access to appropriate, safe, and effective drug products. FDA recognizes the potential benefit of providing consumers with access to additional types of nonprescription drug products, such as some drug products that are currently available only by prescription and that treat chronic diseases or conditions. Nonprescription drug products are generally available for consumers to purchase at such as pharmacies, supermarkets, or other retail locations, and from online retailers. FDA anticipates that nonprescription drug products with an ACNU would be sold similarly. FDA recognizes the potential benefit of providing consumers with appropriate access to nonprescription drug products. As long as consumers can fulfill the ACNU, limiting the locations in which nonprescription drug products with an ACNU can be sold, or requiring consultation with a healthcare professional (*i.e.*, a pharmacist), when not necessary for safe and effective use of the drug product, would limit consumer access to appropriate, safe, and effective drug products, which would unnecessarily undermine these public health benefits of this rule.

Such a system also would be inconsistent with this final rule, which pertains to nonprescription drug products. Section 503(b) of the FD&C Act requires that a drug product be dispensed by prescription when it is not safe for use except under the supervision of a practitioner licensed by law to administer such drug because of toxicity or other potentiality for harmful

effect, or the method of the drug product's use, or the collateral measures necessary to the drug product's use (see section 503(b)(1) of the FD&C Act). If an approved drug product does not meet the criteria for prescription-only dispensing, it may be marketed as nonprescription (see 87 FR 38313 at 38316).

C. Comments on Applicability and FDA Responses

We proposed requirements for NDAs and ANDAs for nonprescription drug products with ACNUs (see proposed 21 CFR 201.67, 201.130, 314.56, 314.81, 314.125, and 314.127). In the following paragraphs, we discuss comments on the applicability of the rule. After consideration of public comments received, we are finalizing our proposals without change.

(Comment 4) We received several comments on how the rule will be applied to already marketed drug products. We received a comment asserting that an ACNU cannot be retroactively required for a nonprescription drug product that FDA has already approved without an ACNU. However, the comment requests FDA make clear in the final rule that FDA has the authority to revisit the approval of a nonprescription drug product when information emerges in the postmarketing setting regarding the safety and efficacy of the nonprescription drug product. Further, we received a comment that FDA approval of a nonprescription drug product with an ACNU should not become the "temporary stopping ground" for every drug moving from prescription to nonprescription status.

(Response 4) We do not intend, as a result of this rule, to revisit nonprescription drug products marketed under approved applications. The approval of an application for a nonprescription drug product prior to the finalization of this rule was based on FDA's finding, in part, that labeling alone is sufficient for the drug product to be used safely and effectively by consumers. Under this rule, such a finding by FDA would obviate the need for the approved nonprescription drug product to have an ACNU in order for the drug product to be used safely and effectively. In addition, we do not think that FDA approval of a nonprescription drug product with an ACNU will generally become a "temporary stopping ground" as a step toward nonprescription approval without an ACNU (*i.e.*, the applicant would regularly propose to remove the ACNU after approval) because the applicant would have demonstrated and FDA

would have determined that labeling, alone, was insufficient to ensure appropriate self-selection or appropriate actual use, or both.

We agree that FDA has authority to address safety and efficacy concerns observed for an approved drug product in the postmarketing setting, including existing authority under the FD&C Act and current regulations to withdraw approval of an application in certain circumstances (see section 505(e) of the FD&C Act and 21 CFR 314.150). This includes withdrawal of an approval of an application for a nonprescription drug product with or without an ACNU for safety or efficacy concerns. In certain situations, if FDA withdraws approval of an application for a nonprescription drug product due to the emergence of a safety issue with regard to appropriate self-selection or actual use of the drug product, the applicant could submit a new application for the product as a nonprescription drug product with an ACNU to ensure appropriate self-selection or actual use, as appropriate.

(Comment 5) We received over 100 comments recommending that specific drug products be available as nonprescription (*e.g.*, antibiotics) or that specific drug products not be made available as nonprescription (*e.g.*, albuterol inhaler). The majority of these comments recommend that oral contraceptives should be available as nonprescription. We also received one comment advocating FDA use the rule to increase access to naloxone. These comments did not discuss whether ACNUs would be appropriate for these drug products if available as nonprescription.

Additionally, we received a few comments discussing the appropriateness of approving nonprescription drug products with ACNUs for certain general types of drug products. We received one comment recommending FDA only approve a nonprescription drug product with an ACNU if it has a low risk for misuse. We received a few comments expressing concerns about the appropriateness of nonprescription drug products with ACNUs for the treatment of chronic conditions and asserting that consumers may not be able to appropriately manage chronic health conditions without the communication and supervision by a healthcare practitioner. We also received a comment discussing that FDA may have unintentionally implied that a drug product to treat chronic conditions or intended for long-term use must have an ACNU to be available as nonprescription. We received several comments expressing concern about the approval of a nonprescription drug

product with an ACNU that has potentially harmful interactions and recommending that the ACNU needs to include information on possible interactions (e.g., drug-drug interactions, questions about diet, vitamins, complementary and alternative medicine, and other nonprescription drug products) to avoid potential life-threatening adverse drug experiences.

(Response 5) We disagree that we need to clarify the rule to address comments regarding approval of specific drug products or categories of drug products or restrict the types of drug products that FDA may consider for approval as a nonprescription drug product with an ACNU. FDA considers the specifics of each application during its review, including the potential risk for misuse of the drug product. As long as the application meets the existing evidentiary standards under the FD&C Act and current FDA regulations to demonstrate the safety and effectiveness of the drug product, and the drug product does not meet the criteria for prescription-only dispensing (see section 503(b)(1) of the FD&C Act), FDA may approve the application as nonprescription. FDA has the authority to approve a nonprescription drug product intended for a chronic disease or condition, or for long-term use, that meets the existing evidentiary standards and FDA regulations. In fact, FDA has approved nonprescription drug products for chronic diseases or conditions, or for long-term use, based on FDA's finding, in part, that labeling alone is sufficient for the drug product to be used safely and effectively by consumers. For example, on January 25, 2013, FDA approved NDA 202211 Oxytrol for Women (oxybutynin) extended-release film, 3.9 milligrams (mg), for the treatment of overactive bladder in women. When relevant, the applicant must ensure consumers understand information on potential interactions to safely and effectively use a nonprescription drug product with an ACNU. Further, consistent with the existing requirements for all nonprescription drug products, an applicant of a nonprescription drug product with an ACNU must include specific warnings, including all major drug-drug and drug-food interaction warnings in the DFL (see § 201.66(c)(5)(v) (21 CFR 201.66(c)(5)(v))).

We appreciate the public's interest in advocating for specific drug products or types of drug products to be approved or not be approved for nonprescription use, such as oral contraceptives and naloxone. Of note, on July 13, 2023,

FDA approved supplemental NDA 017031 for Opill (norgestrel) tablet, 0.075 mg, as a nonprescription daily oral contraceptive to prevent pregnancy. On March 29, 2023, FDA approved supplemental NDA 208411 for Narcan (naloxone hydrochloride) nasal spray, 4 mg, for nonprescription use to reverse the effects of a life-threatening opioid emergency. Additionally, on July 28, 2023, FDA approved NDA 217722 for RiVive (naloxone hydrochloride) nasal spray, 3 mg, for nonprescription use for emergency treatment of opioid overdose in adults and children. Based on FDA's review under relevant statutory and regulatory standards for approval, FDA determined the labeling for these drug products was sufficient to ensure consumers' appropriate self-selection and use of the products without the supervision of a practitioner licensed by law to administer such drug.

(Comment 6) We received several comments asking FDA to clarify when an applicant should propose an ACNU for a nonprescription drug product. We received a comment that asserts that the definition of an ACNU should be limited to those conditions that are most feasible to implement at the pharmacy-patient level and suggests that FDA provide a finite list of additional conditions that would be applied to real-world situations. We received several comments asking FDA to provide examples when labeling is inherently insufficient for appropriate self-selection or actual use, if these examples exist, or examples of specific drug products that FDA considers as possible candidates for approval.

(Response 6) We decline to establish such inflexible limits on when an ACNU should be proposed. The rule is intended to increase options for an applicant to develop and market safe and effective nonprescription drug products and increase consumer access to appropriate, safe, and effective drug products. The rule is intentionally flexible, mindful that technologies evolve and ACNUs may be developed for many different nonprescription drug products. FDA placing limits on the types of conditions that can be proposed or the creation of a finite list of additional conditions is not warranted and may unnecessarily restrict the type and number of drug products that could be marketed nonprescription, contrary to the intent of this rule.

We expect applicants may submit applications for nonprescription drug products with ACNUs for a wide range of indications, including for drug products intended to treat both acute and chronic diseases. However, FDA cannot predetermine the full range of

indications for which nonprescription drug products with ACNUs could be approved, nor can the Agency predetermine that all proposed nonprescription drug products with ACNUs for a given indication would be safe and effective, because FDA considers the specifics of each application during its review. Further, we cannot provide a general list or guideline of when labeling alone is insufficient to ensure appropriate self-selection or appropriate actual use, or both, because the determination of when labeling is insufficient is made for a specific nonprescription drug product based upon the data or other information that the applicant submits to FDA as part of an application.

D. Comments on Definition and FDA Responses

We proposed to establish a definition for additional condition for nonprescription use (ACNU) (see proposed 21 CFR 201.67(b)(1) and 314.56(a)(1)). As proposed, an ACNU means one or more FDA-approved conditions that an applicant of a nonprescription drug product must implement to ensure consumers' appropriate self-selection or appropriate actual use, or both, of the nonprescription drug product without the supervision of a healthcare practitioner if the applicant demonstrates and FDA determines that labeling alone is insufficient to ensure appropriate self-selection or appropriate actual use, or both. As an example, an ACNU for appropriate self-selection could be a questionnaire that consumers are required to complete on a secure website or mobile application created by the applicant to determine whether the drug product is appropriate for the consumer. The questionnaire would contain a series of questions that the consumer answers. The underlying program or other operating information used by the secure website or mobile application would determine if the drug is appropriate for the consumer based on these responses. If the drug is indeed appropriate for the consumer, the consumer could then access and purchase the drug product. For a more specific example, see the proposed rule (87 FR 38313 at 38319), in which we discuss Drug X, a fictitious nonprescription drug product with an ACNU.

In the following paragraphs, we discuss comments on the proposed definition. After consideration of public comments received, we are finalizing our proposal with revisions for consistency with the wording in section 503(b) of the FD&C Act. Therefore, we

are revising the phrase “of a healthcare practitioner” to “of a practitioner licensed by law to administer such drug.”

(Comment 7) We received one comment supporting FDA’s proposed definition of an ACNU because it provides sufficient flexibility for the applicant to develop and tailor the ACNU to a specific drug product.

(Response 7) We agree that the proposed definition of ACNU is sufficiently broad, as was intended, to give applicants flexibility regarding the types of additional conditions that may be proposed and how those conditions can be implemented (87 FR 38313 at 38318). This flexibility will allow applicants to consider the unique benefit and risk considerations for a particular drug product while developing an ACNU to ensure consumers’ appropriate self-selection or appropriate actual use, or both, of the drug product.

(Comment 8) We also received several comments disagreeing with FDA’s proposed definition of ACNU. Some comments disagree with the use of the term “ensure” in the definition and recommend FDA revise the definition to replace the term “ensure” with “enable.” The comments assert that the term “ensure” implies that any risk to consumers from the nonprescription drug product with an ACNU has been eliminated even though all drug products have residual risk regardless of any mitigation steps taken. We received one comment asserting that the proposed definition is vague and suggesting that FDA provide a definition of “appropriate actual use” and “appropriate self-selection.”

(Response 8) We disagree with replacing the term “ensure” with “enable” in the definition. The Merriam-Webster dictionary defines “ensure” as “to make sure, certain, or safe.” The Merriam-Webster dictionary defines “enable” as “to make possible, practical, or easy or to provide with the means or opportunity.” The term “ensure” reflects a greater level of certainty that is consistent with FDA’s approval standards. All drug products, including nonprescription drug products, have risks. As part of our regulatory decision-making process, we conduct a structured benefit-risk assessment to facilitate the balanced consideration of benefits and risks (see, e.g., section 505(d) of the FD&C Act and § 314.50 (21 CFR 314.50)). Nothing in the rule affects this benefit-risk assessment for an application for a nonprescription drug product with an ACNU.

FDA disagrees that specifically defining “appropriate actual use” and “appropriate self-selection” is necessary for nonprescription drug products with an ACNU. The terms “actual use” and “self-selection” are used in the context of all nonprescription drug products. In general, applicants of nonprescription drug products conduct consumer studies such as label comprehension studies, self-selection studies, actual use studies, and human factors studies to help demonstrate that consumers can correctly self-select and correctly use the drug products (see also 87 FR 38313 at 38316). FDA has defined “self-selection” in FDA guidance for industry (Ref. 1 and 87 FR 38313 at 38315).

(Comment 9) Several comments recommend FDA revise the proposed definition to make clear that applicants, not FDA, should determine when an ACNU is necessary. The comments assert that the applicant should have the ability to evaluate the need for an ACNU and propose the use of an ACNU without seeking prior agreement from FDA.

(Response 9) We disagree with revising the definition to permit the applicant, not FDA, to make the final determination on the necessity of the ACNU. To approve a drug product, FDA must determine whether the specific application meets the applicable statutory and regulatory requirements. FDA will not require a nonprescription drug product to have an ACNU if the drug product can be used safely and effectively by consumers, without the supervision of a practitioner licensed by law to administer such drug, based on labeling alone. Requiring unnecessary ACNUs would be inconsistent with the goal of this rulemaking, which is to increase consumer access to safe and effective nonprescription drug products.

While applicants are not required to meet with FDA prior to the submission of an application for a nonprescription drug product with an ACNU, we encourage applicants to meet with FDA to discuss their drug development plans and seek feedback, including whether an ACNU may be necessary. However, it is during FDA’s review of an application that FDA must determine whether the application meets the applicable statutory and regulatory requirements, including whether the applicant demonstrates the necessity of the ACNU to ensure appropriate self-selection or appropriate actual use, or both (see, e.g., § 314.56(c)(1)(v)) in order to approve the nonprescription drug product with an ACNU.

E. Comments on Separate Application Required for a Nonprescription Drug Product With an ACNU and FDA Responses

We proposed that an applicant must submit a separate application for a nonprescription drug product with an ACNU (proposed 21 CFR 314.56(b)). For cases where there is an approved prescription drug product, we proposed that initial approval for a nonprescription drug product with an ACNU cannot be obtained through a supplement to the approved application for prescription use of the drug product.

In the following paragraphs, we discuss comments on this proposed requirement. After consideration of public comments received, we are finalizing our proposal with a clarifying revision to explain that this provision supersedes § 310.200(b) (21 CFR 310.200(b)) with regard to nonprescription drug products with an ACNU. To clarify and avoid ambiguity, we are adding the clause “Notwithstanding § 310.200(b)” to the beginning of the first sentence in 21 CFR 314.56(b).

(Comment 10) We received a few comments supporting the proposed requirement for the submission of a separate application for a nonprescription drug product with an ACNU because it would improve consumer options. Additionally, a commenter asserted that the proposed requirement increases equity and access to drug products. We also received several comments opposing this proposed requirement and asserting that an applicant should be allowed to submit a supplement to an approved prescription application rather than a separate application. One comment asserts that an applicant should not be required to submit a separate application simply because the ACNU is part of a development program, especially where the formulation is similar to the approved prescription application. We received a comment requesting FDA remove the proposed requirement and, instead, address the issue on a case-by-case basis to determine the circumstances when it would be appropriate for an applicant to seek approval of a nonprescription drug product with an ACNU by submitting a supplement. The comment argues that the proposed requirement for a separate application is inconsistent with the FDA guidance for industry from December 2004 “Submitting Separate Marketing Applications and Clinical Data for Purposes of Assessing User Fees” (available at <https://www.fda.gov/media/72397/download>) and FDA

practices, which, according to the comment, contemplate that labeling changes may be the subject of a supplement. In addition, some comments assert that requiring a separate application would disincentivize innovation and limit utilization of the ACNU pathway because the separate application would allow for the potential continued marketing of generic prescription drugs that would compete with the nonprescription drug with an ACNU. The commenters assert that incorporating an ACNU into a development program for a nonprescription drug product is expected to increase the overall costs and time in developing the nonprescription drug product. The commenters explain that there is typically a limited period of marketing exclusivity when a new nonprescription drug product is approved, a “long-accepted means of incentivizing” applicants to undertake such investment. Therefore, the commenters argue that potential continued simultaneous marketing of a generic prescription drug product that could compete with the nonprescription drug product with an ACNU would render any marketing exclusivity moot.

(Response 10) We disagree with removing the requirement for the submission of a separate application. This requirement is essential to achieving the key policy goal of increasing consumer access to appropriate drug products. In cases where there is an approved prescription drug product, this requirement creates a pathway for the simultaneous marketing of the prescription drug product, along with the nonprescription drug product with an ACNU. While many consumers will benefit from the availability of nonprescription drug products with ACNUs, FDA also recognizes that some may not be able to access the nonprescription drug product with an ACNU. For example, a consumer may not be able to access the technology that operationalizes the ACNU. Therefore, continued availability of the prescription drug product along with the nonprescription drug product with an ACNU promotes the greatest access to needed drug products.

We are also clarifying that a separate application must be submitted for a nonprescription drug product with an ACNU notwithstanding § 310.200, which states that an interested person may submit a supplement to an approved new drug application to propose to exempt a drug from the prescription-dispensing requirements of section 503(b)(1)(B) of the FD&C Act.

Under § 310.200(b), applicants may continue to submit a supplement to switch a drug from prescription to nonprescription status if the nonprescription drug product would not have an ACNU and the resulting approved application would only address the nonprescription drug product. Nonprescription drug products without ACNUs do not implicate the same issues regarding continued consumer access to appropriate drug products, because they are generally available to consumers and do not have additional conditions of approval that restrict consumer access.

Additionally, we do not agree that the proposed separate application requirement is inconsistent with existing FDA guidance. The guidance entitled “Submitting Separate Marketing Applications and Clinical Data for Purposes of Assessing User Fees” did not contemplate and, therefore, did not address the submission of an application for a nonprescription drug product with an ACNU. Therefore, the guidance is not relevant to the question of whether a separate application or a supplement is appropriate for such a product. Furthermore, the guidance document merely provides FDA’s recommendations on submission of certain applications to FDA. The guidance document does not set forth any requirements, and the recommendations therein are not binding on FDA or applicants.

We also do not agree that requiring a separate application would necessarily disincentivize innovation and limit utilization of the ACNU pathway. This assertion is speculative and does not outweigh the potential benefits from requiring a separate application, which would increase consumer access to appropriate drug products. We acknowledge that the cost to develop a nonprescription drug product with an ACNU is higher than a nonprescription drug product without an ACNU. The Appendix of the Regulatory Impact Analysis estimates that the core development cost of a nonprescription drug product is \$31.1 million while the estimated cost to develop cost of a nonprescription drug product with an ACNU is \$47.3 million, an estimated markup of \$16.2 million for ACNU-related development. However, as noted in section I.C. of the Regulatory Impact Analysis, evidence shows that roughly 60 percent of purchases for a nonprescription drug product are from new-to-therapy consumers who had not previously taken the drug before it switched from prescription status, suggesting that the potential to attract new-to-therapy consumers for

nonprescription drug products is substantial (Ref. 13). Further, section V.B. of the Regulatory Impact Analysis estimates that every year nonprescription drug manufacturers get \$112.02 million of additional revenue from switching a drug to nonprescription status (Ref. 13), which also indicates there will be incentives for drug manufacturers to innovate and use the ACNU pathway. We disagree that simultaneous marketing would reduce or render moot the benefit of any statutory exclusivity that may be associated with a nonprescription drug product. For example, three-year new clinical investigation exclusivity (*e.g.*, section 505(c)(3)(E)(iii) and (j)(5)(F)(iii) of the FD&C Act) rewards an applicant for sponsoring or conducting additional studies on previously approved drug products containing an active moiety that has been previously approved, and an NDA applicant for a nonprescription drug product with an ACNU could be eligible for such exclusivity, provided the relevant statutory requirements are met. We discuss the issue of “market exclusivity” or “statutory exclusivity” for nonprescription drug products with an ACNU further in our responses to Comments 36 and 72.

(Comment 11) Several comments express concerns that submitting an application is more burdensome than submitting a supplement. Although another comment acknowledges FDA’s explanation that applicants can cross-reference information in an approved application, the comment asserts that the applicant would be required to pay a new application user fee, even though the commenter believes that FDA’s review would be less resource-intensive compared to other NDAs.

(Response 11) We acknowledge that submitting a separate application may be more burdensome than submitting a supplement to the approved prescription drug application; however, an applicant may cross-reference information from its approved NDA for the prescription drug product and would not need to duplicate studies already conducted for and submitted in its NDA for the prescription drug product (87 FR 38313 at 38318). While we acknowledge that a new application user fee will be required, we disagree that FDA’s review of an application for a nonprescription drug product with an ACNU is less resource intensive for the Agency compared to other NDAs. As required for other NDAs, the application must include data and information from studies to support the safety and efficacy of the drug product as nonprescription as well as meet the additional specific requirements for a

nonprescription drug product with an ACNU (see 21 CFR 314.56(c) in this final rule). Generally, these requirements would include the submission of newly generated data and information that FDA would not have previously reviewed, including but not limited to, label comprehension studies, self-selection studies, actual use studies, and human factors studies to demonstrate both the necessity and the effect of the ACNU. In some cases, device information may also be submitted. Additionally, FDA's review of an application for a nonprescription drug product with an ACNU will typically involve many offices in the Center for Drug Evaluation and Research, and in some instances, consults to other Centers within FDA.

(Comment 12) We also received one comment requesting that FDA establish a process for the applicant to revise or remove an approved ACNU for a nonprescription drug product with an ACNU. The comment notes that an ACNU should not be expected to remain unchanged or permanent.

(Response 12) We disagree that we need to establish a new, separate process specific for making post approval changes to an application for a nonprescription drug product with an ACNU. An applicant may propose revisions to an approved application for a nonprescription drug product with an ACNU by submitting a supplement and may describe certain changes in the annual report, consistent with our current regulations for making changes to an FDA-approved application (see §§ 314.70, 314.81, 314.97, and 314.98 (21 CFR 314.70, 314.81, 314.97, and 314.98)). An applicant seeking to make changes to an NDA or ANDA submitted for a nonprescription drug product with an ACNU that is under review by FDA would submit an amendment to the application to request a change (see §§ 314.60 and 314.96 (21 CFR 314.60 and 314.96)). An applicant seeking to make changes to an FDA-approved NDA or ANDA for a nonprescription drug product with an ACNU would submit a supplement to the approved NDA or ANDA (see §§ 314.70 and 314.97) (87 FR 38313 at 38319).

F. Comments on Specific Requirements for an Application for a Nonprescription Drug Product With an ACNU and FDA Responses

We proposed to establish specific NDA and ANDA requirements for a nonprescription drug product with an ACNU (proposed 21 CFR 314.56(c)). After consideration of public comments received, we are finalizing these proposals with a few editorial

modifications to provide clarity. The changes are described below in sections V.F.1. and V.F.2.

1. NDA

In addition to existing content and format requirements for an NDA (§ 314.50), FDA proposed specific requirements for an NDA for a nonprescription drug product with an ACNU. We discuss the specific requirements in the following paragraphs.

a. Statement regarding the purpose of the ACNU. We proposed to require the applicant to provide a statement regarding the purpose of the ACNU: ensure appropriate self-selection or appropriate actual use, or both, by consumers of the nonprescription drug product with an ACNU without the supervision of a practitioner licensed by law to administer such drug (proposed § 314.56(c)(1)(i)). We received no comment specifically regarding this proposed requirement. We are finalizing our proposal with a few editorial modifications to provide greater clarity. We are revising the sentence to add the word “whether” after the phrase “A statement regarding. . . .” We are also removing the colon after “ACNU” and replacing it with the phrase “is to.”.

b. Statement of necessity of the ACNU. We proposed to require the applicant explain why the ACNU is necessary to ensure appropriate self-selection or appropriate actual use, or both, by consumers of the nonprescription drug product (proposed § 314.56(c)(1)(ii)). We received no comment regarding this proposed requirement, and we are finalizing it without change.

c. Description of how the ACNU ensures appropriate self-selection or appropriate actual use, or both. We proposed to require the applicant describe how the ACNU will ensure appropriate self-selection or appropriate actual use, or both, by consumers (proposed 21 CFR 314.56(c)(1)(iii)). After consideration of public comments received, we are finalizing our proposal without change.

(Comment 13) We received a few comments asserting that the proposed rule lacks clarity on how often an ACNU must be fulfilled by consumers. A few commenters question if the consumer would be required to fulfill an ACNU each time the consumer repurchases the drug product, which would be burdensome, particularly if the drug product is indicated for a chronic condition. One comment recommends that FDA require the application to include information on how the consumer would repurchase a

nonprescription drug product with an ACNU.

(Response 13) There is not one standard for the frequency in which an ACNU must be fulfilled by the consumer; this will be determined on a case-by-case basis as we consider the specifics of each application for a nonprescription drug product with an ACNU during our review. As finalized in this final rule, we require that the application include a description of how the ACNU ensures appropriate self-selection or appropriate actual use, or both (21 CFR 314.56(c)(1)(iii) in this final rule), and describe the additional condition(s) implemented and the criteria by which the consumer would successfully fulfill the ACNU, including a description of the specific actions to be taken by a consumer as part of the description of key elements of the ACNU (21 CFR 314.56(c)(1)(iv) in this final rule). Therefore, the application may include information describing how a consumer would make subsequent purchases of the nonprescription drug product with an ACNU, if appropriate. For example, an applicant may explain that a consumer would fulfill an ACNU (*e.g.*, complete a self-selection questionnaire) upon the first time purchasing the nonprescription drug product with an ACNU and at a specific time interval (*e.g.*, every 3 months) in order to repurchase the drug product.

d. Description of the key elements of the ACNU. We proposed to require the applicant to include a description of the key elements of the ACNU, including: the additional condition implemented by the applicant to be fulfilled by the consumer to obtain the nonprescription drug product with an ACNU; the labeling specifically associated with the ACNU; and the criteria by which the consumer would successfully fulfill the ACNU, including a description of the specific actions to be taken by a consumer or required responses to be provided by a consumer (see proposed 21 CFR 314.56(c)(1)(iv)). We received no comment regarding this proposed requirement. We are making an editorial modification for clarity. We are adding the introductory clause: “Key elements of the ACNU” to better explain the required information and to allow for ease of reference to discuss the requirement.

e. Adequate data or other information that demonstrate the necessity of the ACNU to ensure appropriate self-selection or appropriate actual use, or both. We proposed to require an applicant to include adequate data or other information that demonstrate the necessity of the ACNU to ensure

appropriate self-selection or appropriate actual use, or both (proposed 21 CFR 314.56(c)(1)(v)). After consideration of public comments received, we are finalizing our proposal without change.

FDA believes that the requirement for demonstrating that the ACNU is necessary, as reflected in the ACNU definition and in 21 CFR 314.56(c)(1)(v), and as determined by FDA, is necessary to fulfill the key goals of this rulemaking. The key goals are to: (1) increase options for applicants to develop and market safe and effective nonprescription drug products, which would broaden the types of nonprescription drug products available to consumers and (2) increase consumer access to appropriate, safe, and effective drug products, by providing for the availability of prescription versions of nonprescription drug products approved with ACNUs, both of which in turn could improve public health (see the discussion in this section F.1.e.). Allowing a product to be approved as a nonprescription drug product with an ACNU, when the ACNU is not necessary, would not increase options for applicants to develop and market safe and effective nonprescription drug products because they could already be marketed as a nonprescription drug product without an ACNU. Approving a nonprescription drug product with an ACNU that is not necessary also would not necessarily increase consumer access because, although this rule has the potential to provide consumers with access to additional types of nonprescription drug products, FDA recognizes that ACNUs necessarily restrict consumer access, which is appropriate when they are needed to ensure appropriate self-selection or appropriate actual use, or both. However, nonprescription drug products without ACNUs do not necessarily implicate the same issues regarding continued consumer access to drug products because they are generally available to consumers and do not have additional conditions of approval that restrict consumer access. Therefore, if the definition in 21 CFR 201.67(b)(1) and 314.56(a)(1), or the provision at 21 CFR 314.56(c)(1)(v), is stayed or determined to be invalid or unenforceable, the entire rule should be invalidated.

(Comment 14) We received several comments requesting that FDA provide further guidance on the meaning of “adequate data” as it pertains to demonstrating the necessity of the ACNU and the effect of the ACNU. FDA received one comment stating the proposed rule does not address the types of consumer studies that would be

needed to provide adequate data. A few comments assert that FDA should not limit adequate data to prospective consumer behavior studies if other sources referenced by the applicant are reliable and fit for purpose.

(Response 14) Consistent with our proposal, the applicant must conduct or reference adequate testing to show that labeling alone would not support the safe and effective use of the nonprescription drug product (87 FR 38313 at 38320 and 21 CFR 314.56(c)(1)(vi) in this final rule). Further, the applicant must submit data that show that consumers appropriately self-select or actually use the drug product, or both, safely and effectively using the ACNU. To clarify, adequate data need to be relevant to the specific application and need to be interpretable for FDA to evaluate the scientific finding. The types of data that can be submitted are not limited. Applicants can submit data from consumer studies such as label comprehension studies, self-selection studies, actual use studies, and human factors studies (87 FR 38313 at 38315) to demonstrate the necessity of the ACNU and the effect of the ACNU. The specific types of consumer studies an applicant would conduct depends on the development program for the particular nonprescription drug product with an ACNU.

FDA has issued guidances on some types of consumer studies (Refs. 1, 2, and 3). We may provide advice (e.g., specific verbal or written feedback) to applicants on adequate data or other information that demonstrate the necessity and effect of the ACNU in the context of a pending or proposed application, as appropriate. Additionally, applicants can request to meet with FDA staff to discuss questions that arise during the development of a nonprescription drug product with an ACNU. FDA may consider issuing guidance in the future to address general considerations that may arise and are applicable to all applicants developing nonprescription drug products with an ACNU.

(Comment 15) We received many comments asserting that FDA should remove the proposed requirement that the applicant must develop or reference adequate data to demonstrate that labeling is insufficient for safe and effective use of a nonprescription drug product. We received many comments expressing concerns that, before developing an ACNU, an applicant must first generate data from a failed labeling study (i.e., fail first) and FDA must then agree with the applicant’s assessment that labeling alone is insufficient. Several comments state that the fail-first

concept would put the onus on the applicant to prove a negative, rather than developing the key self-selection or use question(s) that trigger the need for an ACNU. One comment asserts that the rigidity of trying to prove a negative is inconsistent with scientific methods in developing a label. A few comments assert that it can become apparent for a variety of reasons that labeling is not adequate throughout the development program. Although the comments note that applicants can utilize meetings with FDA during the development program to obtain alignment, many commenters believe that applicants should have the ability to evaluate the necessity of an ACNU without seeking prior agreement with FDA.

(Response 15) We disagree with removing the requirement that the applicant must provide adequate data or other information to show that labeling alone would not support the safe and effective use of the nonprescription drug product and disagree that the requirement is inconsistent with the methods of developing labeling for nonprescription drug products. An ACNU cannot be proposed merely to provide consumers with additional information when the labeling could be sufficient to ensure appropriate self-selection or actual use or both. In such case, the use of an ACNU can present potential barriers for another applicant developing a nonprescription drug product. We cannot make a determination about whether labeling alone is insufficient without adequate data or other information. While the data or other information will typically come from consumer testing or by reference, it does not necessarily need to come from a failed labeling study. Further, the necessity for adequate data or other information, which typically comes from consumer testing or by reference is consistent with FDA’s approval requirements for all nonprescription drug products. For a nonprescription drug product, the applicant develops and optimizes the labeling using an iterative process and conducts consumer studies (e.g., label comprehension studies, self-selection studies, actual use studies, and human factors studies) to demonstrate whether consumers appropriately self-select and use the drug product using labeling alone. In certain circumstances, an ACNU may only be required for appropriate self-selection or appropriate actual use, but not both, of the nonprescription drug product. For example, if the applicant demonstrates that labeling alone is insufficient to ensure appropriate self-selection (but

not appropriate actual use) of the nonprescription drug product and proposes an ACNU for self-selection, the applicant must still conduct consumer studies to demonstrate that consumers will appropriately use the drug product based on labeling, alone. In addition to reflecting the reality of developing a nonprescription drug product, this policy is also intended to help ensure consumers can access nonprescription drug products without barriers or hurdles to access that are unnecessary when that drug product could be approved as nonprescription without an ACNU.

We encourage applicants to meet with FDA to discuss their drug development plans and seek advice. However, these meetings are not required; applicants that view these meetings as unnecessary are not required to have them.

(Comment 16) We received a few comments recommending that FDA clarify when an applicant can submit “other information” explaining the necessity of the ACNU. One comment recommends FDA define the criteria for when an applicant can submit “other information”; for example, situations that require additional tests, lab values, or other ancillary values or measurements as part of self-selection or actual use; literature; and medical practice guidelines. One comment recommends that FDA clarify how FDA will signal to an applicant when labeling alone is insufficient because clear communication with FDA will allow the applicant to proceed in its development program.

(Response 16) FDA disagrees with providing criteria in the rule for when an applicant can submit “other information” to demonstrate the necessity of the ACNU. Because this determination is specific to the circumstances surrounding each individual drug development program, FDA does not think specifying such criteria in the rule would be feasible and may instead unnecessarily limit the options available to applicants for development program designs.

An applicant may be able to submit information explaining the necessity of the ACNU for appropriate self-selection or appropriate actual use, or both, when FDA has previously signaled that labeling alone is not sufficient to ensure appropriate self-selection or appropriate actual use, or both. For example, this might apply if FDA has previously approved multiple nonprescription drug products for the same indication with a similar ACNU. FDA is available to meet with applicants to discuss drug development plans, which can include discussing questions about when “other

information” can demonstrate the necessity of the ACNU. FDA encourages applicants to discuss their drug development plans with FDA and seek advice.

(Comment 17) We received a few comments suggesting that FDA revise the rule to permit the submission of adequate data or other information that demonstrate “the rationale for use of an ACNU,” rather than adequate data or other information that demonstrate “the necessity of the ACNU.” Another comment also asserts that the results of the self-selection and label comprehension studies or other adequate data or information should justify, rather than demonstrate, that consumers cannot appropriately self-select the drug product with labeling alone.

(Response 17) While this rule has the potential to provide consumers with access to additional types of nonprescription drug products, FDA recognizes that nonprescription drug products without ACNUs do not necessarily implicate the same issues regarding continued consumer access to appropriate drug products, because they are generally available to consumers and do not have additional conditions of approval that restrict consumer access. Therefore, we disagree with the commenters’ assertions because providing adequate data or other information that simply provides a rationale or justification for the use of an ACNU is a lower threshold. A lower threshold may result in an applicant submitting an application for a nonprescription drug product with an ACNU even when an ACNU is not necessary to ensure consumers’ appropriate self-selection or appropriate actual use or both (*i.e.*, labeling was sufficient to ensure appropriate self-selection or actual use or both). Consistent with the rigorous scientific data necessary for an application to meet the evidentiary standards under the FD&C Act and current FDA regulations for demonstrating safety and effectiveness, we expect the applicant to provide adequate data or other information that demonstrates the necessity of the ACNU.

(Comment 18) We received a few comments recommending that FDA provide a streamlined process for demonstrating the necessity of an ACNU because, in certain instances, the need for an ACNU may be obvious and requiring data may delay drug product development. One comment requests that FDA clarify—in situations where the need for an ACNU is uncertain—that applicants may streamline the drug development process by running

simultaneous trials that test the effectiveness of labeling both with and without an ACNU.

(Response 18) FDA disagrees with providing a streamlined process applicable to all applications. Because each development program is unique, establishing a “streamlined” process and standards that applicants must follow as part of the development program may be overly restrictive. FDA acknowledges that applicants may choose to conduct simultaneous trials to demonstrate the necessity of the ACNU and the effect of the ACNU. However, because the results of the studies needed to demonstrate the necessity of the ACNU could affect the studies needed to demonstrate the effect of the ACNU, conducting simultaneous studies may result in the need to conduct additional trials. In general, FDA recommends the development program for a nonprescription drug product with an ACNU proceed in a stepwise approach. The development of labeling for all nonprescription drug products, including a nonprescription drug product with an ACNU, is an iterative process that may depend upon testing and retesting as the label evolves (Ref. 1). The applicant should begin by creating the complete labeling for the drug product that includes consumer-friendly language for all directions, warnings, and precautions, that is consistent with the available prescription labeling, in cases where there is an approved prescription drug product. FDA expects that the applicant will then optimize the labeling using an iterative process and conduct or reference adequate testing (*e.g.*, label comprehension studies, self-selection studies, actual use studies, and human factors studies) to determine if consumer comprehension can be improved to the point where labeling is sufficient for appropriate self-selection or appropriate actual use, or both, without an ACNU. If the conducted or referenced consumer studies demonstrate the necessity for an ACNU, information that is part of the ACNU may need to be aligned with the optimized label. In addition, when it is necessary to conduct pivotal actual use trials, an optimized label is needed before proceeding because consumers will need to refer to the label for use instructions after the point of purchase (*e.g.*, throughout the trial), and the study may be invalid if there are subsequent substantive changes to the labeling. Because each development program is different, we encourage the applicant to discuss its drug development plans with FDA.

(Comment 19) We received one comment questioning whether applicants should assume that the statutory standard for approving an NDA applies to NDAs for nonprescription drug products with ACNUs (e.g., two phase 3 clinical trials to demonstrate safety and effectiveness).

(Response 19) Yes, the statutory standard that an application for a nonprescription drug product must meet under the FD&C Act and current FDA regulations to demonstrate the safety and effectiveness of the drug product would apply to a nonprescription drug product with an ACNU just as they apply to any other NDAs and ANDAs (see section 505(b)(1) or (2) and (j) of the FD&C Act). For example, an NDA for a nonprescription drug product with an ACNU must demonstrate the proposed drug product's safety and effectiveness. Therefore, the NDA must include full reports of investigations to demonstrate that the proposed drug product is safe and effective under the conditions prescribed, recommended, or suggested in its proposed labeling (e.g., phase 3 clinical trials or cross reference information in its approved NDA for the prescription product, where applicable (see section 505(d) and (b) of the FD&C Act).

f. Adequate data or other information that demonstrate the effect of the ACNU to ensure appropriate self-selection or appropriate actual use, or both. We proposed to require the applicant to submit adequate data or information that demonstrates the effect of the ACNU on the appropriate self-selection or appropriate actual use, or both, by the consumer of the nonprescription drug product (proposed 21 CFR 314.56(c)(1)(vi)). After consideration of public comments received, we are finalizing our proposal without change.

(Comment 20) A comment recommends that health literacy be a significant factor in determining adequate data or other information that demonstrates the effect of the ACNU.

(Response 20) FDA understands this comment to be suggesting that health literacy be considered when enrolling study participants. An application for a nonprescription drug product with an ACNU must include adequate data or information that demonstrates the effect of the ACNU on the appropriate self-selection or appropriate actual use, or both, by the consumer of the nonprescription drug product (21 CFR 314.56(c)(1)(vi)). The data must show that consumers appropriately self-select or use the drug product safely and effectively, or both, with the ACNU. Because a nonprescription drug product

with an ACNU, like other nonprescription drug products, would be used by consumers from the general population without the supervision of a practitioner licensed by law to administer such drug, an applicant is expected to include a wide range of subjects in consumer studies. Specifically, in self-selection studies, exclusion criteria should be minimal (e.g., excluding only those who cannot read and understand English) (Ref. 2). While FDA does not have specific recommendations on enrolling subjects with varying levels of health literacy, applicants should include an adequate number of subjects who have limited literacy skills in their consumer studies. The proportion of low-literacy subjects in the study sample should be representative of the proportion of adults in the United States with low-literacy skills based on available national data (Ref. 1) to help ensure that the study population is representative of the population that may use the nonprescription drug product.

g. Description of the specific way the ACNU is operationalized. We proposed to require that the applicant describe the specific way the ACNU is operationalized (proposed 21 CFR 314.56(c)(1)(vii)). We stated that while it is important for FDA to understand how the ACNU is operationalized because this is part of achieving appropriate self-selection or use, the specific way an ACNU is operationalized is not a key element of the ACNU (87 FR 38313 at 38320) (see 21 CFR 314.56(c)(1)(iv) of this final rule regarding key elements of the ACNU). The purpose of the ACNU is to ensure appropriate self-selection, or appropriate actual use, or both by consumers of the nonprescription drug product with an ACNU without the supervision of a practitioner licensed by law to administer such drug (21 CFR 314.56(c)(1)(i) of this final rule). The ACNU can be operationalized in different ways provided it reliably meets the objective. In the following paragraphs, we discuss and respond to comments on this requirement. After consideration of public comments received, we are finalizing the proposal with editorial modifications for clarity. We are adding the introductory clause: "Operationalization of the ACNU" for clarity and to allow for ease of reference to discuss the requirement. We are revising the word "way" to "way(s)" to add clarity because an application may include more than one way to operationalize the ACNU.

(Comment 21) We received a few comments that support FDA's position that an ACNU can be operationalized in different ways as long as it reliably

meets its objective. Specifically, one comment supports the flexibility in how an ACNU may be operationalized given that the technologies used may change over time. One comment requests that FDA clarify its expectation for the description of how the applicant will operationalize the ACNU.

(Response 21) We appreciate commenters' support and firmly believe that the ACNU can be operationalized in different ways provided it reliably meets the objective. The applicant should describe the specific way the ACNU is operationalized so that we can understand how the ACNU is ensuring appropriate self-selection or appropriate actual use, or both. Because each development program is different, we encourage the applicant to discuss its drug development plans with FDA. Additionally, FDA may consider issuing guidance in the future to address general considerations that may arise and are applicable to all applicants developing nonprescription drug products with an ACNU, or to address new technology, if appropriate.

(Comment 22) We received a few comments that request that FDA add language to the rule clarifying that ACNUs must be operationalized in ways that do not restrict the sale of a nonprescription drug product with an ACNU so that the ACNU does not become a barrier to long-term use of a drug product.

(Response 22) We do not think that additional language needs to be added to the rule to address this comment. Because the ACNU is necessary to ensure appropriate self-selection or appropriate actual use, or both, by consumers of the drug product, the nonprescription drug product with an ACNU must only be made available to the consumer after the ACNU has been fulfilled by the consumer. However, in the case of long-term use of a nonprescription drug product with an ACNU where there is the need to repurchase the drug product, there is not one standard for the frequency in which an ACNU must be fulfilled by the consumer; this will be determined on a case-by-case basis as we consider the specifics of each application for a nonprescription drug product with an ACNU during our review. Therefore, the application may include information describing how a consumer would make subsequent purchases of the nonprescription drug product, if appropriate. For example, an applicant may explain that a consumer would fulfill an ACNU (e.g., complete a self-selection questionnaire) upon the first time purchasing the nonprescription drug product with an ACNU and at a

specific time interval (*e.g.*, every 3 months) when repurchasing the drug product.

(Comment 23) Several comments suggest that the operationalization of an ACNU may have potential implications on access, health equity, privacy, and ultimately health outcomes. A few comments state that applicants should consider how to prevent or mitigate potential access issues for older adults, people with disabilities, people in long-term care facilities, incarcerated persons, and for people with limited English proficiency, health literacy, or digital literacy. One comment recommends that FDA require the applicant to describe considerations of ease of use, health equity, access, and privacy in deciding how to operationalize the ACNU. Some comments suggest that applicants should implement more than one way of operationalizing an ACNU to accommodate various health and digital literacy or comfort levels to ensure equitable access. One comment recommends that FDA clarify that applicants and FDA will abide by existing and future Federal, State, and local protections against discrimination in designing, approving, and implementing ACNUs such as the Federal Americans with Disabilities Act and section 1557 of the Affordable Care Act, which prohibits discrimination based on race, color, national origin, sex, age, or disability in any health program administered by the Department of Health and Human Services.

(Response 23) We acknowledge and understand the concerns and emphasize the importance of access to appropriate drug products. FDA recognizes the potential benefit of providing consumers with access to additional types of nonprescription drug products and the rule has the potential to broaden the types of drug products that FDA could approve as nonprescription (87 FR 38313 at 38316). As discussed in Response 20, because a nonprescription drug product with an ACNU, like other nonprescription drug products, would be used by consumers from the general population without the supervision of a practitioner licensed by law to administer such drug, an applicant is expected to include a wide range of subjects in consumer studies. While FDA does not have specific recommendations for enrolling subjects with varying levels of health literacy, applicants should include an adequate number of subjects who have limited literacy skills in their consumer studies (including human factors validation studies of the user interface) to help

ensure that the study population is representative of the population that may use ACNU for the nonprescription drug product. As discussed further in our response to Comment 59, FDA acknowledges the benefits of having translated drug information for individuals with limited English proficiency. FDA strongly encourages applicants to work with retailers and other organizations to ensure that a nonprescription drug product with an ACNU is accessible to individuals with limited English proficiency. Additionally, FDA recognizes that in certain situations, an individual may need assistance in fulfilling an ACNU. Therefore, FDA acknowledges the possibility an individual other than the intended user might be the person who fulfills the ACNU and obtains the drug product. For example, a caregiver may fulfill the ACNU on behalf of a child or an older adult.

We disagree with revising the requirement regarding the specific way the ACNU is operationalized because the requirement is intentionally broad to allow applicants significant flexibility regarding how the ACNU can be operationalized, mindful that technologies evolve and ACNUs may be developed for many different nonprescription drug products. The flexibility in this requirement will allow applicants to develop an ACNU appropriate for the specific drug product while taking into consideration a diverse group of consumers who may use the drug product if approved. While FDA will not require an applicant to operationalize an ACNU in more than one way, an applicant may submit and FDA may approve an application that includes more than one way to operationalize an ACNU for a particular nonprescription drug product with an ACNU provided that the ways the ACNU is operationalized reliably meets the objective (*e.g.*, appropriate self-selection). For example, an ACNU that includes the administration of a questionnaire as a key element might operationalize the ACNU by administering the questionnaire using a website and might alternatively operationalize the ACNU by administering the questionnaire using a mobile application or an automated telephone response system (see also 87 FR 38313 at 38320).

Additionally, continued availability of the prescription drug product, if one is approved, along with the availability of the nonprescription drug product with an ACNU, will promote greater access to needed drugs by providing flexibility in how people can obtain them. Patients can continue interacting

with their healthcare practitioner and obtain the drug by prescription, or choose to purchase a nonprescription drug product with an ACNU after fulfilling the ACNU, if appropriate (21 CFR 314.56(b) and see also 87 FR 38313 at 38319).

We agree that FDA and applicants must comply with all applicable statutory and regulatory requirements, including Federal, State, and local protections against discrimination. However, FDA does not provide guidance on how to comply with any legal obligations stemming from a source outside of the statutes and regulations that FDA administers. To the extent the comments summarized here also pertain to privacy considerations, those portions of the comments are addressed in our response to Comment 70.

(Comment 24) We received a comment expressing concern that remote, technological access to fulfill an ACNU for a nonprescription drug product may not ensure that the individual fulfilling the ACNU is in fact the consumer.

(Response 24) FDA acknowledges the possibility that an individual other than the intended user might be the person who fulfills the ACNU and obtains the drug product. In some cases, this might be acceptable. For example, a caregiver may fulfill the ACNU on behalf of a child or an older adult. However, in other cases, an individual might attempt to misrepresent themselves as the intended user to inappropriately access the nonprescription drug product with an ACNU. FDA expects applicants to mitigate this by incorporating safeguards against such attempts. For example, an applicant may consider bot detection, unique user identification, requirements for affirmation of truthfulness, or other methods.

(Comment 25) We received a few comments requesting guidance on the use of technology. We received a comment recommending that when operationalization of an ACNU is based on software (*e.g.*, via a kiosk or web-based application), the software should be considered a key element of the ACNU. Further, the comment suggests that because the software is being used to direct access, the software should be regulated as a device and the quality assurance system should meet part 4 (21 CFR part 4) for combination products.

(Response 25) We disagree that software should be considered a key element of the ACNU. The applicant must describe the specific way the ACNU is operationalized (see 21 CFR 314.56(c)(1)(vii)). While it is important for FDA to understand how the ACNU

is operationalized because this is part of achieving appropriate self-selection or use, the specific way an ACNU is operationalized is not a key element of the ACNU. The purpose of the ACNU is to ensure appropriate self-selection, appropriate actual use, or both, of the drug product without the oversight of a healthcare practitioner. The ACNU can be operationalized in different ways provided it reliably meets the objective (87 FR 38313 at 38320). However, any technology, including software, used to operationalize the ACNU must comply with relevant requirements. FDA considers a software function that meets the definition of a device in section 201(h) of the FD&C Act and does not meet the criteria under section 520(o) of the FD&C Act to be a device software function. Software used to operationalize an ACNU that meets the definition of a device and is not otherwise excluded from that definition will generally be regulated as such. Consistent with FDA's approach to other device software functions, we recommend that applicants of such software consult the policies and recommendations set forth in FDA's guidance documents, such as FDA's "Policy for Device Software Functions and Mobile Medical Applications" (Ref. 4). FDA acknowledges that certain nonprescription drug products with ACNUs may be considered drug-device combination products as defined in § 3.2(e) (21 CFR 3.2(e)).

(Comment 26) We received one comment asserting that an applicant must ensure that safeguards are in place to deny access to the nonprescription drug product with an ACNU if a technology failure in the operationalization of the ACNU occurs and the ACNU cannot be completed. The comment also suggests that FDA could allow a manufacturer's representative, a pharmacist, or a pharmacy technician to be able to administer a questionnaire to consumers in the event that the technology fails (*e.g.*, kiosks or online portals are not working).

(Response 26) We agree that the applicant must ensure that consumers cannot access the nonprescription drug product with an ACNU without fulfilling the ACNU. "Additional condition for nonprescription use" (ACNU) is defined as one or more FDA-approved conditions that an applicant of a nonprescription drug product must implement to ensure consumers' appropriate self-selection or appropriate actual use, or both, of the nonprescription drug product without the supervision of a practitioner licensed by law to administer such drug

if the applicant demonstrates and FDA determines that labeling alone is insufficient to ensure appropriate self-selection or appropriate actual use, or both (21 CFR 314.56(a) and 201.67(b) of this final rule). The requirement that the applicant describe the specific way the ACNU is operationalized is intentionally broad to allow significant flexibility regarding how the ACNU can be operationalized (21 CFR 314.56(c)(1)(vii) of this final rule). An applicant may submit, and FDA may approve, more than one way to operationalize an ACNU, which could also increase consumers' ability to access the drug product with an ACNU if one way the ACNU is operationalized fails. There is no requirement that an ACNU be operationalized using particular technology.

(Comment 27) We received a few comments recommending that FDA provide clarity about the process and information needed for an applicant to update how an approved ACNU is operationalized. One comment seeks clarity on the process an applicant would use to notify FDA when software upgrades and technology updates are needed for the ACNU. The comment suggests most technical changes and software upgrades should be submitted in the applicant's annual report. However, the comment suggests if the change is expected to result in a substantive change in how a consumer interacts with the ACNU, impacts the drug product's intended use, significantly improves safety and effectiveness of the ACNU, impacts risk controls, or increases risk to consumers, then the applicant would be expected to seek prior approval from FDA before proceeding with the change. The comment further states that the principles outlined in the existing Center for Devices and Radiological Health (CDRH) guidances, including the guidance for industry and FDA staff from October 2017, entitled "Deciding When to Submit a 510(k) for a Software Change to an Existing Device" (available at <https://www.fda.gov/media/99785/download>), should apply to applicants that may need to make technical or software changes. The comment requests FDA issue new guidance advising applicants how to inform FDA of the changes needed when the ACNU does not involve software.

(Response 27) An applicant of an approved NDA or ANDA for a nonprescription drug product with an ACNU must follow the same requirements as holders of other approved NDAs and ANDAs to make changes to a drug product. This means that an applicant must propose

revisions to an approved application for a nonprescription drug product with an ACNU by submitting a supplement, or, if applicable, by describing changes in an annual report, consistent with our current regulations for making changes to an FDA-approved application (see §§ 314.70, 314.81, 314.97, and 314.98). FDA may consider issuing guidance in the future to address general considerations that may arise applicable to all applicants on changes to the operationalization of, or software or technology associated with, an ACNU, if appropriate.

(Comment 28) FDA sought comment on any unique retail issues that might arise for retailers or consumers based on the way the applicant operationalizes the ACNU. We received two comments asking FDA to clarify whether consumers who satisfy the ACNU for the reference listed drug (RLD) (*i.e.*, branded drug product) could purchase the generic product. These two comments noted that this question may arise, for example, if a retailer does not currently have in stock the specific nonprescription drug product with an ACNU for which the ACNU was fulfilled, or a consumer fulfills the ACNU for the RLD but prefers to purchase the generic version. We received a comment that states FDA should only approve technology-neutral ACNUs and limit the proliferation of excessive proprietary platforms. We received a few comments asserting that if each applicant uses its own mechanism to provide a nonprescription drug product with an ACNU, pharmacies and other retailers may be unable to accommodate the many different mechanisms.

(Response 28) We acknowledge and appreciate the retail concerns expressed in the comments. During the development program of a nonprescription drug product with an ACNU, we encourage applicants to consider the feasibility of the specific way the ACNU is operationalized and the potential impact on retailers so as not to impede consumer access.

As our review is inherently application-specific, we expect a consumer seeking a particular nonprescription drug product with an ACNU will fulfill the ACNU as operationalized for that specific product. Accordingly, in general, consumers could not purchase the generic drug product without fulfilling the ACNU as operationalized for the generic drug product. FDA will review and approve NDAs and ANDAs for nonprescription drug products with an ACNU consistent with applicable requirements, which includes

consideration and review of, the statement of purpose of the ACNU, key elements of the ACNU, and the way(s) the ACNU is operationalized, as finalized in this rule at 21 CFR 314.56(c)(2). FDA must review and understand how the ACNU is operationalized to ensure that the ACNU achieves appropriate self-selection or use. As noted above, while it is important for FDA to understand how the ACNU is operationalized because this is part of achieving appropriate self-selection or use, the specific way an ACNU is operationalized is not a key element of the ACNU. The purpose of the ACNU is to ensure appropriate self-selection, appropriate actual use, or both, of the drug product without the supervision of a practitioner licensed by law to administer such drug, and the ACNU can be operationalized in different ways provided it reliably meets the objective (see also 87 FR 38313 at 38320). (See our response to Comment 25 and section V.F.g. of this document.) The regulations are intentionally broad and provide applicants significant flexibility in determining the specific way the ACNU may be operationalized, and FDA will not require an ACNU to use any specific technology or be “technology-neutral.” Thus, as stated above, since our review is inherently application-specific, and because we are specifically reviewing and approving how the ACNU is operationalized to ensure that the ACNU achieves appropriate self-selection, appropriate actual use, or both, we expect a consumer seeking a particular nonprescription drug product with an ACNU will fulfill the ACNU as operationalized for that specific product. Also, even if a generic applicant operationalizes the ACNU in a different way (e.g., uses a different technology) than its RLD, the purpose and key elements of the ACNU must be the same between RLD and generic drug. As a result, we expect that a consumer who can fulfill the brand drug’s ACNU would also be able to fulfill the generic drug’s ACNU.

In addition to the content and format requirements under § 314.94, FDA proposed specific requirements for an ANDA for a nonprescription drug product with an ACNU (proposed 21 CFR 314.56(c)(2)). We are making a few editorial modifications to the proposed requirement. The first editorial modification is adding the word “include” at the end of the introductory statement for ease of reading, and other changes are described below in section V.F.2. In the following paragraphs, we discuss a general comment on the topic

of ANDAs as a whole prior to discussing each of the specific requirements.

h. General comment on ANDAs.

(Comment 29) We received one comment that asserts that when there are significant differences in efficacy or side effect profiles between the RLD nonprescription drug product with an ACNU and an ANDA nonprescription drug product with an ACNU, such discrepancies should be addressed in the ANDA. The comment further asserts that different formulations should require a separate process which might not require a de novo application but would be more rigorous than an ANDA, which could include additional pharmacokinetic data and evidence demonstrating that consumers can safely use the drug product.

(Response 29) We disagree with the comment. To be approved, an ANDA for a nonprescription drug product with an ACNU must meet the standards specified in section 505(j) of the FD&C Act and relevant FDA regulations (see part 314, subpart C (21 CFR part 314, subpart C)) (see also 87 FR 38313 at 38318), as is true for any other ANDA. These standards do not change as a result of this final rule. For example, consistent with all ANDAs (other than ANDAs with differences approved under a petition filed under § 314.93), an ANDA for a nonprescription drug product with an ACNU must contain information to show that the drug product is pharmaceutically equivalent and bioequivalent to its RLD, and thus is expected to have the same clinical effect and safety profile as its RLD when used under the conditions specified in the labeling (see 87 FR 38313 at 38321).

i. Statement regarding the purpose of the ACNU. We proposed to require an ANDA applicant state the purpose of the ACNU (proposed 21 CFR 314.56(c)(2)(i)). We explained that as part of the submission, an ANDA applicant would state the purpose of the ACNU (the same purpose as the ACNU for the RLD) (87 FR 38313 at 38321). The heading in the preamble of the proposed rule was entitled, “Statement regarding the purpose of the ACNU” while both the preamble discussion and proposed codified text used the slightly different wording, “state the purpose of the ACNU” (see 87 FR 38313 at 38321 and 38330, respectively).

We received no comment regarding this proposed requirement, and we are finalizing it with editorial modifications for clarity and consistency. We are making a modification by revising the wording from “State the purpose of the ACNU” to “A statement regarding whether the purpose of the ACNU is to ensure appropriate self-selection or

appropriate actual use, or both, by consumers of the nonprescription drug product with an ACNU without the supervision of a practitioner licensed by law to administer such drug, which must be the same as the purpose of the ACNU for its reference listed drug (RLD)” for consistency and to capture the requirement more clearly. This modification clarifies that the ACNU for the ANDA must have the same purpose as the ACNU for the RLD, consistent with the discussion in the proposed rule (87 FR 38313 at 38321). This modification also makes the language consistent with the requirement for NDAs for a nonprescription drug product with an ACNU (see 87 FR 38313 at 38320 and 21 CFR 314.56(c)(1)(i) in this final rule).

*j. Information demonstrating that the key elements of the ACNU are the same as the key elements of the ACNU for its RLD.*⁴ We proposed to require an ANDA applicant include information demonstrating that the key elements of the proposed ACNU are the same as the key elements of the ACNU for its reference listed drug (RLD) (proposed 21 CFR 314.56(c)(2)(ii)). After consideration of public comment received, we are finalizing the proposal with only minor editorial modifications to provide greater clarity. We are revising the heading at 21 CFR 314.56(c)(2)(ii) to remove the word “include” since we moved “include” to be the last word of the introductory sentence under the broader heading at 21 CFR 314.56(c)(2) for ease of reading as discussed previously. We also shortened “reference listed drug” to “RLD.”

(Comment 30) We received a few comments that specifically support the requirement that an ANDA demonstrate that the key elements of the ACNU are the same as the key elements of the ACNU for its RLD. We also received a comment that suggests FDA reconsider what it defines as the key elements of the ACNU and provide more flexibility than the rule already provides for differences in how an ACNU is implemented by the RLD and ANDA applicants. The commenter further states that it does not believe that if the purpose of the ACNU is to ensure adequate self-selection by screening out consumers with certain conditions, that purpose can only be achieved through a single set of questions and responses that might be proprietary to the RLD.

⁴ We note that the heading for this section was “Description of key elements of the ACNU” in the proposed rule (87 FR 38313 at 38321). Nonsubstantive edits made here in this final rule for increased clarity.

(Response 30) We appreciate the comments supporting the requirement that an ANDA demonstrate that the key elements of the proposed ACNU are the same as the key elements of the ACNU for its RLD. We disagree that FDA should reconsider what it defines as the key elements of the ACNU and provide more flexibility for differences in how an ACNU is implemented by the RLD and ANDA applicants.

Based on existing statutory and regulatory requirements for ANDAs, applicants may submit an ANDA referencing a listed drug (including a listed drug that has been approved with an ACNU) under section 505(c) of the FD&C Act and rely on FDA's previous finding that the RLD is safe and effective (see 87 FR 38313 at 38321). Because FDA is approving the description of the key elements of the ACNU for the NDA (see 21 CFR 314.56(c)(1)(iv)), which includes the criteria by which the consumer would successfully fulfill the ACNU, including a description of the specific actions to be taken by a consumer or required responses to be provided by a consumer), which are necessary for the safe and effective use of the nonprescription drug product with the ACNU, and because the ANDA is relying upon FDA's previous finding that the RLD is safe and effective, the ANDA must demonstrate that the key elements of the proposed ACNU are the same as the key elements of the ACNU approved for its RLD. The labeling for the ANDA drug product must be the same as the labeling for its RLD at the time of the ANDA's approval, except for changes required because of differences approved under a petition filed under § 314.93 or because the drug product for which an ANDA is submitted and the RLD are produced or distributed by different manufacturers (see sections 505(j)(2)(A) and (j)(4) of the FD&C Act and §§ 314.94(a)(8)(iv) and 314.127(a)(7)). Generally, we anticipate that the ANDA applicant would use the same questions and responses as the RLD in its labeling.

Lastly, consistent with 505(j) of the FD&C Act and our general approach to ANDAs, we are providing flexibility in how an ANDA applicant can operationalize its ACNU in a different way from its RLD (87 FR 38313 at 38321). The ANDA would contain information to support that the way in which the ACNU is operationalized achieves the same purpose as the ACNU for its RLD, and the differences from the RLD are otherwise acceptable in an ANDA (87 FR 38313 at 38321).

(Comment 31) We received a few comments that express concern about the complexities of consumer selection

of ANDAs. A comment expresses concerns that allowable differences between the RLD and ANDA(s) for a nonprescription drug product with an ACNU could lead to increased consumer confusion and limit the ability of consumers to transition to a generic drug product, which could undermine the cost-saving potential that accompanies generic drug products. Another comment states that generic drug product applicants may conceivably be able to devise a completely novel ACNU that achieves substantially the same result as the ACNU for the RLD, which could cause consumer confusion. A few comments assert that consumers who have become accustomed to fulfilling an ACNU for a nonprescription drug product may be hesitant to change to a generic drug product if the ACNU varies too drastically from the RLD. One comment requests FDA clarify that all similar drug products that require an ACNU for nonprescription use will be subject to the same ACNU to limit consumer confusion and asserts that such a clarification could aid in retailers' ability to stock multiple nonprescription drug products with an ACNU.

(Response 31) While we agree that the rule permits an ANDA applicant to operationalize its ACNU in a different way from its RLD, we disagree that this rule permits the ANDA applicant to devise a completely novel ACNU. An ANDA for a nonprescription drug product with an ACNU must meet the evidentiary standards under the FD&C Act and FDA regulations for approval of an ANDA (see 87 FR 38313 at 38318). This final rule does not affect the applicability of these standards. As with all ANDAs (other than ANDAs with differences approved under a petition filed under § 314.93), an ANDA for a nonprescription drug product with an ACNU must contain information to show that the drug is pharmaceutically equivalent and bioequivalent to its RLD, and thus is expected to have the same clinical effect and safety profile as its RLD when used under the conditions specified in the labeling. Applicants submitting an ANDA referencing a listed drug that has been approved with an ACNU under section 505(c) of the FD&C Act are relying on FDA's previous finding that the RLD is safe and effective. Therefore, because FDA would have previously approved the description of the key elements of the ACNU for the NDA, which are necessary for the safe and effective use of the nonprescription drug product with the ACNU, and the ANDA is relying upon FDA's previous finding that the RLD is

safe and effective, the ANDA must demonstrate that the purpose and key elements of the proposed ACNU are the same as the purpose and key elements of the ACNU approved for its RLD (see 21 CFR 314.56(c)(2)(i) and (ii) of this final rule). As noted, the requirement provides flexibility for ANDAs in how the applicant operationalizes the ACNU. The rule requires that the ANDA contain information to support that the way in which the ACNU is operationalized achieves the same purpose as the ACNU for its RLD, and to show that differences from the RLD are otherwise acceptable in an ANDA. Moreover, the labeling for the ANDA drug product must be the same as the labeling for its RLD at the time of the ANDA's approval, except for changes required because of differences approved under a petition filed under § 314.93 or because the drug product for which an ANDA is submitted and the RLD are produced or distributed by different manufacturers (see section 505(j)(2)(A) and (j)(4) of the FD&C Act and §§ 314.94(a)(8)(iv) and 314.127(a)(7)).

Therefore, while we appreciate concerns that consumers may be hesitant to use a generic drug product with an ACNU that is operationalized differently from the RLD, we disagree that the differences between the RLD and the ANDA would be so great as to impede consumers' consideration of using a generic nonprescription drug product with an ACNU.

(Comment 32) We received a comment that recommends FDA require an ANDA include information demonstrating that the key elements of the ACNU are "equivalent to" the key elements of the ACNU for its RLD, rather than "the same as" the key elements of the ACNU for its RLD.

(Response 32) We disagree. The use of the term "same as" is consistent with current regulations applicable to ANDAs. For example, when determining the appropriateness of an ANDA, the term "same as" generally means identical in active ingredient(s), dosage form, strength, route of administration, and conditions of use (see § 314.92(a)(1) (21 CFR 314.92(a)(1))).

*k. Information on the way the ACNU would be operationalized.*⁵ We proposed to require that an ANDA applicant include information on the way the ACNU would be operationalized, as follows. If an

⁵ We note that the heading for this section was "Description of how the applicant will operationalize the ACNU" in the proposed rule (87 FR 38313 at 38321). Nonsubstantive edits made here in this final rule for increased clarity.

applicant believes the ACNU is operationalized in the same way as the RLD, include information demonstrating that the ACNU is operationalized in the same way as the RLD. If a different way to operationalize the proposed ACNU is used, include information to show that this different way to operationalize the proposed ACNU achieves the same purpose as the ACNU for its RLD and that the differences from the RLD are otherwise acceptable in an ANDA (proposed 21 CFR 314.56(c)(2)(iii)). After consideration of public comments received, we are finalizing the proposal with editorial modifications for clarity. We revised the heading at 21 CFR 314.56(c)(2)(iii) to remove the word “include.” As previously discussed in section V.F.2., we moved “include” to be the last word of the introductory sentence under the broader section, 21 CFR 314.56(c)(2), for ease of reading. We are adding the introductory clause: “Operationalization of the ACNU:” to the first sentence of the requirement for clarity and to allow for ease of reference to discuss the requirement. We are revising “include information on the way the ACNU would be operationalized” of the first sentence to “a description of the specific way(s) the ACNU is operationalized” for consistency with the NDA requirement in 21 CFR 314.56(b)(1)(vii) of this final rule. We are revising the word “way” to “way(s)” to add clarity because an application may include more than one way to operationalize the ACNU.

(Comment 33) We received a comment asserting that FDA’s proposed rule incorrectly suggested that ACNUs are not “conditions of use” under section 505(j) of the FD&C Act. The comment states that although the proposed rule contends that “the specific ways to operationalize the ACNU are not considered key elements of the ACNU and otherwise are not considered a condition of use of the drug product,” the proposed rule does not provide a basis for distinguishing an ACNU from other labeling elements that qualify as “conditions of use.”

(Response 33) We agree with the comment that an ACNU is a “condition of use” under section 505(j) of the FD&C Act, and we appreciate the opportunity to clarify, as relevant to section 505(j), the differences between the ACNU and the way(s) the ACNU is operationalized.

An ANDA for a nonprescription drug product with an ACNU must meet the standards specified under section 505(j) of the FD&C Act and applicable FDA regulations for approval of an ANDA. This final rule does not affect the applicability of these standards, as noted in our responses to Comments 29

and 31. Under section 505(j), an ANDA applicant can rely on FDA’s previous finding that the RLD is safe and effective so long as the ANDA applicant demonstrates that the proposed drug product and the RLD are the same with respect to active ingredient(s), conditions of use, dosage form, route of administration, strength, and, with certain exceptions, labeling. (An ANDA must also include sufficient information to demonstrate that the proposed product is bioequivalent to the RLD and that the ANDA meets the approval requirements relating to chemistry, manufacturing, and controls. See sections 505(j)(2)(A) and (4) of the FD&C Act.) This means that for an RLD with an ACNU, FDA would have previously approved the NDA with the description of the key elements of the ACNU (including the additional condition implemented by the applicant to be fulfilled by the consumer, the labeling specifically associated with the ACNU, and the criteria by which the consumer would successfully fulfill the ACNU) as necessary for the safe and effective use of the nonprescription drug product with the ACNU (see 21 CFR 314.56(c)(1)(i) through (vii)). This also means that for an ANDA—which relies upon FDA’s previous finding that the RLD is safe and effective—the ANDA must demonstrate that the purpose and key elements of the proposed ACNU are the same as the purpose and key elements of the ACNU approved for its RLD (see 21 CFR 314.56(c)(2)(i) and (ii) of this final rule) as part of meeting section 505(j)’s requirements for sameness (see section 505(j)(2)(A)(ii) of the FD&C Act).

However, an ANDA generally is not required to be the same as the listed drug it references in all respects (see section 505(j)(2)(A)). For example, a generic drug generally can differ from its RLD in certain respects, such as with regard to device configuration or with respect to inactive ingredients. As explained in response to Comment 31, this rule intentionally provides the ANDA applicant flexibility to operationalize its ACNU in a different way from its RLD, as long as the ANDA applicant is able to show that it achieves the same purpose as the ACNU for its RLD and that any differences from the RLD are otherwise acceptable in an ANDA. Moreover, the labeling for the ANDA drug product must be the same as the labeling for its RLD at the time of the ANDA’s approval, except for changes required because of differences approved under a petition filed under § 314.93 or because the drug product for which an ANDA is submitted and the

RLD are produced or distributed by different manufacturers (see section 505(j)(2)(A) and (j)(4) of the FD&C Act and §§ 314.94(a)(8)(iv) and 314.127(a)(7)). Differences in operationalization between an ANDA and its RLD, and differences in labeling that stem from those differences in operational design, may be permissible; the extent to which such differences affect the approvability of a proposed ANDA will be evaluated on a case-by-case basis. See section 505(j)(2)(A)(v) and (j)(4)(B) of the FD&C Act. We would expect an ANDA that meets the statutory and regulatory sameness requirements for an ANDA, and that operationalizes the ACNU in a different way than the RLD yet achieves the same purpose as the ACNU for its RLD, to be as safe and effective as its RLD.

(Comment 34) We received a comment that recommends that when an ANDA applicant proposes a different way to operationalize the ACNU, the applicant is required to include information to show that this different way to operationalize the proposed ACNU achieves “an equivalent” purpose as the ACNU for its RLD, rather than “the same” purpose as the ACNU for its RLD.

(Response 34) We disagree. The use of the term “same as” is consistent with section 505(j) of the FD&C Act and current regulations applicable to ANDAs. For example, when determining the appropriateness of an ANDA, the term “same as” generally means identical in active ingredient(s), dosage form, strength, route of administration, and conditions of use (see § 314.92(a)(1)).

(Comment 35) We received a few comments that encourage FDA to consider the use of shared system ACNUs between the RLD and ANDA applicants. One comment encourages FDA to establish processes to have ANDA applicants use the same ACNU as the RLD to maintain consistency, similar to the use of shared risk evaluation and mitigation strategy (REMS) programs by generic and brand manufacturers. Another comment states that use of shared system ACNUs could facilitate implementation of the systems in pharmacies and other points of sale and provide a simpler ACNU experience for consumers; however, the comment further states that FDA should not require the use of shared system ACNUs because they could be used to block generic competition.

(Response 35) FDA disagrees with the comment that FDA should encourage ANDA applicants to use a shared system to operationalize the ACNU. While ANDA applicants are required to

demonstrate that the purpose and key elements of the ACNU are the same as that of the ACNU for the RLD, we intentionally proposed a broad requirement to allow significant flexibility regarding how the ACNU can be operationalized. An ANDA applicant may operationalize its ACNU in a different way from its RLD so long as it achieves the same purpose as the ACNU for its RLD and that the differences from the RLD are otherwise acceptable in an ANDA (§ 314.56(c)(2)(iii) of this final rule). Requiring a shared system to operationalize the ACNU would limit the ability of the ANDA applicant to operationalize the ACNU in a different manner than the RLD.

(Comment 36) We received a few comments that state that patents claiming aspects of an ACNU for a nonprescription drug product should be eligible for patent listing in FDA's publication "Approved Drug Products With Therapeutic Equivalence Evaluations" (commonly known as the Orange Book) if they meet the criteria outlined in the FD&C Act and FDA's patent listing regulations. One comment states that the statute, which was amended by the Orange Book Transparency Act (Pub. L. 116–290, 134 Stat. 4889 (2021)), and existing regulations already identify the factors that govern whether an ACNU-related patent must be listed. Another comment asserts that the ACNU itself should be given the same full purview of patent protection afforded in the ANDA drug review process and require the follow-on applicant to consider and certify as to the NDA holder's patents. The comment further states that this would serve to put the original ACNU applicant on notice and allow them to take any necessary action regarding potential patent infringement before the follow-on nonprescription drug product with an ACNU comes to market. A separate comment discusses patentability of the ACNU and recommends that an ACNU be afforded similar intellectual patent protection as the drug formulation but only as it relates to drug products indicated to treat a specific condition or symptom. The comment further states that such protection is not advisable for the operationalization of the ACNU because it is unlikely that a sufficiently broad array of possibilities exists to operationalize ACNUs to justify any periods of market exclusivity.

FDA also received a comment recommending that patents claiming aspects of an ACNU for the nonprescription drug product should not be submitted for listing because allowing patents claiming aspects of the

ACNU to be listed in the Orange Book would allow a patent holder to try to delay FDA approval of an ANDA for a nonprescription drug product with an ACNU.

(Response 36) We appreciate the comments received in response to our request for comments on whether patents claiming aspects of the ACNU for the nonprescription drug product may be submitted consistent with applicable laws and regulations. To the extent the comments opined on whether an ACNU should be subject to patent protection, FDA notes that questions of patentability are overseen by the U.S. Patent and Trademark Office, and not FDA.

As a general matter, any applicant who submits an NDA must submit applicable patent information to FDA. Such submission of patent information must be consistent with section 505(b)(1)(A)(viii) and (c)(2) of the FD&C Act and 21 CFR 314.53, and a patent must not be submitted for listing unless the patent claims the drug that is the subject of the application and is a drug substance (active ingredient) patent or drug product (formulation or composition) patent, or claims a method of using the drug described in the drug's approved labeling. In turn, a 505(b)(2) or ANDA applicant must provide an appropriate patent certification or statement with respect to each such patent. The status of each patent listed for the listed drug(s) relied upon or reference listed drug, and the relevant patent certification or statement, must be considered in determining the timing of the approval of a 505(b)(2) or ANDA application.

Taking into consideration patent certification and other requirements that might serve as potential barriers to ANDA applicants developing nonprescription drug products, we proposed significant flexibility in the rule to allow an ANDA applicant to operationalize its ACNU in a different way from its RLD. As described throughout this rule (e.g., Responses 5, 6, and 7), this rule gives applicants flexibility regarding the types of ACNUs that may be developed, as well as how those ACNUs may be operationalized. Given this flexibility, and without knowing what patents an RLD application holder may ultimately have with respect to a nonprescription drug product with an ACNU (as noted above, the U.S. Patent and Trademark Office oversees determinations of patentability), FDA is unable to predict the patent issues that may be relevant to nonprescription drug products with an ACNU. However, we reiterate that in all cases, submission of patent information

must be consistent with section 505(b)(1)(A)(viii) and (c)(2) of the FD&C Act and 21 CFR 314.53, and a patent must not be submitted for listing unless the patent claims the drug that is the subject of the application and is a drug substance (active ingredient) patent or drug product (formulation or composition) patent, or claims a method of using the drug described in the drug's approved labeling.

To the extent the comments summarized here about "market exclusivity" also pertain to statutory exclusivity, those portions of the comments are addressed in our response to Comment 72.

G. Comments on Nonprescription and Prescription Approval and Simultaneous Marketing and FDA Response

We proposed to establish that because the ACNU allows the nonprescription drug product to be used safely and effectively without the supervision of a practitioner licensed by law to administer such drug, the ACNU is a meaningful difference between the prescription drug product and the nonprescription drug product with an ACNU. Therefore, a prescription drug product and a nonprescription drug product with an ACNU that contain the same active ingredient can be simultaneously marketed even if they do not have other meaningful differences, such as different indications or strengths (proposed 21 CFR 314.56(d)).

After consideration of public comments received, we are finalizing our proposal with an editorial correction. We are making an editorial correction to the proposed heading in 21 CFR 314.56(d), "Simultaneous marketing of nonprescription and prescription products," by adding the word "drug" such that it now more accurately states, "Simultaneous marketing of nonprescription and prescription drug products".

FDA believes that the requirement for submission of a separate application (21 CFR 314.56(b)) and the simultaneous marketing provision (21 CFR 314.56(d)) are necessary to fulfill the key goals of this rulemaking, which are to: (1) increase options for applicants to develop and market safe and effective nonprescription drug products, which would broaden the types of nonprescription drug products available to consumers and (2) increase consumer access to appropriate, safe, and effective drug products, by providing for the availability of prescription versions of nonprescription drug products approved with ACNUs, both of which in

turn could improve public health. If either of those requirements in the final rule is stayed or determined to be invalid or unenforceable, the remaining provisions of the rule should no longer continue in effect because the rule would not meet FDA's objectives. Without the requirement to submit a separate application, an applicant could submit a supplemental application to switch the status of an approved prescription drug product to a nonprescription drug product with an ACNU. If such a supplemental "switch" application were approved for an RLD, prescription ANDAs that reference the RLD would be required to submit supplemental applications to switch their drug products from prescription to nonprescription with an ACNU. This would potentially remove all the prescription drug products from the market. If a consumer who had been using a prescription drug product is unable to obtain it once it became available only as a nonprescription drug product with an ACNU (e.g., because the person lacks access to the relevant technology), the consumer would lose access to the drug. Similarly, consumers who prefer to interact with their healthcare practitioners and obtain the drug by prescription may be less likely to continue the treatment with a nonprescription drug product with an ACNU. These outcomes would be contrary to FDA's intent for the rule.

Therefore, if 21 CFR 314.56(b) or (d) is stayed or determined to be invalid or unenforceable, the entire rule should be invalidated.

(Comment 37) Many comments support the simultaneous marketing of the same drug as a prescription drug product and a nonprescription drug product with an ACNU. One comment supports simultaneous marketing to increase equitable access to safe and effective drug products and expand consumer choice. Another comment expresses support for FDA clarifying that an ACNU is a meaningful difference and asserts that there has not been clear understanding to date as to what "meaningful difference" means. We also received a comment requesting that FDA require the applicant to have a marketed prescription version of the same drug product at the same time as a marketed nonprescription drug product with an ACNU. However, we received a few comments that disagree with simultaneous marketing and assert that it does not improve or otherwise affect opportunities for consumer access. These commenters assert that simultaneous marketing would inadvertently create a less competitive marketplace by failing to incentivize

investment in the process of switching prescription drug products to nonprescription status and, consequently, fail to realize the public health benefits associated with the introduction of novel nonprescription drug products. These commenters also assert that simultaneous marketing is not necessary because the applicant could choose to initiate discussions with FDA about possible options for product access for persons who cannot or choose not to fulfill the ACNU or a consumer would be able to speak to their healthcare practitioner about treatment options if they cannot fulfill the ACNU.

(Response 37) As discussed in section V.G. of this document, we agree that simultaneous marketing could increase consumer access. Continued access to the prescription drug product, along with the availability of the nonprescription drug product with an ACNU, allows greater access to needed drugs by providing flexibility in how to obtain them. The consumer may obtain a nonprescription drug product with an ACNU however it is operationalized or continue to interact with their healthcare practitioner and obtain the approved prescription drug product, if appropriate (see also 87 FR 38313 at 38319).

As discussed in our response to Comment 10, we disagree that simultaneous marketing is not necessary to promote greater access to drug products or that simultaneous marketing would disincentivize development of a nonprescription drug product with an ACNU. FDA recognizes that some consumers may not be able to access the nonprescription drug product with an ACNU. While we agree, as discussed in our response to comment 23, that the applicant may operationalize an ACNU in more than one way, there are consumers that the drug product would not be appropriate for in the nonprescription setting, but the drug product would be an appropriate use when under the supervision of a practitioner licensed by law to administer such drug. If there is not simultaneous marketing of the prescription drug product and nonprescription drug product with the ACNU, the prescription drug product would no longer be able to be marketed, which would eliminate the prescription drug product as a treatment option for health care practitioners to prescribe for patients. Therefore, continued availability of the prescription drug product along with the nonprescription drug product with an ACNU promotes the greatest access to needed drug

products in both the prescription and nonprescription settings.

We disagree with the recommendations to revise the rule to require that the applicant market both a prescription version of the drug product and a nonprescription with an ACNU version of the drug product. A nonprescription drug product with an ACNU is not required to first be marketed as a prescription drug product. If the application for a nonprescription drug product with an ACNU meets the evidentiary standards under the FD&C Act and current FDA regulations to demonstrate the safety and effectiveness of the drug product in the nonprescription setting, then FDA could approve the application even if there is not a marketed prescription version.

(Comment 38) We received a comment that many stakeholders have misconceptions about a nonprescription drug product with an ACNU, including the view that nonprescription drug products with ACNUs are a third class of drugs or "an expansion of dual status." The commenter states that FDA can address these misconceptions by changing the terminology from "simultaneous marketing" to "simultaneous access."

(Response 38) We clarify that the rule does not establish a third class of drug products for purposes of section 503(b) of the FD&C Act. FDA approves drugs as either prescription or nonprescription drug products under section 505 of the FD&C Act. The rule is intended to increase options for applicants to develop and market safe and effective nonprescription drug products. Also, we interpret the comment about "dual status" to refer to simultaneous marketing of prescription and nonprescription drugs. While we recognize that there may be various misconceptions about what constitutes meaningful differences between prescription and nonprescription drug products, we disagree that changing the terminology in this rule from "simultaneous marketing" to "simultaneous access" will reduce any confusion that may exist. Based on our experience with industry, the term does not currently cause confusion. FDA has consistently used the term "simultaneous marketing" to explain FDA's interpretation of the language in section 503(b) of the FD&C Act to allow the same active ingredient to be simultaneously marketed in both a prescription drug product and nonprescription drug product if a meaningful difference exists between the two that makes the prescription product safe only under the supervision

of a practitioner licensed by law to administer such drug (see 87 FR 38313 at 38321, 83 FR 13994, April 2, 2018, and 70 FR 52050, September 1, 2005). Changing this long-used term may introduce new confusion.

(Comment 39) We received comments that agree that FDA has the legal authority under the FD&C Act to allow the simultaneous marketing of products with the same active ingredient as both a prescription drug product and a nonprescription drug product if there is a meaningful difference between the two drug products.

(Response 39) We agree with the comments that the FD&C Act permits the simultaneous marketing of a prescription drug product and a nonprescription drug product where a meaningful difference exists between the two that makes the prescription product safe only under the supervision of a practitioner licensed by law to administer such drug.

As noted in the proposed rule, under section 503(b) of the FD&C Act, the same active ingredient can be simultaneously marketed in both a prescription drug product and nonprescription drug product if a meaningful difference exists between the two that makes the prescription product safe only under the supervision of a practitioner licensed by law to administer such drug (see 87 FR 68702, 87 FR 38313 at 38321, 83 FR 13994, and 70 FR 52050). Section 503(b)(1)(A) requires a drug to be limited to prescription-only status if, because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, it is not safe for use except under the supervision of a practitioner licensed by law to administer such drug. Conversely, a drug that can be used safely by consumers without the supervision of a practitioner licensed by law to administer such drug does not require a prescription. Under section 503(b)(1), a drug cannot be both prescription and nonprescription at the same time, because it cannot be both safe and unsafe for use without the supervision of a practitioner licensed by law to administer such drug. For the same reason, two drug products with the same active ingredient that don't have meaningful differences also can't be simultaneously marketed as prescription and nonprescription. However, consistent with section 503(b)(1), if there is a meaningful difference (e.g. indication, strength, route of administration, dosage form, or patient population) between two drug products with the same active ingredient that makes one drug product

safe for use only under the supervision of a practitioner licensed by law to administer such drug, while the other drug product is safe for use without such supervision, then the two products may be simultaneously marketed as prescription and nonprescription drug products, respectively. (See also the discussion on meaningful difference in our response to Comment 40).

In addition, under section 503(b)(4)(B) of the FD&C Act, a drug for which the prescription dispensing provisions of section 503(b)(1) do not apply shall be deemed to be misbranded if at any time prior to dispensing, the label of the drug bears the "Rx only" symbol. Likewise, under section 503(b)(4)(A), drugs that are subject to the prescription dispensing provisions of section 503(b)(1) must bear the "Rx only" symbol, or else they are misbranded. This effectively means that, absent a meaningful difference between them, simultaneous marketing of two drug products with the same active ingredient as both prescription and nonprescription drug products would result in one of the two products being misbranded. However, if there is a meaningful difference between two drug products with the same active ingredient that makes one drug product safe for use only under the supervision of a practitioner licensed by law to administer such drug, then simultaneous marketing of the two products is permitted. See also the responses to Comment 2 and Comments 40 through 43, below.

(Comment 40) Some commenters contend that an ACNU is not a meaningful difference for purposes of simultaneous marketing of prescription and nonprescription drugs under section 503(b) of the FD&C Act (see also Comments 41–43 and FDA responses). Specifically, the comments argue that a meaningful difference between two drug products must exist in indication, strength, route of administration, dosage form, or patient population. The commenters assert that a switch to nonprescription status may be accompanied by one of these meaningful changes in addition to an ACNU, but the ACNU itself does not establish such a difference. The commenters specifically cite FDA's decision to withdraw ANDA drug products that referenced the prescription NDA 020698, MiraLAX Powder (polyethylene glycol (PEG)–3350) powder for occasional constipation because FDA approved a full switch of NDA 02698 from prescription to nonprescription marketing. The commenters assert that FDA found that while there were

differences in labeling, FDA looks to differences in indication, strength, route of administration, dosage form, [and] patient population to determine whether there is a meaningful difference between the two products. Therefore, the commenters assert that the mere presence of an ACNU does not implicate any of these factors.

(Response 40) FDA disagrees with these comments. FDA's considered judgment, based on the Agency's scientific and technical expertise, is that an ACNU would in fact constitute a meaningful difference between a prescription drug product and a nonprescription drug product with an ACNU, even if they do not have other meaningful differences, such as different indications or strengths. While we have previously provided some examples of what may constitute a meaningful difference, such as indication, strength, route of administration, dosage form, or patient population (see 83 FR 13994 and 70 FR 52050), we have not created a finite list of what may constitute a meaningful difference and will continue to make determinations of "meaningful difference" as appropriate.

In circumstances where the applicant would like to market a previously approved prescription drug product as nonprescription, the applicant must demonstrate that the proposed nonprescription drug product does not meet the criteria in section 503(b)(1) of the FD&C Act. FDA evaluates the data submitted by the applicant and makes a scientific determination about whether consumers can use the drug product safely and effectively without the supervision of a practitioner licensed by law to administer such drug, and therefore the drug product can be approved as nonprescription. When FDA determines that, based on the data, a proposed nonprescription drug product does not meet the criteria in section 503(b)(1) of the FD&C Act, the Agency may also make a scientific determination regarding whether there is a meaningful difference between the nonprescription drug product and a prescription drug product that contains the same active ingredient. If there is no meaningful difference between the products, then the product marketed as a prescription drug product would no longer meet the criteria for prescription drugs in section 503(b)(1) and would need to switch to nonprescription status. For example, with NDA 020698, MiraLAX (PEG–3350) powder for occasional constipation, FDA made a scientific determination that there are no meaningful differences between the prescription and nonprescription drug

products. In that scenario, the following were the same for the prescription and the nonprescription drug product: the active ingredient (PEG-3350), dosage form (powder for solution), strength (17 gram (g) dose in 4 to 8 ounces of liquid), route of administration (oral), indications (constipation), and patient population (17 years of age or older). As discussed in the response to Comment 41, in *Breckenridge Pharm., Inc. v. FDA*, 754 Fed. Appx. 1 (D.C. Cir. 2018), the U.S. Court of Appeals for the D.C. Circuit found no error in FDA's determination that differences in the duration of use between the prescription and nonprescription PEG-3350 products were not "meaningful differences" such that the prescription and nonprescription products could be marketed simultaneously.

There are also examples in which FDA has determined that, based on the data submitted, a drug meets the criteria in section 503(b)(1) of the FD&C Act for certain conditions of use; however, for other conditions of use, it does not meet the criteria in section 503(b)(1) of the FD&C Act. For example, Nasonex (mometasone furoate) nasal spray, 50 microgram (mcg)/spray (NDA 020762) was approved with two indications. FDA determined that data supported that the indication related to treatment of allergy symptoms did not meet the criteria for a prescription drug in section 503(b)(1) of the FD&C Act and that consumers could self-select and use the drug product for that indication in the nonprescription setting. Therefore, on March 17, 2022, based on data submitted by the applicant, FDA approved nonprescription Nasonex 24HR Allergy (mometasone furoate) nasal spray, 50 mcg/spray (NDA 215712) for the temporary relief of allergy symptoms. However, Nasonex's indication of "treatment of chronic rhinosinusitis with nasal polyps in adult patients 18 years of age and older" continues to meet the criteria in section 503(b)(1) of the FD&C Act. Therefore, FDA made a scientific determination that there is a meaningful difference between the prescription and nonprescription drug products because of their different indications, and the prescription and nonprescription drug products may be marketed simultaneously consistent with section 503(b).

Another example involves Xyzal (levocetirizine dihydrochloride) 0.5 mg/milliliter (mL) solution. The prescription product (NDA 022157) was approved in 2008 for the relief of symptoms associated with seasonal allergic rhinitis (SAR) and perennial allergic rhinitis (PAR), and the

treatment of uncomplicated skin manifestations of chronic idiopathic urticaria (CIU) for patients 6 years of age and older. In 2009, it was approved for SAR for patients 2 years of age and older, and PAR and CIU in adults and children 6 months of age and older. In 2017, Xyzal Allergy 24HR (NDA 209090) was approved for nonprescription use with the previously prescription indication of SAR in adults and children 2 years of age and older. The nonprescription drug product was also approved with the PAR indication, but only for adults and children 2 years of age and older. The younger age range (6 months of age to under 2 years) remained prescription because the diagnosis of PAR in infants and children under the age of 2 years is more complex and requires the evaluation of a physician. The indication for CIU for all age ranges continues to meet the criteria for prescription use. Thus, the meaningful difference between the prescription and nonprescription versions of Xyzal (levocetirizine dihydrochloride) for the PAR indication is a difference in patient population (*i.e.*, certain age groups).

An ACNU is a condition that must be affirmatively fulfilled by a consumer before they can self-select, use, or both self-select and use, a nonprescription drug product. Therefore, a consumer will generally need to act to fulfill an ACNU, and, as explained further in response to Comment 42 below, this distinguishes it from labeling. Similar to the different indications and patient population in the above examples for Nasonex and Xyzal, an ACNU will be a meaningful difference that exists between two drugs that makes the prescription drug product safe only under the supervision of a practitioner licensed by law to administer the drug and the nonprescription drug product safe for use without the supervision of such a practitioner. If an NDA is submitted for a nonprescription drug with an ACNU, FDA would only approve it if FDA determines that the applicant's studies and other information in the application demonstrate the ACNU would make the nonprescription drug product safe for use without the supervision of a practitioner licensed by law to administer the drug product. However, without the ACNU, the drug product would be safe and effective only under the supervision of a practitioner licensed by law to administer the drug product, and FDA could not approve the drug product as nonprescription.

(Comment 41) Some commenters argue that FDA's position that an ACNU is a meaningful difference ignores the

statutory language in section 503(b) of the FD&C Act, legislative history of the Durham-Humphrey Amendments to the FD&C Act, legal precedent, specifically the D.C. Circuit's decision in the *MiraLAX* case, *Breckenridge Pharm., Inc. v. FDA*, 754 Fed. Appx. 1 (D.C. Cir. 2018), and decades of Agency precedent. A commenter explains that the Durham-Humphrey Amendments amended section 503(b) of the FD&C Act to add the definition for prescription drug, which effectively established prescription and nonprescription drugs as two separate categories. The commenter further explains that legislative history shows that Congress amended the FD&C Act to address confusion that arose due to the fact that the same drug could be characterized as a prescription drug by one manufacturer and as nonprescription by another. The commenter further explains that the mutually exclusive nature of the classification of a drug product as either prescription or nonprescription is manifest in the statutory language. The commenter asserts that if FDA were to collapse the two categories for simultaneous marketing of a prescription drug product with a nonprescription drug product with an ACNU, it would not only contradict the plain-language meaning of the FD&C Act but also cause confusion that the Durham-Humphrey Amendments were meant to address. In discussing FDA's decision to withdraw approval of ANDA products that referenced *MiraLAX*, PEG-3350, the commenters argue that, in reaching its decision that the ANDA products did not have a meaningful difference from the RLD product (NDA 02698, *MiraLAX* (PEG-3350) powder for occasional constipation), FDA looked to differences in indication, strength, route of administration, dosage form, and patient population, but did not look to whether the product had an ACNU (see also Comment 40).

(Response 41) As discussed in response to Comments 39 through 40 above, and discussed further below in responses to Comments 42 through 43, FDA's position is entirely consistent with, and is in fact the best reading of, the statutory language in section 503(b) of the FD&C Act. Under section 503(b), the same active ingredient can be simultaneously marketed in both a prescription drug product and nonprescription drug product if a meaningful difference exists between the two that makes the prescription product safe only under the supervision of a practitioner licensed by law to administer the drug. FDA disagrees with commenters who argue that a

meaningful difference between two drug products must exist in indication, strength, route of administration, dosage form, or patient population, and that an ACNU is not a meaningful difference because it does not implicate any of these factors.

Recognizing that an ACNU can be a meaningful difference that allows for simultaneous marketing is also consistent with the legislative history of the Durham-Humphrey Amendments of 1951 (Pub. L. 82–215, 65 Stat. 648). Until 1951, the FD&C Act did not contain criteria for determining when to limit a drug's approval to prescription use. As a result, different manufacturers made different decisions about whether to market a drug as prescription or nonprescription. This resulted in confusion and uncertainty for pharmacists and consumers about whether certain drugs were safe for use without the supervision of a physician. To eliminate this confusion and uncertainty, and to protect the public health, Congress amended section 503(b) of the FD&C Act with the Durham-Humphrey Amendments, which had two primary objectives: (1) to protect the public from abuses in the sale of potent prescription drugs; and (2) to relieve retail pharmacists and the public from burdensome and unnecessary restrictions on the dispensing of drugs that are safe for use without the supervision of a physician (see S. Rep. No. 946, at 1 (1951), reprinted in 1951 U.S.C.C.A.N. 2454). By recognizing that there are circumstances under which an ACNU (e.g., restricting access to the drug unless a consumer demonstrates an appropriate medical history through a questionnaire) can help ensure that a patient can self-select and use a drug safely and effectively without the supervision of a practitioner licensed by law to administer such drug, this rulemaking advances the second primary objective of these amendments. Simultaneous marketing of a prescription drug product and a nonprescription drug product with an ACNU that do not have other meaningful differences can reduce burdens on access for patients for whom a drug is safe and effective for use without supervision of a practitioner licensed by law to administer such drug, without causing confusion. The ACNU would be a meaningful difference that consumers and pharmacists would recognize, along with its associated labeling including the ACNU Instructions and Statement, as differentiating the product from a

potential prescription version of the product.

FDA's decision to withdraw approval of ANDA products that referenced NDA 020698 MiraLAX (PEG–3350) powder for occasional constipation, and the D.C. Circuit's decision in *Breckenridge Pharm., Inc. v. FDA* upholding the Agency's position, have no bearing on whether an ACNU is a meaningful difference between prescription and nonprescription drug products. As a threshold matter, MiraLAX is not a nonprescription drug product with an ACNU. Additionally, when FDA made its decision, and when *Breckenridge Pharm., Inc. v. FDA* was decided, this regulation had not yet been promulgated. Instead, the court focused on whether labeling regarding duration of use could constitute a meaningful difference; the court upheld FDA's conclusion that it did not in that case, while expressly leaving open the possibility that it might in another case (see 754 Fed. Appx. at 4). Accordingly, whether an ACNU is an example of a meaningful difference with regard to the PEG–3350 products was not relevant to FDA's withdrawal decision for MiraLAX and, likewise, was not at issue in *Breckenridge Pharm., Inc. v. FDA*. As discussed further in response to Comment 42 below, as defined in this rule, an ACNU cannot consist merely of labeling, even if one aspect of it includes labeling, nor is an ACNU “functionally equivalent to labeling.”

Furthermore, FDA's determination here that an ACNU would constitute a meaningful difference is consistent with FDA's approach to the MiraLAX proceedings. There, FDA stated: “In determining whether an Rx drug product and an OTC drug product are the same, FDA considers whether there are any meaningful differences between the OTC and Rx products that would justify the different marketing status of the products” (see 73 FR 63491 at 63492, October 24, 2008). As explained in our response to Comment 40, FDA's considered judgment is that an ACNU, as defined in this rule, would be such a meaningful difference because it would allow a drug product that would otherwise require a prescription to be marketed as a nonprescription drug product.

(Comment 42) One comment argues that an ACNU is labeling or “functionally equivalent to labeling” because it is intended to enable an individualized consumer response for the purpose of self-selection and/or actual use, the same role played by traditional drug labeling, and therefore it does not constitute a meaningful difference between a prescription drug

product and a nonprescription drug product.

(Response 42) FDA does not agree that an ACNU is labeling or “functionally equivalent to labeling,” or that legal precedent is being ignored. Prescription drug labeling is designed to inform healthcare practitioners and thus contains more detailed information than nonprescription drug labeling. Nonprescription drug labeling is designed for consumers. As illustrated in the MiraLAX proceedings in *Breckenridge Pharm., Inc. v. FDA*, we determined that the differences in the labeling between the nonprescription drug product and the generic prescription drug products that were “simply . . . due to the different audiences (i.e., learned intermediary versus lay consumer) and the difference in setting (i.e., use with a physician's supervision versus consumer self-directed use)” were not meaningful differences for purposes of section 503(b) of the FD&C Act (see 83 FR 14007). However, certain meaningful differences between drugs may be reflected in their labeling (e.g., indication or patient population).

This is consistent with FDA's determination that an ACNU is a meaningful difference because an ACNU (as defined in this regulation) cannot consist merely of labeling, even if one aspect of it includes labeling. A label is the written, printed, or graphic matter on the immediate container of the drug product (see section 201(k) of the FD&C Act). Labeling is all labels or other written, printed, or graphic matter on the drug product or any of its containers or wrappers, or accompanying the drug product (see section 201(m) of the FD&C Act). Labeling for nonprescription drugs provides information to consumers to self-select and use the drug product, and the consumer reads this information to self-select and use the drug product.

In contrast to labeling, an ACNU is a condition that must be affirmatively fulfilled by a consumer before they can self-select, use, or both self-select and use, a nonprescription drug product. Therefore, a consumer will generally need to act to fulfill an ACNU. For example, with Drug X (see more information about Drug X, a fictitious nonprescription drug product with an ACNU, in the proposed rule (87 FR 38313 at 38319)), the ACNU requires all consumers to complete a questionnaire located on a secure website created by the applicant to determine whether Drug X is appropriate for the consumer. Using a consumer's answers to the questions, the underlying program or other operating information used by the secure website, not the consumer,

calculates the risk score for a serious side effect and determines if the consumer has an acceptable disease-specific risk score to use Drug X and therefore purchase Drug X. As shown in this example, an ACNU may include labeling, but the ACNU is not in itself labeling. It is a condition that a consumer must affirmatively satisfy, which ensures that a drug product can be appropriately selected and used safely and effectively without the supervision of a practitioner licensed by law to administer such drug.

FDA disagrees that an ACNU is “functionally equivalent to labeling.” With previous prescription-to-nonprescription switches that have been approved by FDA, including the one at issue in the *MiraLAX* proceedings in *Breckenridge Pharm., Inc. v. FDA*, the drug product was safe for use without the supervision of a practitioner licensed by law to administer such drug under section 503(b) of the FD&C Act; it simply needed to be labeled to satisfy the requirement for adequate directions for use and other labeling requirements for nonprescription marketing under the FD&C Act and FDA regulations. On the other hand, for a nonprescription drug product approved with an ACNU, FDA has determined that labeling alone is insufficient to ensure appropriate self-selection or appropriate actual use, or both (see generally 21 CFR 314.56 of this final rule). Therefore, a drug product approved with an ACNU could not satisfy the requirement for adequate directions for use for a layperson under the FD&C Act and FDA regulations, and would not be safe for use without the supervision of a practitioner licensed by law to administer such drug. We have provided in this rule an exemption from the requirement for adequate directions for use on the condition that, among other conditions, the approved ACNU is implemented as approved under the application, so that the drug would then become safe for use in the nonprescription setting (see 21 CFR 201.130 in this final rule).

With regard to the comment’s argument that an ACNU is functionally equivalent to labeling because they both “ensure appropriate self-selection and use of the OTC product,” the comment does not explain why this is different from other characteristics of a drug that it concedes are meaningful differences. In particular, the comment “request[s] that the final rule acknowledge and maintain FDA’s prior position that it will look to indication, strength, route of administration, dosage form, and patient population to determine whether there are meaningful differences between two products with the same active

ingredient” The comment therefore concedes that the indication and patient population can be meaningful differences for purposes of simultaneous marketing under section 503(b) of the FD&C Act, but does not acknowledge that these conditions, which are only reflected in the labeling, also serve to “ensure appropriate self-selection and use of the OTC product.” Such conditions are, in fact, critical to appropriate self-selection and use. Because the ACNU would similarly provide a difference for the drug that is meaningful, the nonprescription drug with an ACNU would be a different drug product from a prescription version, even if it does not have other meaningful differences for purposes of simultaneous marketing under section 503(b) of the FD&C Act.

(Comment 43) We received a comment that argues that this rule, by allowing the simultaneous marketing of the prescription version of the drug product and a nonprescription with an ACNU version of the drug product, “indisputably triggers the major questions doctrine because it would radically overhaul the OTC drug market and limit consumer access to OTC drugs . . . which is undeniably an issue of ‘vast economic and political significance.’” (quoting *West Virginia v. EPA*, 142 S. Ct. 2587, 2605).

(Response 43) We do not agree that this rule implicates the “major questions doctrine” because of the provision providing for simultaneous marketing. In *West Virginia v. EPA*, the Supreme Court found that, “to substantially restructure the American energy market,” the “‘claim[ed] to discover in a long-extant statute an unheralded power’ representing a ‘transformative expansion in [its] regulatory authority,’” and that the Agency “‘located this newfound power in the vague language of an ‘ancillary provision[.]’ of the Act.” 597 U.S. 697, 724 (2022) (citations omitted). The Court further found that this ancillary provision “‘had rarely been used in the preceding decades,’” but was then used “‘to adopt a regulatory program that Congress had conspicuously and repeatedly declined to enact itself.” *Id.* Consequently, the Court stated that “‘there is every reason to ‘hesitate before concluding that Congress’ meant to confer . . . the authority” in question to the EPA and that the case was a “‘major questions case.” *Id.* at 724–725. To overcome its hesitation and “‘skepticism toward EPA’s claim,” the Court stated that “‘the Government must—under the major questions doctrine—point to ‘clear congressional authorization’ to regulate in that manner.” *Id.* at 732.

None of the findings described above in *West Virginia v. EPA* applies to the provision in this rule providing for simultaneous marketing of prescription drugs and nonprescription drugs with ACNUs. As discussed in the response to Comment 2, Congress has given FDA the authority to make scientific determinations about which drugs may be marketed as prescription or nonprescription drugs. In addition, section 503(b)(3) gives FDA the authority to issue regulations to remove the prescription-only dispensing requirements from drugs when such requirements are not necessary for the protection of the public health. FDA’s finding that an ACNU would constitute a meaningful difference is simply the latest determination in a series of determinations under section 503(b) of the FD&C Act regarding whether some difference constitutes a meaningful difference for purposes of prescription and nonprescription marketing. For example, in 1984, the Agency approved a nonprescription ibuprofen product because it had meaningful differences from the prescription versions of ibuprofen (see 67 FR 54139 for general background related to this regulatory history).

Likewise, for decades other drug products have been approved as nonprescription drug products even though prescription drug products contained the same active ingredient (see 70 FR 52051 for some examples, including loperamide in a prescription drug product for chronic diarrhea and in an OTC drug product for acute diarrhea). In 2005, FDA noted that such meaningful differences had, up to that time, included a difference in indication, strength, route of administration, and dosage form. FDA also indicated that it was considering whether a difference in patient population could also constitute a meaningful difference for purposes of simultaneous marketing (see 70 FR 52050, September 1, 2005). Later, in the **Federal Register** of October 24, 2008 (73 FR 63491; see also 83 FR 13994), related to the *MiraLAX* proceeding, and in 2013 related to an approval decision for NDA 202211 Oxytrol for Women (oxybutynin) extended-release film, 3.9 mg, for the treatment of overactive bladder in women, FDA made clear that patient population could also be a meaningful difference between a prescription drug product and a nonprescription drug product.

In addition, in 2018, the D.C. Circuit Court of Appeals in *Breckenridge Pharm., Inc. v. FDA* upheld FDA’s determination that the labeled duration of use for the nonprescription *MiraLAX*

product did not constitute a meaningful difference from the generic prescription drugs, and recognized that “the agency left open the possibility that differences in duration of use—in other circumstances—could add up to a ‘meaningful difference.’” 754 Fed. Appx. 1, 4 (citing FDA’s publications in the **Federal Register** related to the *MiraLAX* proceeding, at 83 FR 13994 at 13999 and 73 FR 63491 at 634913). Thus, whether a difference between a prescription drug product and a nonprescription drug product constitutes a meaningful difference that permits simultaneous marketing in accordance with section 503(b) of the FD&C Act is something FDA has considered and acted upon in numerous instances for decades. FDA’s determination in this rule that an ACNU would constitute the same kind of meaningful difference is hardly a “sweeping assertion of ‘unprecedented power over American industry,’” as the commenter claims.

The simultaneous marketing provision in this rule is also unlike the Agency actions in “major questions” cases because, among other things, it does not represent an attempt to “substantially restructure” a market. All that this provision of the rule will do is provide an additional consideration for applicants seeking authorization for a product to enter the market. With regard to simultaneous marketing of prescription drug products and nonprescription drug products, as noted above, there are currently, and there have long been, marketed prescription drug products and nonprescription drug products that contain the same active ingredient because there is some meaningful difference that supports the simultaneous marketing of the drug products, and FDA has made determinations regarding what constitutes a meaningful difference under section 503(b) of the FD&C Act for decades. For this same reason, the simultaneous marketing provision in this rule, which simply clarifies another difference that the Agency has determined would constitute a meaningful difference between prescription and nonprescription drug products under section 503(b), does not represent a “transformative expansion in . . . regulatory authority” that is derived from “vague language of an ‘ancillary provision[]’ of the Act.” In addition, inclusion of the simultaneous marketing provision does not create a “regulatory program that Congress [has] conspicuously and repeatedly declined to enact itself.” FDA is not aware of any Congressional consideration of

legislation regarding the marketing of nonprescription drugs with ACNUs alongside prescription versions of such drugs.

The comment also appears to be arguing that the simultaneous marketing provision implicates the major questions doctrine because it would “limit consumer access to OTC drugs.” But any prediction that the simultaneous marketing provision would limit consumer access is highly speculative. To support this assertion, the comment claims that “prescription drug companies may decide not to pursue OTC switch opportunities that use an ACNU” if prescription versions of the drug continue to be marketed. Similarly, by way of analogy, one might argue that the benefit of statutory exclusivity, such as that provided at section 505(j)(5)(F)(iii) of the FD&C Act, would be undermined by FDA’s rule. However, FDA would disagree with this because as noted below in response to Comment 72, an application—including an application for a nonprescription drug product with an ACNU—is eligible for exclusivity if applicable statutory requirements are met. Further, as noted above, the assertion that the ACNU pathway or the benefit of exclusivity would be undermined by the rule is speculative, particularly considering the evidence showing that roughly 60 percent of purchases for a nonprescription drug product are from new consumers who had not previously taken the drug before it switched from prescription status, suggesting that the potential to attract new-to-therapy consumers for nonprescription drug products is substantial (Ref. 13). Moreover, this critique is not specific to nonprescription drug products with ACNUs; it would also apply to other drug products for which there is a meaningful difference that allows simultaneous marketing. Furthermore, although we do not anticipate this scenario, even if no applicant pursues the development and eventual marketing of a nonprescription drug product with an ACNU, ACNU products do not currently exist in the marketplace. So, it is not clear how this rule would “limit consumer access to OTC drugs,” or how that would implicate the major questions doctrine. Rather, the final rule is intended to increase options for applicants to develop and market safe and effective nonprescription drug products and increase consumer access to appropriate, safe, and effective drug products, which could improve public health.

Ultimately, the simultaneous marketing provision in this rule does

not present one of the “extraordinary cases that call for a different approach” in statutory interpretation, because it is not one of the “cases in which the ‘history and the breadth of the authority that [the agency] has asserted,’ and the ‘economic and political significance’ of that assertion, provide a ‘reason to hesitate before concluding that Congress’ meant to confer such authority.” 597 U.S. at 721.

We also note that in the context of arguing that the major questions doctrine applies, this comment further argued that *Chevron* deference would consequently not apply. Since this comment was submitted, the Supreme Court decided *Loper Bright Enterprises v. Raimondo*, which overruled *Chevron* (see 144 S. Ct. 2244 (2024)). Therefore, we acknowledge *Chevron* deference would not apply when analyzing the statutory authority for this rule, including the simultaneous marketing provision. However, *Loper Bright* itself recognized that “Congress has often enacted . . . statutes” that by their terms delegate authority to “exercise a degree of discretion” in “giv[ing] meaning to a particular statutory term” or “fill[ing] up the details of a statutory scheme.” *Loper Bright*, 144 S. Ct. at 2263 (cleaned up). Section 503(b)(3) of the FD&C Act, which empowers the Secretary to adopt regulations “remov[ing] drugs subject to section 505 from the requirements of paragraph (1) of this subsection when such requirements are not necessary for the public health,” delegates just such an authority. As explained in the response to comment 2, throughout section 503(b), Congress also more broadly delegated FDA the explicit authority to use its scientific judgment to determine which drugs should be prescription or nonprescription, within the statutory criteria. And as part of its broad authority to approve and regulate drug products, including to establish specific regulations for drug products, FDA is authorized to determine the conditions under which a drug is safe and effective for use without a prescription. See, e.g., sections 505, 505G, and 701 of the FD&C Act.

In any case, we believe this rule represents the best reading of the FD&C Act. As explained in the response to comment 39 and in the proposed rule, section 503(b) of the FD&C Act allows the same active ingredient to be simultaneously marketed in both a prescription drug product and nonprescription drug product if a meaningful difference exists between the two that makes the prescription product safe only under the supervision of a practitioner licensed by law to

administer the drug (see 87 FR 68702, 87 FR 38313 at 38321, 83 FR 13994, and 70 FR 52050). Section 503(b)(1)(A) requires a drug to be limited to prescription-only status if, because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, it is not safe for use except under the supervision of a practitioner licensed by law to administer such drug. Conversely, a drug that can be used safely by consumers without the supervision of a practitioner licensed by law to administer such drug does not require a prescription. Under section 503(b)(1), a drug cannot be both prescription and nonprescription at the same time, because it cannot be both safe and unsafe for use without the supervision of a practitioner licensed by law to administer such drug. For the same reason, two drug products with the same active ingredient that don't have meaningful differences also can't be simultaneously marketed as prescription and nonprescription. However, consistent with section 503(b)(1), if there is a meaningful difference between two drug products with the same active ingredient that makes one drug product safe for use only under the supervision of a practitioner licensed by law to administer such drug, while the other drug product is safe for use without such supervision, then the two products may be simultaneously marketed as prescription and nonprescription drug products, respectively.

In addition, under section 503(b)(4)(B) of the FD&C Act, a drug, for which the prescription dispensing provisions of section 503(b)(1) do not apply, shall be deemed to be misbranded if at any time prior to dispensing, the label of the drug bears the "Rx only" symbol. Likewise, under section 503(b)(4)(A), drugs that are subject to the prescription dispensing provisions of section 503(b)(1) must bear the "Rx only" symbol, or else they are misbranded. The juxtaposition of these two provisions dictates that, absent a meaningful difference between the products, simultaneous marketing of two drug products with the same active ingredient as both a prescription and a nonprescription drug product would result in one of the two products being misbranded. However, if there is a meaningful difference between two drug products with the same active ingredient that makes one drug product safe for use only under the supervision of a practitioner licensed by law to administer such drug, then

simultaneous marketing of the two products is permitted.

We believe that FDA's longstanding interpretation of section 503(b), in which a meaningful difference allows prescription and nonprescription drug products with the same active ingredient to be simultaneously marketed, represents the best reading of that provision. A contrary reading would require all ibuprofen products, for example, to be restricted to prescription status because some products containing ibuprofen meet the prescription drug definition in section 503(b)(1) of the FD&C Act. Under the Agency's longstanding interpretation of section 503(b), however, because the nonprescription versions of ibuprofen have meaningful differences from the prescription versions, such as different indications and strengths, they are different drugs that no longer meet the prescription drug definition for purposes of section 503(b). Likewise, a drug that no longer meets the prescription drug definition in section 503(b)(1) of the FD&C Act because it is approved with an ACNU is a different drug for purposes of simultaneous marketing of prescription drugs containing the same active ingredient consistent with section 503(b).

We have already explained in this response how the simultaneous marketing provision of this rule simply reflects another determination by the Agency regarding whether a particular difference constitutes a meaningful difference for purposes of simultaneous marketing of prescription and nonprescription drugs with the same active ingredient under section 503(b) of the FD&C Act. In our responses to Comments 2 and 39 through 42, we also explained how this is consistent with FDA's statutory authority to make scientific determinations about which drugs should be prescription or nonprescription drugs, the legislative history of the Durham-Humphrey Amendments, which added section 503(b) to the FD&C Act, as well as legal precedent and Agency practice.

(Comment 44) We received a few comments asserting that simultaneous marketing of a prescription drug product and the nonprescription drug product with an ACNU could lead to inaccurate case reporting of adverse events for the nonprescription drug product with an ACNU. The comments describe concerns that reports of adverse events for the prescription drug product and the nonprescription drug product with an ACNU could be conflated and identification of a true safety signal for a drug product may not

be detected accurately or could be delayed due to background noise.

(Response 44) We disagree that simultaneous marketing of a prescription drug product and a nonprescription drug product with an ACNU, where the only meaningful difference between the two drug products is the ACNU, could lead to inaccurate case reporting of adverse events or delayed identification of a safety signal arising for either drug product. An applicant must report adverse drug experience information to FDA in compliance with applicable postmarketing reporting requirements (§ 314.80). Among other information, an individual case safety report contains certain identifiable information that would be unique to either the prescription drug product or the nonprescription drug product with an ACNU, such as application number and type, drug product name, national drug code, and lot number (§ 314.80(f)). Therefore, FDA would have information to investigate whether the safety signal was associated with a prescription drug product, nonprescription drug product with an ACNU, or both.

Additionally, FDA has robust reporting systems for consumers to report adverse drug experiences, complaints, or other issues with FDA-regulated products, including nonprescription drug products. MedWatch is FDA's program for reporting serious adverse drug experiences, product quality problems, therapeutic inequivalence/failure, and product use errors with human medical products (Ref. 5). Additionally, consumers can contact the FDA Consumer Complaint Coordinator for the State in which they reside to report adverse drug experiences or other problems with FDA-regulated products. FDA's Consumer Complaint Coordinators, located in FDA offices, will listen, document a complaint about an FDA-regulated product, and follow up as necessary (Ref. 6). As with other FDA-regulated products, FDA has experience investigating if there is a safety signal with a particular product.

(Comment 45) We received a few comments opposing simultaneous marketing stating that marketing of a prescription drug product and a nonprescription drug product with an ACNU may lead to consumer confusion because the labeling information for the prescription drug product and nonprescription drug product with an ACNU would not be identical in content or format.

(Response 45) We disagree that simultaneous marketing of a prescription drug product and a

nonprescription drug product with an ACNU, where the only meaningful difference between the two drug products is the ACNU, would cause consumer confusion because of labeling differences between the prescription drug product and the nonprescription drug product with an ACNU. The commenter did not support its assertion with any evidence. There are numerous drug products with the same active ingredient that are currently simultaneously marketed as a prescription drug product and a nonprescription drug product where there is a meaningful difference between the two products. FDA does not have any data to show that there is consumer confusion and industry has not previously conveyed concerns with these products that are currently simultaneously marketed. Generally, labeling for nonprescription drug products and prescription drug products are not identical in content and format because they are directed to different audiences (primarily consumers for nonprescription drug products and healthcare practitioners for prescription drug products) to provide the information necessary for the safe and effective use of the drug product. Therefore, different content and format regulations apply to prescription and nonprescription labeling (see generally §§ 201.57 and 201.66 (21 CFR 201.57 and 201.66), respectively). Labeling for nonprescription drug products is directed to consumers (see § 201.66). Although patient labeling is required for certain prescription drug products (see, e.g., 21 CFR part 208), generally, labeling for prescription drug products, including the prescribing information (see § 201.57), is directed to the healthcare practitioner—not the patient—and a patient uses the prescription drug product under the supervision of a practitioner licensed by law to administer such drug.

H. Comments on Refusal To Approve an Application With an ACNU and FDA Response

FDA specified in the proposed rule that we would refuse to approve an application for a nonprescription drug product with an ACNU if FDA has determined the application failed to meet the requirements specified in proposed 21 CFR 314.56 applicable to NDAs (proposed 21 CFR 314.125(b)(20)) or ANDAs (proposed 21 CFR 314.127(a)(15)). In the following paragraphs, we discuss the comments on this proposal. After consideration of public comments received, we are finalizing our proposals without change.

(Comment 46) We received a few comments supporting the provision. One comment explains that this provision is important because it alerts applicants to the requirements for a nonprescription drug product with an ACNU and explains FDA's action if the application does not comply with the requirements. We received one comment requesting that FDA include language in the rule to explain that FDA would not approve a nonprescription drug product with an ACNU if it has not been shown that the ACNU is necessary because the commenter believes this specific reason for rejecting an application is somewhat unusual.

(Response 46) An application for a nonprescription drug product with an ACNU must meet all applicable requirements for an application in addition to the specific requirements for a nonprescription drug product with an ACNU in § 314.56 in this final rule. FDA is including in the rule when FDA would refuse to approve an application for a nonprescription drug product with an ACNU. In addition to the other reasons for refusing to approve an application previously established at 21 CFR 314.125 and 314.127, we are establishing at 21 CFR 314.125(b)(20) and 314.127(a)(15) in this final rule, that we would refuse to approve an application for a nonprescription drug product with an ACNU if FDA determined the application failed to meet the applicable requirements in 21 CFR 314.56. For example, if an application for a nonprescription drug product with an ACNU fails to include a statement regarding the necessity of the ACNU (21 CFR 314.56(b)(1)(ii) in this final rule) or include adequate data or other information that demonstrates the necessity of the ACNU to ensure appropriate self-selection or appropriate actual use, or both (21 CFR 314.56(b)(1)(v) in this final rule), FDA would not approve the application.

I. Comments on Other Postmarketing Reports and FDA Responses

We proposed to require a new postmarketing report for nonprescription drug products with ACNUs. We proposed that applicants must report to FDA information concerning any incident of failure in the implementation of an ACNU using the FDA Adverse Event Reporting System (FAERS) (proposed 21 CFR 314.81(b)(3)(v)). In the following paragraphs, we discuss comments on this proposed requirement.

After considering the comments, which we discuss below, we are making clarifying changes to the requirement because of significant commenter

confusion as to when a postmarketing report should be submitted to FDA and concerns about duplicative reporting requirements. We are replacing the title "Report of failure in the implementation of an additional condition for nonprescription use" with "Report of additional condition of nonprescription use (ACNU) failure for a nonprescription drug product with an ACNU" in the heading. We are replacing the phrases "when a failure in the implementation of an additional condition for nonprescription use (ACNU) for a nonprescription drug product occurs" and "report of a failure in implementation of an ACNU" with "report of an ACNU failure" throughout 21 CFR 314.81(b)(3)(v) of the final rule. We are designating 21 CFR 314.81(b)(3)(v)(A) and adding the subtitle "ACNU failure" followed by the explanation that an ACNU failure occurs upon either of the following events: (1) a failure associated with the implementation of the key elements of the ACNU under 21 CFR 314.56(c)(1)(iv) or (c)(2)(ii) or (2) a failure associated with the operationalization of an ACNU under 21 CFR 314.56(c)(1)(vii) or (c)(2)(iii), as approved by FDA in the application (21 CFR 314.81(b)(3)(v)(A) in this final rule). To address confusion about applicant responsibilities in connection with ACNU failure reporting requirements and to be consistent with certain existing postmarketing reporting requirements for adverse drug experiences (see § 314.80), we are adding 21 CFR 314.81(b)(3)(v)(B), stating that the applicant must develop written procedures for the surveillance, receipt, evaluation, and reporting of ACNU failures to FDA. We note that FDA has described its intention to issue a proposed rule that, among other things, would modernize postmarketing safety reporting requirements for human drug and biological products and require application holders for drug products and certain biological products to establish and maintain a pharmacovigilance quality system (see Regulation Identifier Number 0910–AI61 on Fall 2023 Unified Agenda of Regulatory and Deregulatory Actions). In that proposed rule, FDA intends to provide notice and an opportunity for comment on any proposed changes that, if finalized, may affect the requirements in § 314.81(b)(3)(v) of this final rule.

We are designating § 314.81(b)(3)(v)(C) and adding the subtitle "Report of ACNU failure" followed by information about the report of ACNU failure. To address commenter confusion that a report of an ACNU failure is duplicative of existing

postmarketing reporting requirements for adverse drug experiences (see § 314.80), we are removing the clause “that may cause or lead to inappropriate medication use or consumer harm” from the explanation of an event that triggers the submission of a report of an ACNU failure because an ACNU failure may still occur even if such failure does not cause or lead to inappropriate medication use or consumer harm. In addition, we are removing the clause stating that a report must be submitted, “whether or not the failure is associated with an adverse event,” to avoid confusion between a report of an ACNU failure submitted under § 314.81(b)(3)(v) of this final rule and a postmarketing report of an adverse drug experience, which would be submitted under § 314.80. To reduce burden and further address commenter confusion, we are clarifying that if an applicant receives or otherwise obtains information regarding an adverse drug experience associated with an ACNU failure before the submission of a report of an ACNU failure, a single individual case safety report must be submitted to FDA that describes both the adverse drug experience and the associated ACNU failure. To clarify the term “supplement,” and not to confuse with a supplement to an approved application, we are revising the phrase “must supplement the report” to “submit a follow-up report to the previously submitted report,” and “the supplement must include” to “the follow-up report must include.”

We are designating the content of the report of ACNU failure to § 314.81(b)(3)(v)(D) in this final rule and adding the subheading “Content of Report of ACNU failure.” We are revising the subheading in § 314.81(b)(3)(v)(A)(2) from “Additional information, if known.” to “Additional Information if available to the applicant.” for clarity. In order to reduce burden on industry by having consistency with current processes for ICSR submissions, we are also revising the requirement for the content of an ACNU report to include the additional information, if available to the applicant, as a dataset in a structured manner instead of a narrative summary (see proposed § 314.81(b)(3)(v)(A)(2)(iv) and (v)). Therefore, while the additional information is consistent with the proposed rule, we are separating the additional information into separate provisions consistent with current practices for reporting structure beginning at § 314.84(b)(3)(v)(D)(2)(iv) in this final rule (21 CFR 314.81(b)(3)(v)(D)(2)(iv) through (x) in

this final rule). Among other requirements, § 314.84(b)(3)(v)(D)(2)(iv) in this final rule requires the use of ACNU failure terms. The applicant may use, for example, a MedDRA (Medical Dictionary for Regulatory Activities) term or the verbatim phrasing used by the reporter as the ACNU failure term. Additionally, new MedDRA terms have been added to describe certain ACNU failures.

We are also making nonsubstantive changes to align with existing postmarketing reporting requirements. We are replacing “adverse event” with “adverse drug experience” throughout § 314.81(b)(3)(v) in this final rule to align with the terminology used for postmarketing reporting requirements for adverse drug experiences in § 314.80. Although reports of an ACNU failure will be submitted to FAERS, we have removed specific mention of FAERS from the rule to align with existing postmarketing reporting requirements which do not specifically refer to an FDA database for submissions (see, e.g., § 314.80). Therefore, in addition to the reasons stated in the previous paragraphs, we are omitting the following sentence from the regulation: “All failures in implementation of an ACNU must be reported to the FDA Adverse Event Reporting System (FAERS), whether or not the failure in implementation of an ACNU is associated with an adverse event.” (as stated in proposed § 314.81(b)(3)(v)). We are also removing the phrase “to FAERS” throughout the section.

We are also making the following clarifying revisions on our own initiative in § 314.81(b)(3)(v): (1) replacing the word “submitter” with “applicant,” (2) replacing “obtains” with “receives or otherwise obtains,” (3) removing the word “as” before the clause “required in § 314.80(f),” and making corresponding grammatical changes in sentences (e.g., revising an “a” to “an” due to sentence revisions).

(Comment 47) We received many comments that support FDA’s proposal to require postmarketing reports for an ACNU failure. We received many comments that support robust postmarketing surveillance for nonprescription drug products with ACNUs for FDA to monitor the drug products. One comment recommends that if an applicant does not comply with the reporting requirement, the applicant must market its drug product as a prescription drug product and cannot market its drug product as a nonprescription drug product with an ACNU.

(Response 47) FDA agrees that postmarketing reports of an ACNU failure are an important part of FDA surveillance to ensure that consumers are appropriately accessing the nonprescription drug product with the ACNU as approved by FDA. If an applicant does not comply with the requirements for postmarketing reports, the applicant may be subject to an FDA enforcement action for failure to submit required postmarketing reports (see section 301(e) of the FD&C Act (21 U.S.C. 331(e)); see also section 505(e) of the FD&C Act).

(Comment 48) We received a few comments asserting that the requirement for a report of an ACNU failure exceeds FDA’s statutory authority, particularly where no adverse event occurred.

(Response 48) We disagree that FDA lacks authority to require postmarketing reports of ACNU failures, including when they are not associated with particular adverse drug experiences.⁶ Section 505(k)(1) of the FD&C Act authorizes FDA to require such reporting. Specifically, section 505(k)(1) requires reports “of data relating to clinical experience and other data or information” as FDA prescribes by regulation, “on the basis of a finding that such . . . reports are necessary in order to enable [FDA] to determine, or facilitate a determination, whether there is or may be ground” for withdrawing approval of an application.

When describing the kinds of data or information that FDA may require to be reported, section 505(k)(1) of the FD&C Act does not expressly refer to adverse drug experiences, and instead refers to a broader category of “data relating to clinical experience and other data or information.” In contrast, in other parts of the FD&C Act, the statute does expressly use the term “adverse drug experience,” see, e.g., sections 505(k)(3) and 505–1, underscoring that “data relating to clinical experience and other data or information” means something distinct from data or information relating to “adverse drug experiences.” Indeed, consistent with the statutory text, FDA has long interpreted “data relating to clinical experience and other data or information,” as described in section 505(k)(1) of the FD&C Act, as

⁶ See 21 CFR 314.80(a), (defining *adverse drug experience* as “any adverse event associated with the use of a drug in humans, whether or not considered drug related” including the following: An adverse event occurring in the course of the use of the drug in professional practice; an adverse event occurring from drug overdose whether accidental or intentional; an adverse event occurring from drug abuse; an adverse event occurring from drug withdrawal; and any failure of expected pharmacological action).

covering a broader set of information than solely adverse drug experiences. For example, under 21 CFR 314.81(b), implementing section 505(k)(1) of the FD&C Act, applicants are required to report other kinds of information, regardless of whether the information is associated with adverse drug experiences, such as “information concerning any incident that causes the drug product or its labeling to be mistaken for, or applied to, another article,” “a summary of new information from the previous year that might affect safety, effectiveness, or labeling of the drug product,” and “distribution data.”

Additionally, like these other kinds of information, even when there is no adverse drug experience that is clearly associated with an ACNU failure, ACNU failures generally would have a bearing on whether the Agency may consider withdrawal proceedings pursuant to section 505(e) of the FD&C Act. For example, under section 505(e), the Agency may withdraw approval of an application if certain new information shows that a drug is not safe for use under the conditions of use upon the basis of which the application was approved. If the applicant does not ensure that the ACNU is implemented and operationalized as approved by FDA in the application, then the drug may no longer be considered safe and effective for use in the nonprescription setting. In such a case, FDA may consider withdrawing an application, if, for example, an applicant fails to take appropriate corrective action to prevent reoccurrence of an ACNU failure of the same nature.

More specifically, because a nonprescription drug product with an ACNU must only be made available to consumers who fulfill the ACNU for whom it is appropriate, ACNU failures are relevant to understanding the safety and effectiveness of the drug. With an ACNU failure, an adverse drug experience may very well occur even if there are no reported adverse drug experiences associated with a particular ACNU failure. The ACNU failure could be an indication that the method of implementing or operationalizing the ACNU is flawed, which may result in the drug product not being made available to consumers for whom it is appropriate and, in other instances, may result in the drug product being made available to consumers for whom it is not appropriate. For example, with Drug X (see more information about Drug X, a fictitious nonprescription drug product with an ACNU, in the proposed rule (87 FR 38313 at 38319)), the ACNU requires all consumers to complete a

questionnaire located on a secure website created by the applicant to determine whether Drug X is appropriate for the consumer. The consumer answers the series of questions in the questionnaire and the underlying program or other operating information used by the secure website calculates the risk score for a serious side effect and determines if the consumer has an acceptable disease-specific risk score to use Drug X and therefore purchase Drug X. A software failure that results in a miscalculation of the risk score would be an ACNU failure even if the failure did not provide the consumer with access to drug product because such failure in calculating the risk score could similarly provide consumers access to the drug product for whom it is not appropriate. FDA and applicants have an interest in understanding the ACNU failures and mitigating the risk of reoccurrence of an ACNU failure because ACNU failures could result in adverse drug experiences or lead to the drug product being made available to consumers that should not be taking the drug product for various reasons.

(Comment 49) We also received several comments that oppose the proposed postmarketing reporting requirement for a nonprescription drug product with an ACNU as “overly broad,” “unnecessary”, or “excessive burdensome.” Those comments request that FDA revise or remove the requirement to report an ACNU failure. The comments contend that a nonprescription drug product with an ACNU would already be subject to the same postmarketing reporting requirements for adverse drug experiences in § 314.80 and, if applicable, 21 CFR part 803 for medical devices. The comments assert that the postmarketing reporting requirement for ACNU failures could require the submission of a very large number of postmarketing reports and will place undue resource demands on both applicants and FDA. Several comments suggest revisions in how FDA defines a failure in implementation of an ACNU to narrow the scope of the reporting requirement. A few of these comments suggest that the submission of a report should be limited to an ACNU failure that results in an adverse event or that is likely to result in an adverse event. A few comments suggest that what they consider nonsignificant failures (e.g., ACNU failures with no adverse events) should be captured and investigated under an applicant’s existing complaint handling processing instead of under a postmarketing reporting requirement.

(Response 49) After consideration of comments received, FDA is revising the requirement to report ACNU failures for clarity and to decrease any potential duplicative reporting. We are clarifying the events that would result in the submission of a report of an ACNU failure to make clear that these reports are not duplicative of the applicable regulatory requirement for the submission of postmarketing reports of adverse drug experiences under § 314.80. In order to clarify that only reports of ACNU failures are required to be submitted in a postmarketing report under § 314.81 and because postmarketing reports of adverse experiences are currently required under § 314.80, we are removing language that: (1) a report of an ACNU failure should be submitted if the failure may cause or lead to inappropriate medication use or consumer harm and (2) a report must be submitted to FAERS whether or not the failure in implementation of the ACNU is associated with an adverse event. We clarify that a report of an ACNU failure must be submitted to FDA when an event occurs that differs from the following, as approved by FDA in the application including: (1) a failure associated with the implementation of one or more of the key elements of an ACNU under § 314.56(c)(1)(iv) or (c)(2)(ii) or (2) a failure associated with operationalization of the ACNU under 21 CFR 314.56(c)(1)(vii) or (c)(2)(iii) (§ 314.81(b)(3)(v) in this final rule). A nonprescription drug product with an ACNU that includes a device constituent part is also subject to combination product reporting requirements, including malfunction reporting (see 21 CFR 803.50 and part 4) for an event involving the device constituent part.

For the reasons explained in response to Comment 48, we disagree that reports of ACNU failure should only be submitted for ACNU failures that result in an adverse event or that is likely to result in an adverse event.

(Comment 50) We received a comment suggesting that the proposed postmarketing reporting provision would require reports about a wide range of technological failures, including routine and quickly resolved technological failures (e.g., broken kiosks or credit card readers, disruptions at a retailer, or temporarily inaccessible websites or mobile applications).

(Response 50) Reports of ACNU failures may need to be submitted for various types of technological failures. However, the specific circumstances of the technological failure would

determine whether it constitutes an ACNU failure. We are revising the rule to clarify the events that would be considered ACNU failures. We further clarify that a report of an ACNU failure must be submitted to FDA when there is an event that occurs that differs from how FDA approved the nonprescription drug product with an ACNU: (1) a failure associated with the implementation of the key elements of an ACNU under § 314.56(c)(1)(iv) or (c)(2)(ii), as approved by FDA in the application or (2) a failure associated with operationalization of an ACNU under 21 CFR 314.56(c)(1)(vii) or (c)(2)(iii), as approved by FDA in the application (§ 314.81(b)(3)(v) in this final rule).

(Comment 51) One comment states that frequent reporting of “problems” to FDA also might stigmatize nonprescription drug products with ACNUs, as some observers may incorrectly equate any reported problem with a threat to someone’s health.

(Response 51) We interpret the comment about “frequent reporting of problems” to mean frequent reporting of ACNU failures and disagree. FDA has a public health interest in receiving reports of ACNU failures because the FDA-approved ACNU ensures consumers’ appropriate self-selection or appropriate actual use, or both, of the nonprescription drug product without the supervision of a practitioner licensed by law to administer such drug. FDA and applicants have an interest in understanding the ACNU failures and mitigating the risk of reoccurrence of an ACNU failure because ACNU failures could result in adverse drug experiences or lead to the drug product being made available to consumers that should not be taking the drug product for various reasons, even if the initial failure did not.

(Comment 52) We received a comment expressing concerns that the proposed rule requires immediate reporting regardless of the nature of the failure and will require a significant change to pharmacovigilance programs with limited benefit.

(Response 52) As explained in our responses to Comments 49–50, FDA clarified the events that would result in the submission of a report of an ACNU failure. The applicant must submit the report of an ACNU failure as soon as possible but no later than 15 calendar days from the date when the applicant has acquired the minimum dataset for an ACNU failure (§ 314.81(b)(3)(v)(E) of this final rule). We disagree that applicants will need to make significant changes to pharmacovigilance programs in order to comply with the timeframe

for submitting a report of an ACNU failure under § 314.81 because the requirement is consistent with the timeframe for the submission of certain postmarketing reports of adverse drug experiences under § 314.80. Therefore, applicants will generally already have systems in place that could be adapted to facilitate the reporting of ACNU failures. FDA has a public health interest in receiving reports of ACNU failures expeditiously because the FDA-approved ACNU ensures consumers’ appropriate self-selection or appropriate actual use, or both, of the nonprescription drug product without the supervision of a practitioner licensed by law to administer such drug. Further, as explained previously, FDA and applicants have an interest in understanding the ACNU failures and working to mitigate the risk of recurrence of an ACNU failure.

(Comment 53) We received several comments on the burden and benefits of submitting individual reports to FDA for each individual ACNU failure encountered by a consumer resulting from the same cause of failure, as opposed to a single, consolidated report for all such failures. We received several comments supporting a single, consolidated report to reduce the reporting burden on applicants. We received a few comments that recommend FDA consider the nature of the failure or clinical outcome of the failure (*i.e.*, a risk-based approach) to determine whether individual or consolidated reporting is appropriate. We received one comment recommending consolidated reporting whereby reports would be submitted at intervals less than 5 days apart or when the particular error occurs after a certain number of times because applicants may not have the capacity to submit individual reports for every occurrence of a particular technical malfunction or error. Another comment urges FDA to consider consolidated reporting for ACNU failures that the comment characterized as unrelated to safety and effectiveness (such as a computer system failure). Finally, we received a comment that requests FDA consider implementing a more streamlined reporting procedure for nonprescription drug products with ACNUs similar to CDRH’s Voluntary Malfunction Summary Reporting (VMSR) program for medical devices.

(Response 53) As explained in our responses to Comments 49–50, FDA clarified the events that would result in the submission of a report of an ACNU failure as not all issues related to an ACNU are ACNU failures. FDA specifically sought comment on the

burden and benefits of submitting an individual report to FDA for each ACNU failure encountered by a consumer resulting from the same cause of failure, as opposed to a single, consolidated report for such failures. Given the possibility for numerous reasons for an ACNU failure depending on the particular circumstances, FDA believes that individual reporting for ACNU failures would provide more specific information to facilitate an understanding of ACNU failures, their causes, and their outcomes. Therefore, we disagree with submitting a single, consolidated report of an ACNU failure resulting from the same cause of failure.

The VMSR program (see 83 FR 40973, August 17, 2018) is a voluntary program intended to streamline reporting of device malfunctions in certain situations based on FDA experience with summary reporting programs, key findings from CDRH’s pilot program for the submission of Medical Device Reports (MDRs) in summary format on a quarterly basis, and other information summarized in the 2017 proposal for the VMSR program (see 82 FR 60922, December 26, 2017). Therefore, we disagree with implementing a reporting procedure for nonprescription drug products with ACNUs similar to the VMSR program because we do not have findings on which to base a streamlined approach. To decrease any potential duplicative reporting burden by applicants, we clarified the events that would result in the submission of a report of an ACNU failure to FDA.

(Comment 54) We received a few comments questioning whether FAERS is an appropriate database for collecting reports of ACNU failures. One comment specifically raises a concern about whether FAERS is appropriate to collect reports of technological failures, considering that FAERS currently focuses on adverse events and product defects and quality. The comment further asks FDA to clarify any changes that would be required to the reporting forms to accommodate ACNU failures. A few comments also question whether the clinical reviewers of FAERS reports have the expertise to evaluate reports of technological problems and the attempted remedies.

(Response 54) FAERS is the database currently designed to support FDA’s postmarketing safety surveillance program for drugs and certain biological products and can currently accommodate reports of ACNU failures. Although reports of an ACNU failure will currently be submitted to FAERS, we have removed specific mention of FAERS from the rule to align with other postmarketing reporting regulations,

which do not specifically refer to a current FDA database for submissions (see, e.g., § 314.80).

The informatic structure of the FAERS database aligns with the International Council for Harmonisation guidance for industry entitled “E2B(R3) Electronic Transmission of Individual Case Safety Reports (ICSRs) Implementation Guide—Data Elements and Message Specification” (available at <https://www.fda.gov/media/81904/download>).

FDA reviewers are trained to evaluate reports of technological problems and the attempted remedies. Center for Drug Evaluation and Research (CDER) reviewers may consult CDRH reviewers, when appropriate, to address any issues regarding technology related to an ACNU.

(Comment 55) We received one comment suggesting that pharmacies or sellers would be required to report and record ACNU failures thereby placing a tremendous burden on the pharmacies or sellers.

(Response 55) We disagree. While a pharmacist or other individual may voluntarily submit a report of an ACNU failure to FDA’s reporting systems such as Medwatch (Ref. 5), the rule requires the applicant of the nonprescription drug product with an ACNU to submit reports of an ACNU failure (see § 314.81(b)(3)(v) in this final rule). Therefore, unless they are applicants for the relevant drug product, pharmacies and sellers are not required under the rule to report ACNU failures.

(Comment 56) We received a comment seeking clarification on whether FDA expects an applicant to implement remediation for every ACNU failure. The comment further states that an applicant should determine when remediation should be implemented based on its safety assessment and that the remedial action taken to address the ACNU failure depends on the type of failure and the consequence of the failure.

(Response 56) If there is an ACNU failure, an event has occurred that is not consistent with FDA’s approval of the nonprescription drug product with an ACNU in one or both of two ways: (1) a failure associated with the implementation of the key elements of an ACNU under 21 CFR 314.56(c)(1)(iv) or (c)(2)(ii) or (2) a failure associated with operationalization of the ACNU under 21 CFR 314.56(c)(1)(vii) or (c)(2)(iii), as approved by FDA in the application (§ 314.81(b)(3)(v) in this final rule). The applicant must explain the remedial action initiated or completed and the corrective action to prevent ACNU failures of the same nature in the future

(§ 314.81(b)(3)(v)(A)(2)(v) in this final rule).

(Comment 57) We received a comment requesting that FDA provide guidance on how often applicants should monitor a nonprescription drug product with an ACNU.

(Response 57) We understand the need for additional clarity here. In the proposed rule, we stated that, “to meet these reporting requirements, applicants will likely need quality assurance systems in place to capture instances where failures in implementation of an ACNU occur” (87 FR 38313 at 38322). The proposed rule also proposed that the report must include certain information that the applicant is aware of about the drug product and the initial reporter, as well as a narrative summary of the failure in implementation of an ACNU and a description of the action initiated or completed to address the failure in implementation of an ACNU (87 FR 38313 at 38323 and proposed § 314.81). As mentioned earlier, to address confusion and be consistent with the existing postmarketing reporting requirements for adverse drug experiences (see § 314.80) and cognizant of minimizing burden we are adding § 314.81(b)(3)(v)(B), stating that the applicant must develop written procedures for the surveillance, receipt, evaluation, and reporting of ACNU failures to FDA. This gives applicants flexibility to develop procedures specific to the drug product and potentially align with any written procedures already established with respect to § 314.80 to help minimize burden. We anticipate that applicants could adapt any written procedures for surveillance, receipt, evaluation, and reporting of postmarketing adverse drug experiences as already required under § 314.80 to also include instances of an ACNU failure.

(Comment 58) We received a comment that recommends FDA create a consumer-friendly website and telephone number for consumers to report issues with a nonprescription drug product with an ACNU.

(Response 58) FDA already has reporting systems for consumers to report adverse drug experiences, complaints, or other issues with FDA-regulated products, including nonprescription drug products. MedWatch is the FDA’s program for reporting serious adverse drug experiences, product quality problems, therapeutic inequivalence/failure, and product use errors with human medical products (Ref. 5). Additionally, consumers can contact the FDA Consumer Complaint Coordinator for the State in which they reside to report

adverse drug experiences or other problems with FDA-regulated products. FDA’s Consumer Complaint Coordinators, located in FDA offices, will listen, document a complaint about an FDA-regulated product, and follow up as necessary (Ref. 6). Therefore, we disagree that FDA needs to create an additional consumer-friendly website and telephone number for consumers to report issues specific for a nonprescription drug product with an ACNU.

J. Comments on General Labeling Requirements and FDA Responses

We proposed to require that a nonprescription drug product with an ACNU must comply with all applicable regulatory requirements for nonprescription drug products under part 201 (21 CFR part 201), including the format and content of nonprescription drug product labeling under § 201.66 and the statements specified in proposed 21 CFR 201.130(a) (proposed 21 CFR 201.67(c)). In the following paragraphs, we discuss the comments on these requirements. After consideration of public comments received, we are finalizing our proposals with modifications for clarity and consistency with revisions made to § 201.130 in this final rule. Specifically, we are revising the citation in 21 CFR 201.67(c) of the final rule from “§ 201.130(a)” to “§ 201.130(a) and (b).”

(Comment 59) We received several comments supporting the proposed labeling requirements because the labeling will help consumers use nonprescription drug products with ACNUs safely and effectively. However, a few comments express concerns about whether consumers possess the capacity to obtain, process, and understand the basic health information needed to make an appropriate health decision using the labeling for nonprescription drug products with ACNUs. A few comments discuss accessibility of labeling for nonprescription drug products with an ACNU, and one comment recommends that labeling should be made available to consumers in multiple languages using a quick-response code (commonly referred to as a QR code) on the labeling. Another comment requests that FDA develop criteria to ensure accessibility of labeling for nonprescription drug products with ACNUs.

(Response 59) We understand commenters’ concerns that some consumers may have difficulty using the labeling for a nonprescription drug product with an ACNU. However, consistent with the development of nonprescription drug products,

applicants of nonprescription drug products with ACNUs may be required to conduct consumer studies which can help demonstrate that the requirement for adequate directions for use is met (87 FR 38313 at 38316). These studies may include label comprehension studies, self-selection studies, actual use studies, and other human factors studies (87 FR 38313 at 38316). FDA has issued guidances on certain types of consumer studies (Refs. 1 to 3). Because nonprescription drug products with an ACNU, like other nonprescription drug products, will be used by consumers from the general population without supervision of a practitioner licensed by law to administer such drug, applicants are expected to include a wide range of subjects in consumer studies. Specifically, in self-selection studies, exclusion criteria should be minimal (e.g., inability to read and understand English) (Ref. 2). In label comprehension studies, applicants should include an adequate number of subjects in self-selection studies who have limited literacy skills. The proportion of low-literacy subjects in the study sample should be representative of the proportion of adults in the United States with low literacy skills based on available national data (Ref. 1).

FDA acknowledges the benefits of having translated drug information for individuals with limited English proficiency. FDA's current regulations require that all words, statements, and other information required by or under authority of the FD&C Act appear on the label or labeling in the English language, with limited exceptions (see § 201.15(c)). In the case of articles distributed solely in the Commonwealth of Puerto Rico or in a Territory where the predominant language is one other than English, the predominant language may be substituted for English. In addition to English, an applicant may provide consumers with labeling in other languages; however, applicants (and not FDA) must ensure the translation of the labeling is accurate and complete. FDA strongly encourages applicants to work with retailers and other organizations to ensure that a nonprescription drug product with an ACNU is accessible to individuals with limited English proficiency. To the extent an applicant, retailer, or other organization receives Federal financial assistance from the U.S. Department of Health and Human Services (HHS), they are required to take reasonable steps to provide meaningful access to their programs and activities by individuals with limited English proficiency under

Title VI of the Civil Rights Act of 1964 and its implementing regulations (42 U.S.C. 2000d, *et seq.*; 45 CFR part 80; see also section 1557 of the Affordable Care Act, 42 U.S.C. 18116, which provides similar protections as those under Title VI in health programs and activities receiving Federal financial assistance).

We note that we considered requiring that the label include additional information for consumers such as information that the drug may also be available as a prescription drug product. We ultimately rejected that idea, however; the purpose of applicable labeling requirements for nonprescription drug products and the specific labeling requirements for nonprescription drug products with an ACNU is to provide consumers with the information that they need to self-select and use the drug product in the nonprescription setting, not to inform them of other treatment options. However, while FDA would not require this information on the labeling of the nonprescription drug product, the applicant may choose to engage in promotional communications for both the approved prescription and nonprescription drug products.

(Comment 60) We received one comment that requests FDA clarify the standards for permissible labeling differences between an RLD and an ANDA nonprescription drug product with an ACNU that is operationalized differently from the RLD to increase the viability of the ACNU pathway for generic drug products.

(Response 60) We disagree with the need to clarify permissible labeling differences specific to an RLD and an ANDA nonprescription drug product with an ACNU because the rule does not change the standards for permissible labeling differences between an RLD and an ANDA. The labeling for the ANDA drug product must be the same as the labeling for its RLD at the time of the ANDA's approval, except for changes required because of differences approved under a petition filed under § 314.93 or because the drug product for which an ANDA is submitted and the RLD are produced or distributed by different manufacturers (see section 505(j)(2)(A) and (j)(4) of the FD&C Act and §§ 314.94(a)(8)(iv) and 314.127(a)(7)). Any permissible labeling difference would be determined on a case-by-case basis as we consider the specifics of each application for a nonprescription drug product with an ACNU during our review.

(Comment 61) We received a comment that the proposed labeling requirements of 21 CFR 201.67(c) do not

impose any incentive or requirement for consumers to read the information provided by the applicant before accessing and fulfilling the ACNU. The comment suggests that consumers could access the information on the provided website, disregard the information, and fulfill the ACNU without having the requisite knowledge to make an informed decision.

(Response 61) While FDA acknowledges that we cannot require a consumer to read labeling, the applicant must describe how the ACNU will ensure appropriate self-selection or appropriate actual use, or both, by consumers (21 CFR 314.56(c)(1)(iii) in this final rule) and submit adequate data or other information that demonstrates the effect of the ACNU on the appropriate self-selection or appropriate actual use, or both, by the consumer of the nonprescription drug product (21 CFR 314.56(c)(1)(vi) in this final rule).

K. Comments on Format Requirements for Required ACNU Statement and FDA Responses

We proposed to require that the ACNU Statement specified in proposed 21 CFR 201.130(a)(2) meet specific format requirements (proposed 21 CFR 201.67(d)). In the following paragraphs, we discuss the comments on this proposed requirement. After consideration of public comments received, we are finalizing our proposal with modifications for consistency with changes made to 21 CFR 201.130 and elsewhere in this final rule. We are finalizing the proposed title of the requirement, "Format requirements for required ACNU statement" with minor revision to read as follows: "Format requirements for the required statement about the ACNU." We are replacing the word "statement" with the phrase "statement about the ACNU" in all instances throughout § 201.67(d) for clarity. We proposed that the statement specified in § 201.130(a)(2) must meet all format requirements that are specified in § 201.67(d). However, due to revisions in the regulation's text, we are revising the citation of 21 CFR 201.130(a)(2) to 21 CFR 201.130(b)(1).

(Comment 62) We received one comment in support of the proposed format requirement that the ACNU Statement specified in proposed 21 CFR 201.130(a)(2) appear in a yellow background banner. However, several comments oppose the proposed format requirement that the statement about the ACNU appear in boldface and black type in a yellow background banner. Several comments state that the proposed format requirements: (1) are overly prescriptive, (2) may not achieve

the desired visibility in all cases, and (3) do not appropriately consider a drug product's unique trade dress. One comment argued that while there are benefits of highlighting the statement to increase attention to it, too much highlighted information could reduce attention to other important elements on the PDP. Many comments state that the format of the statement about the ACNU should be determined on a product-by-product basis. A few comments recommend that FDA allow flexibility in the font type, color of the font, and highlight color that fits the requirement of prominence and the proposed trade dress consistent with the format requirements in 21 CFR 201.66(d)(3).

(Response 62) We disagree with revising the format requirements for the statement about the ACNU. While we understand concerns from some commenters that the formatting of the statement may visually conflict with trade dress, the distinctive formatting (e.g., boldface and black type in a yellow background banner) of the statement is necessary for consistency across all nonprescription drug products with ACNUs. Having standardized format and content on labeling is consistent with FDA practice and regulations, where possible (see generally 21 CFR part 201). Consistency in the format and content of the statement about the ACNU is important so that consumers become familiar with the statement and can easily identify the drug product as a nonprescription drug product with an ACNU, not a traditional nonprescription drug product that can be purchased without fulfilling an ACNU. We want consumers to know that there is something different about an ACNU drug product and for consumers and other persons to understand that these drug products are not suitable for all individuals and should only be used after fulfilling the ACNU. This statement is to provide immediate notice to consumers and for other people who may have access to the drug product purchased by the consumer (e.g., household members, visitors to the consumer's house) but did not fulfill the ACNU. This drug may not be right for that person and using the drug product without fulfilling the ACNU could put the person at risk for side effects and medication errors. Thus, the format requirements for the statement are intended to help ensure the safe and effective use of nonprescription drug products with ACNUs.

(Comment 63) A few comments oppose the proposed font size requirement asserting the font size is exceptionally large given the variability

of package sizes. One comment suggests that the proposed font size requirements result in the statement consuming a significant portion of the PDP, from one-quarter to one-third of the PDP, at a minimum. One comment recommends permitting the use of a smaller font size when the required minimum font size is not feasible due to the package size (e.g., convenience or small size packaging).

(Response 63) FDA disagrees that the required font size is exceptionally large. Published references recommend a larger font size, such as 12-point sans serif to improve readability (Refs. 7 and 8). A larger font size will help ensure consumers can identify a nonprescription drug product with an ACNU and read the statement that alerts consumers that the drug product is not suitable for all individuals and should only be used after fulfilling the ACNU. As required in existing regulations for nonprescription drug product labeling, the PDP must be large enough to accommodate all the mandatory label information required to be placed on the PDP with clarity and conspicuousness and without obscuring designs, vignettes, or crowding (see § 201.60). Applicants can reduce the font size of the trade or proprietary name of the nonprescription drug product with an ACNU, if one exists, and promotional material to allow room for the statement about the ACNU. We believe an applicant should generally be able to include the statement on the PDP as specified in the rule without having to increase the package size. However, we also proposed an exception—an applicant may request an exception to the minimum font size requirement for containers where its size would render compliance with the requirement impractical (§ 201.67(d)(5) in this final rule).

L. Comments on Exemption From Adequate Directions for Use and FDA Responses

We proposed to exempt a nonprescription drug product with an ACNU from the statutory requirement to be labeled with adequate directions for use, provided that certain conditions are met. Specifically, we proposed a nonprescription drug product approved with an ACNU under section 505(c) or (j) of the FD&C Act would be exempt from section 502(f)(1) if the product contains the labeling required under proposed 21 CFR 201.130(a) and the ACNU is implemented by the applicant as approved by FDA in the application (proposed 21 CFR 201.130). We proposed to require that the following statement appear as the first direction under the heading "Directions" in the

labeling, as required in 21 CFR 201.66(c)(6): "To check if this drug is safe for you, go to [insert where or how consumers can find information about the ACNU; for example, applicant's website, phone number, or specific retail location] and [insert action to be taken by consumer]. Do not take this drug without completing this step." (Proposed 21 CFR 201.130(a)(1)) We also proposed to require that the following statement appear on the immediate container label and, if one exists, the outside container or wrapper of the retail package: "You must complete an extra step to see if this drug is safe for you before you use it. Do not take this drug without completing this step. See the Drug Facts Labeling for more information." (Proposed 21 CFR 201.130(a)(2)) We proposed that this statement must meet the specific format requirements as specified in proposed 21 CFR 201.67(d). We also proposed that the labeling of the drug must comply with other applicable labeling requirements for nonprescription drug products under part 201, including the format and content requirements for nonprescription drug product labeling under 21 CFR 201.66 (proposed 21 CFR 201.130(a)(3)). Lastly, we proposed to require the ACNU to be implemented by the applicant under the conditions set forth in the approved application for the nonprescription drug product with an ACNU to be exempt from the requirement to be labeled with adequate directions for use (see 87 FR 38313 at 38324 and proposed 21 CFR 201.130(b)).

In the following paragraphs, we discuss the comments on this requirement. After consideration of public comments received, we are finalizing our proposals with modifications as discussed. After considering comments, as discussed below, we are adding flexibility to the labeling requirements regarding instructions for the ACNU and the statement about the ACNU (21 CFR 201.130(a) and (b) in this final rule). These requirements, as revised based on comments we received, provide flexibility for applicants to better convey information to consumers for a particular nonprescription drug product with an ACNU. FDA feels strongly that the content of required labeling in 21 CFR 201.130(a)(1) and (b)(1) in this final rule should generally be consistent across all nonprescription drug products with ACNUs. Consistency in the content of the labeling is important to help consumers understand (including the original purchaser and persons other than the original purchaser) that these nonprescription drug products are not

suitable for all individuals and should be only used after fulfilling the ACNU. Consistency assists consumers in understanding the ACNU that the consumer must fulfill and where to find additional information. Consistency in the labeling can reduce consumer confusion about nonprescription drug products with an ACNU because the labeling will become familiar to consumers and promote recognition that a nonprescription drug product has an ACNU. However, we recognize that in certain situations, revisions to the required labeling may be appropriate for a drug product due to the specifics of the drug product or the ACNU. Therefore, we are revising the requirement to allow FDA to approve an NDA applicant's revisions to the labeling specified in 21 CFR 201.130(a)(1) and (b)(1) in this final rule when the revisions are appropriate for a specific drug product and the applicant supports the revisions with adequate data or other information that demonstrates sufficient consumer understanding of the revised labeling. Because FDA believes that consistency in the content of the required labeling is important FDA does not intend to approve revisions to the labeling that are minor in nature, do not address a specific aspect of the particular drug product or ACNU, or are inconsistent with the labeling for similar nonprescription drug products with ACNUs in the same therapeutic category. For example, if FDA has approved an NDA for Drug X as a nonprescription drug product with an ACNU for condition A and in therapeutic category B with the ACNU Statement in 21 CFR 201.130(b)(1)(i), FDA would generally expect to approve an NDA for a nonprescription drug product with an ACNU for Drug Y also for condition A and in therapeutic category B with the same ACNU Statement as Drug X (*i.e.*, the ACNU Statement in 21 CFR 201.130(b)(1)(i) in this final rule).

FDA is also adding flexibility by requiring the location of the instructions for the ACNU specified in 21 CFR 201.130(a)(1) in this final rule to either appear under the "Use" or "Uses" heading or the "Directions" heading, depending on the purpose of the ACNU, to better inform consumers of the reason that the ACNU needs to be fulfilled (21 CFR 201.130(a)(2) in this final rule).

To accommodate the revisions, we had to make changes to the structure of the regulatory text. We are adding "(ACNU)" to the header in 21 CFR 201.130 in this final rule. We are deleting the clause "in paragraphs (a) and (b) of this section are met" in the

introductory text. We are revising 21 CFR 201.130(a) completely in this final rule to explain the required instructions for the ACNU. The introductory text at 21 CFR 201.130(a) in this final rule now states: "The label of the drug must include instructions for the ACNU as follows:". We are also completely revising 21 CFR 201.130(a)(1) introductory text in this final rule to read "Content of instructions for the ACNU must either be:" in order to accommodate revisions that the applicant may propose to the instructions for the ACNU. We are also moving the language of the instructions for the ACNU from 21 CFR 201.130(a)(1) as proposed to 21 CFR 201.130(a)(1)(i). Therefore, the ACNU instructions in 21 CFR 201.130(a)(1)(i) will read as follows: "[T]o check if this drug is safe for you, go to [insert where or how consumers can find information about the ACNU; for example, applicant's website, applicant's phone number, or specific retail location] and [insert action to be taken by consumer]. Do not take this drug without completing this step". Additionally, we are adding alternative ACNU instructions in 21 CFR 201.130(a)(1)(ii) to read "FDA may approve an NDA applicant's revisions to the ACNU Instructions when the revisions are appropriate for a specific drug product and the applicant supports the revisions with adequate data or other information that demonstrate sufficient consumer understanding of the revised statement." We are deleting the clause in proposed 21 CFR 201.130(a)(1) "The statement must be followed by the other information required in 21 CFR 201.66(c)(6)" as it was redundant after the revisions to the final rule. We are adding 21 CFR 201.130(a)(2) introductory text for clarity and to provide the location of the instructions, which will read "The locations of instructions for the ACNU are as follows:". We are adding flexibility to the placement of the statement by adding 21 CFR 201.130(a)(2)(i) through (iii) in this final rule (previously proposed in 21 CFR 201.130(a)(1)). We are adding 21 CFR 201.130(a)(2)(i), stating that if the purpose of the ACNU is for self-selection, the instructions for the ACNU must appear under the "Use" or "Uses" heading required in 21 CFR 201.66(c)(4) as the first statement, followed by the other information required in 21 CFR 201.66(c)(4). We are also adding 21 CFR 201.130(a)(2)(ii) in the final rule, stating that if the purpose of the ACNU is for actual use, the instructions for the ACNU must appear under the "Directions" heading required in 21

CFR 201.66(c)(6) as the first direction, followed by the other information required in 21 CFR 201.66(c)(6), which is consistent with the location of the statement on the labeling as proposed. We are adding 21 CFR 201.130(a)(2)(iii) in the final rule, stating that if the purpose of the ACNU is for both self-selection and actual use, the instructions for the ACNU must appear under the "Use" or "Uses" heading as the first statement, followed by the other information required in 21 CFR 201.66(c)(4) and may also appear under the "Directions" heading as the first direction, followed by the other information required in 21 CFR 201.66(c)(6).

Additionally to further accommodate the added flexibility, we are revising 21 CFR 201.130(b) introductory text in this final rule to state that the label of the drug must include a statement about the ACNU. We are also adding 21 CFR 201.130(b)(1) to read "Content of the statement about the ACNU must either be:" We are adding 21 CFR 201.130(b)(1)(i) to include the language of the statement in proposed 21 CFR 201.130(a)(2) as follows: "You must complete an extra step to see if this drug is safe for you before you use it. Do not take this drug without completing this step. See the Drug Facts Labeling for more information". We are also adding 21 CFR 201.130(b)(1)(ii), stating that FDA may approve an NDA applicant's revisions to the ACNU Statement when revisions are appropriate for a specific drug product and the applicant supports the revisions with adequate data or other information that demonstrate sufficient consumer understanding of the revised statement. We are adding 21 CFR 201.130(b)(2) in this final rule to include information consistent with the format information proposed in § 201.130(a)(2) to read as follows: "The statement about the ACNU must be in the form and manner required by § 201.67(c)." We are redesignating proposed 21 CFR 201.130(a)(3) to § 201.130(c) of this final rule with minor editorial changes to revise "Complies" to "The labeling of the drug must comply" for clarity. We are redesignating proposed § 201.130(b) to § 201.130(d) in this final rule with minor editorial revisions to revise "The additional condition for nonprescription use" to "ACNU." Furthermore, we are also making revisions for consistency with revisions to 21 CFR 201.67(e) and 314.81(b)(3)(v) in this final rule to provide clarity on implementation of an ACNU by revising "under the conditions set forth in the approved application." to state that the ACNU

must be implemented by the applicant in accordance with: (1) key elements of the ACNU under § 314.56(c)(1)(iv) or (c)(2)(ii) and (2) the operationalization of the ACNU under § 314.56(c)(1)(vii) or (c)(2)(iii), as approved by FDA in the application.

(Comment 64) A few comments oppose the placement of the proposed statement of instructions for the ACNU specified in proposed 21 CFR 201.130(a)(1) in the DFL under the “Directions” heading because the placement of the statement should distinguish between an ACNU that is necessary for appropriate self-selection, appropriate actual use, or both. For example, one comment recommends that the labeling statement should appear under the “Use” heading in the DFL to alert consumers that they will need to fulfill an ACNU for the listed use(s) rather than under the “Directions” heading because information under the “Directions” heading is more closely associated with how consumers should take a product after the consumer determines whether the nonprescription drug product with an ACNU is appropriate for the consumer to use.

(Response 64) We agree with the concerns about the standardized placement of the statement in the DFL under the heading “Directions.” Therefore, FDA is revising the rule to require the labeling statement to either appear under the “Use” or “Uses” heading or the “Directions” heading, depending on the purpose of the ACNU, to better inform consumers of the reason that the ACNU needs to be fulfilled. Therefore, we are revising the requirement at 21 CFR 201.130(a)(2) in this final rule to require that if the purpose of the ACNU is to ensure appropriate self-selection, the labeling statement must appear under the “Use” or “Uses” heading as the first statement, followed by the other information required in 21 CFR 201.66(c)(4) (21 CFR 201.130(a)(2)(i) in this final rule); if the purpose of the ACNU is to ensure appropriate actual use, the labeling statement must appear under the “Directions” heading as the first direction, followed by the other information required in 21 CFR 201.66(c)(6) (21 CFR 201.130(a)(2)(ii) in this final rule); or if the ACNU is for both self-selection and actual use, the statement must appear under the “Use” or “Uses” heading as the first statement, followed by the other information required in 21 CFR 201.66(c)(4) and may also appear under the “Directions” heading as the first direction, followed by the other information required in 21

CFR 201.66(c)(6) (21 CFR 201.130(a)(2)(iii) in this final rule).

(Comment 65) Several comments support the use of standardized statements in proposed 21 CFR 201.130(a)(1) and (2) to communicate the presence of an ACNU clearly and prominently for a nonprescription drug product to consumers, especially because fulfillment of an ACNU will be a completely new behavior for consumers. However, many comments oppose the standardized wording of the proposed labeling statement specified in proposed 21 CFR 201.130(a)(1) and (2) for being unnecessarily specific and restrictive. Many comments suggest the proposed labeling statements are too lengthy, not consumer-friendly and should be significantly streamlined. Many comments recommend that FDA’s proposed language should be an example or template to help guide applicants during their development programs to allow for flexibility to convey specific information about a particular ACNU. A few comments state that the proposed wording for the required labeling statement in proposed 21 CFR 201.130(a)(2) is only appropriate for an ACNU necessary to ensure appropriate self-selection, but not an ACNU necessary to ensure appropriate actual use. We received one comment providing results of a small qualitative research study assessing consumer understanding of the proposed labeling statement specified in proposed 21 CFR 201.130(a)(2); the study suggested poor understanding of the statement’s intended purpose. A few comments suggest FDA consider requiring a validated symbol or simple, universal flag in lieu of the proposed ACNU Statement. Several comments recommend that the content of the proposed required labeling statement be determined on a product-by-product basis. For example, a comment recommends that a stronger labeling statement be used on nonprescription drug products with ACNUs that have the potential for more adverse events.

(Response 65) FDA believes that consistency in the content of the required labeling is important to alert consumers and decrease confusion (see discussion above). However, we recognize that in certain situations, revisions to the required labeling may be appropriate for a drug product to convey specific information for a particular nonprescription drug product with an ACNU. Therefore, we are revising the requirements at 21 CFR 201.130(a)(1)(ii) and (b)(1)(ii) in this final rule to permit FDA to approve an NDA applicant’s revisions to the required labeling when the revisions are

appropriate for a specific drug product and the applicant supports the revisions with adequate data or other information that demonstrate sufficient consumer understanding of the revised statement. For example, the NDA applicant would submit adequate data from robust label comprehension studies that demonstrate consumers understand the revised labeling statement(s). Additionally, while we reviewed the qualitative research study that was submitted, the study was small and did not provide usable data with which to assess or revise the required labeling.

(Comment 66) One comment supports the proposed exemption from adequate directions for use for nonprescription drug products with an ACNU provided the following information is adequately described and provided to consumers at the point of purchase: (1) name and description of the drug product, (2) dosage form, dosage, route of administration, and duration of drug therapy, (3) special directions and precautions for preparation, administration, and use by the consumer, (4) common severe side effects or adverse effects or interactions and therapeutic contraindications that may be encountered, (5) techniques for self-monitoring of drug therapy, (6) proper storage, and (7) action to be taken in the event of an erroneous dose (e.g., a missed dose or a double dose).

(Response 66) Existing statutory and regulatory requirements ensure that the information discussed in the comment would be included on the labeling of the nonprescription drug product with an ACNU, if relevant for the drug product. Consistent with section 502(c) of the FD&C Act, approved labeling for a nonprescription drug product with an ACNU would need to be available to consumers under the customary conditions of purchase and use of the product. Nonprescription drug products, including nonprescription drug products with ACNUs, must comply with applicable labeling requirements under part 201, including the format and content requirements for the DFL (see 21 CFR 201.66).

(Comment 67) A few comments discuss the need for exemption from the labeling requirements in part 201. One comment recommends that FDA amend proposed 21 CFR 201.130(a)(3) by adding the following sentence at the end of the paragraph: “This requirement would not apply when an exemption has been granted or approved.” One comment states that because nonprescription drug products may be sold in convenience or small pack sizes, there may be limited space for the required statement provided at

proposed 21 CFR 201.130(a)(1). The comment recommends that the rule include an exemption for nonprescription drug products with an ACNU when the container is too small to bear all of the required information, similar to the exemption in 21 CFR 201.10(h)(2)(i) through (iv).

(Response 67) We disagree with revising the rule to provide a waiver or an exemption for nonprescription drug products with an ACNU from the applicable labeling requirements in part 201. The required labeling in 21 CFR 201.130(a)(1) and (b)(1) of this final rule are important for consumers to appropriately self-select or appropriately use the nonprescription drug product with an ACNU because it informs consumers where the additional condition would be found and explains the additional condition that the consumer must fulfill. The statement about the ACNU also alerts consumers that the drug product is not suitable for all individuals and should only be used after fulfilling the ACNU. Further, a nonprescription drug product with an ACNU must comply with all applicable labeling requirements for nonprescription drug products, including the DFL requirements under 21 CFR 201.66.

M. Comment on Misbranding and FDA Response

We proposed an exemption for a nonprescription drug product with an ACNU from the requirement for adequate directions for use in section 502(f)(1) of the FD&C Act, if the product contains the labeling specified in proposed 21 CFR 201.130(a) and the ACNU is implemented by the applicant as approved by FDA in the application (see proposed 21 CFR 201.67(e)). In the following paragraphs, we discuss a comment on this proposal. After consideration of the public comment received, as discussed below, we are finalizing our proposal with modifications for consistency with revisions made elsewhere to the rule. We are revising 21 CFR 201.67(e)(1) from “It is made available without the labeling” to “It does not comply with the labeling requirements” for clarity. We are revising the citation in 21 CFR 201.67(e)(1) from “§ 201.130(a)” to “paragraphs (c) and (d) of this section and § 201.130(a) through (c)” for clarity and completeness. We are also making revisions to 21 CFR 201.67(e)(2) for clarity and consistency with revisions to 21 CFR 201.130(d) and 314.81(b)(3)(v) in this final rule by revising “as approved by FDA in the application” to state that the ACNU is not implemented by the applicant in accordance with the

following, as approved by FDA in the application: (1) the key elements of the ACNU under 21 CFR 314.56(c)(1)(iv) for NDAs or 21 CFR 314.56(c)(2)(ii) for ANDAs or (2) the operationalization of the ACNU under 21 CFR 314.56(c)(1)(vii) for NDAs or 21 CFR 314.56(c)(2)(iii) for ANDAs.

(Comment 68) We received one comment seeking clarity on what it means when an ACNU is not implemented by the applicant as approved by FDA in the application. The comment questions whether implementation of the ACNU means to make the ACNU available, or whether implementation includes the steps the pharmacy/seller must take to ensure the ACNU was fulfilled.

(Response 68) We understand the commenter’s need for clarity and are revising the misbranding provision accordingly. Specifically, we are revising 21 CFR 201.67(e)(2) in this final rule, consistent with the revisions in 21 CFR 201.130(d) in this final rule, to state that a nonprescription drug product with an ACNU is misbranded when the ACNU is not implemented by the applicant in accordance with: (1) the key elements of the ACNU under 21 CFR 314.56(c)(1)(iv) or (c)(2)(ii) or (2) the operationalization of the ACNU under in 21 CFR 314.56(c)(1)(vii) or (c)(2)(iii), as approved by FDA in the application.

N. Miscellaneous Comments and FDA Responses

We received other relevant comments on the proposed rule, but not specific to a requirement. In the following paragraphs, we discuss and respond to these comments. After considering these comments, we are not making any changes as a result of these comments.

(Comment 69) We received several comments requesting that FDA advise applicants on where the specific NDA and ANDA requirements for a nonprescription drug product with an ACNU should be included in the existing structure of an application (e.g., in which module(s) should information be placed).

(Response 69) Consistent with applications for nonprescription drug products, an application for a nonprescription drug product with an ACNU must be submitted electronically (see section 745A(a) of the FD&C Act) in electronic common technical document (eCTD) format. eCTD is the standard format for submitting applications, amendments, supplements, and certain reports to FDA’s Center for Drug Evaluation and Research (CDER) and Center for Biologics Evaluation and Research. Generally, the eCTD format

consists of five modules. FDA issues guidances related to eCTD, which are applicable to nonprescription drug products with ACNUs (Ref. 9). We may provide guidance specific for applications for nonprescription drug products with ACNUs in the future as appropriate. Additionally, an applicant can request to meet with FDA staff to discuss questions that arise during the development of a nonprescription drug product with an ACNU, including in which module(s) specific information should be placed.

(Comment 70) We received a comment that requests FDA require applicants to protect any consumer data that may have been collected via an ACNU.

(Response 70) It is unclear what kinds of data are the focus of the comment. Although FDA does not provide guidance on how to comply with any legal obligations stemming from a source outside of the statutes and regulations that FDA administers, FDA generally expects that applicants will comply with applicable statutory and regulatory requirements related to protecting consumer information, including health information and consumer data (e.g., purchasing history). Additionally, FDA has resources on a web page entitled “Digital Health Policy Navigator,” which includes information on privacy and is available on FDA’s website at <https://www.fda.gov/>, which based on our understanding of the comment, addresses the commenter’s concerns.

(Comment 71) We received a few comments stating that the proposed rule lacks clarity on the criteria that FDA will use to determine when a nonprescription drug product with an ACNU is a combination product because of the inclusion of a component that is deemed to be a medical device. The comments request that FDA issue a companion guidance to explain the criteria that will be used to determine whether a nonprescription drug product with an ACNU is a combination product. The comments also request that FDA confirm that when a nonprescription drug product with an ACNU is considered a combination product, CDER will continue to be the lead review center if the primary mode of action is attributed to the drug component, which aligns with current practices.

(Response 71) In some cases, a nonprescription drug product with an ACNU may be comprised of a drug constituent part and a device constituent part (see § 3.2(e)) and, therefore, be subject to regulatory requirements applicable to combination

products (see, e.g., part 4). FDA would continue to follow existing regulatory requirements to determine whether a nonprescription drug product with an ACNU is a drug or a combination product. Under 21 CFR 3.4, the center that leads the premarket review and regulation of a combination product is determined by the product's primary mode of action (*i.e.*, the single mode of action of a combination product that provides the most important therapeutic action). Because FDA expects that nonprescription drug products with an ACNU that are combination products generally will have a drug primary mode of action, FDA expects CDER would be the lead center for the review. We encourage applicants to utilize FDA resources on combination products (Ref. 10). We also encourage applicants to engage with FDA during the drug development process for a nonprescription drug product with an ACNU, including regarding questions about how their product is classified.

(Comment 72) FDA received a comment that the proposed rule does not discuss whether an NDA for a nonprescription drug product with an ACNU would be eligible for 3-year, new clinical investigation exclusivity, or whether an ANDA for a nonprescription drug product with an ACNU and containing a paragraph IV certification could give rise to 180-day exclusivity even if the RLD was originally approved as a prescription drug product. The comment requests that FDA address these issues in the final rule.

(Response 72) FDA declines to address these exclusivity comments in the final rule, as this rulemaking does not propose any changes or considerations regarding exclusivity. An NDA or ANDA holder, including an NDA or ANDA holder for a nonprescription drug product with an ACNU, is eligible for exclusivity if applicable statutory requirements are met (see, e.g., section 505(c)(3)(E)(iii), (j)(5)(B)(iv), and (j)(5)(F)(iii) of the FD&C Act) (see also 21 CFR 314.108). As explained in our response to Comment 36, FDA proposed significant flexibility in the types of ACNUs that may be developed, as well as how those ACNUs may be operationalized. Given this flexibility, and that eligibility for statutory exclusivity (such as, 3-year new clinical investigation exclusivity for an NDA) depends on the facts of each application, FDA is unable to predict potential eligibility for statutory exclusivity for nonprescription drug products with an ACNU across the board.

(Comment 73) We received a comment stating that the proposed rule

does not mention whether FDA or the Federal Trade Commission (FTC) will oversee the advertisement of nonprescription drug products with ACNUs.

(Response 73) Consistent with the memorandum of understanding between FTC and FDA, FTC has primary responsibility with respect to the regulation of the truth or falsity of all advertising of nonprescription drug products, which would include nonprescription drug products with ACNUs (Ref. 11). FDA has primary responsibility with respect to regulating the labeling of nonprescription drug products.

(Comment 74) We received a comment that strongly encourages FDA to implement educational campaigns geared toward consumers, retailers, and healthcare professionals to explain the differences between prescription drug products, nonprescription drug products, and nonprescription drug products with ACNUs. The comment further states that members of the Nonprescription Drugs Advisory Committee will also need training about how they should evaluate applications that propose an ACNU.

(Response 74) We will provide robust communication to inform the public about the final rule. We will have specific communications tailored to interested parties, including consumers, retailer, and healthcare providers. We will also have specific communication and educational information for members of FDA advisory committees, should an advisory committee be necessary for a specific application for a nonprescription drug product with an ACNU. FDA will especially focus communication and education for consumers both about the final rule and in the future should FDA approve a nonprescription drug product with an ACNU.

(Comment 75) We received a comment requesting that FDA create a public registry of all approved nonprescription drug products with ACNUs, including all data and information about the ACNU and the purpose of the ACNU.

(Response 75) FDA agrees with including approved nonprescription drug products with an ACNU, including relevant information about the approval, in a database. FDA has an existing public database of approved drug products entitled "Drugs@FDA" available at <https://www.accessdata.fda.gov/scripts/cder/daf/index.cfm>. FDA issues approval letters that are publicly available for all drug product approvals. Consistent with FDA approval for all drug products,

upon approval of a nonprescription drug product with an ACNU, FDA will issue an approval letter for a nonprescription drug product with an ACNU that includes, among other things, a statement that the drug product requires an ACNU and the key elements of the ACNU. Information about the approved nonprescription drug product with an ACNU will also be available in FDA's database of approved drug products at <https://www.accessdata.fda.gov/scripts/cder/daf/index.cfm>. Additionally, FDA communicates certain nonprescription drug product approvals on our website (see Ref. 12), and we intend to consider a similar process to communicate approvals of nonprescription drug products with an ACNU.

(Comment 76) We received a comment requesting that FDA either clarify how it will enforce the requirement that a nonprescription drug product with an ACNU not be made available to consumers unless the ACNU is fulfilled, or require the applicant to submit procedures to ensure that requirement is met.

(Response 76) The burden is on the applicant to implement the ACNU as approved by FDA in the application and to ensure that the drug product is not made available to consumers unless the ACNU is fulfilled. A nonprescription drug product with an ACNU that is made available to a consumer without the ACNU being fulfilled by the consumer would be misbranded (21 CFR 201.67(e) in this final rule). It is a prohibited act under section 301(a) of the FD&C Act to introduce or deliver for introduction into interstate commerce any drug that is misbranded (21 U.S.C. 331(a)). It is also a prohibited act under section 301(k) of the FD&C to do any act with respect to a drug if such act is done while such drug is held for sale after shipment in interstate commerce and results in the drug being misbranded. Additionally, a nonprescription drug product with an ACNU would be an unapproved new drug product if it is made available to consumers without an ACNU. With certain limited exceptions not relevant here, it is a violation of sections 301(d) and 505(a) of the FD&C Act to introduce or deliver into interstate commerce an unapproved new drug (87 FR 38313 at 38325). FDA may pursue enforcement action against applicants who violate the FD&C Act.

(Comment 77) We received a few comments requesting further clarification of certain topics (e.g., submission requirements and labeling) through guidance documents. We also received a comment requesting that FDA provide clear and timely input on

the development program for a nonprescription drug product with an ACNU throughout the development process.

(Response 77) We encourage applicants to read existing applicable FDA guidance documents by searching for relevant topics on our website available at <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>. For example, search “nonprescription” to find relevant guidances on labeling specific for nonprescription drug products. Additionally, FDA may consider issuing guidance in the future to address general considerations that may arise and are applicable to all applicants developing nonprescription drug products with an ACNU. We encourage applicants to meet with FDA to discuss their drug development plans and seek advice.

(Comment 78) We received a comment encouraging FDA to explain how it intends to address any application proposing an ACNU for a nonprescription drug product that was submitted for approval before the proposed rule is finalized.

(Response 78) Once the rule is in effect, FDA may approve applications for nonprescription drug products that meet the relevant standard, regardless of whether such applications were submitted before or after the rule was in effect.

VI. Effective Date

This rule is effective January 27, 2025.

VII. Economic Analysis of Impacts

A. Introduction

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, Executive Order 14094, the Regulatory Flexibility Act (5 U.S.C. 601–612), the Congressional Review Act/Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801, Pub. L. 104–121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Orders 12866, 13563, and 14094 direct us to assess all benefits, costs, and transfers of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Rules are “significant” under Executive Order 12866, section 3(f)(1) (as amended by Executive Order 14094) if they “have an annual effect on the economy of \$200 million or more (adjusted every 3 years

by the Administrator of [the Office of Information and Regulatory Affairs (OIRA)] for changes in gross domestic product); 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.” OIRA has determined that this final rule is not a significant regulatory action under Executive Order 12866, section 3(f)(1).

Because this rule is not likely to result in an annual effect on the economy of \$100 million or more or meets other criteria specified in the Congressional Review Act/Small Business Regulatory Enforcement Fairness Act, OIRA has determined that this rule does not fall within the scope of 5 U.S.C. 804(2).

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. This rule would establish requirements for a nonprescription drug product with an ACNU. We cannot anticipate the number of applicants that would submit applications or the types of drug products that would be covered under such applications. However, we estimate the costs for any applicant to read and understand the rule would likely range between 0.04 percent and 0.12 percent of the gross receipts of very small applicants. Therefore, we certify that the final rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes estimates of anticipated impacts, before issuing “any rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year.” The current threshold after adjustment for inflation is \$183 million, using the most current (2023) Implicit Price Deflator for the Gross Domestic Product. This final rule will not result in an expenditure in any year that meets or exceeds this amount.

B. Summary of Benefits, Costs, and Transfers

The final rule will establish requirements for a nonprescription drug product with an ACNU. Compared to traditional nonprescription drug products, which consumers must be able to self-select and use based on labeling, alone, an approved ACNU, in addition to the labeling, will ensure the appropriate self-selection, the

appropriate use, or both of a nonprescription drug product without the supervision of a practitioner licensed by law to administer such drug. We expect this rule will expand consumer access to certain drug products in a nonprescription setting and increase options for applicants to develop and market safe and effective nonprescription drug products.

Table 1 shows our quantified benefits. We estimate a reduction in access costs to consumers who could transfer from a prescription drug product to a nonprescription drug product with an ACNU. Our primary estimate for this item is \$33.62 per consumer per purchase with a range of \$0 to \$67.23. We also quantify the value of the potential reduction in the number of repetitive meetings with applicants that will occur during the approval process. For example, potential applicants have requested additional meetings with us for each development program to discuss this topic; these types of individual meetings are time-consuming and use Agency resources. Multiple potential applicants have been asking the same types of questions, creating repetitiveness and inefficiencies. Because the rule addresses these and other questions, we anticipate that the rule will reduce or eliminate this burden for potential applicants and us. Our primary estimate is \$68,773.11 per applicant with a range of \$56,332.65 to \$81,763.56. We do not monetize our estimates of benefits over a 10-year horizon because of the high uncertainty about the number of applicants, applications, potential approvals, and purchases that might occur; and consumer preferences to switch products. However, we present estimates in the uncertainty section of this analysis.

Although an applicant will incur the costs to develop and apply for a nonprescription drug product with an ACNU, for this analysis, we assume that applicants submit applications only when they believe that the profits from the approval will exceed the costs of the application. We lack information to monetize these potential profits and costs over a 10-year horizon.

Monetized costs include a one-time cost of reading and understanding the rule for those potentially interested in pursuing this path for their drug products. We do not monetize these estimates for more than one interested party because of the high uncertainty about the number of interested parties over this time horizon. The primary estimate equals \$1,156.74 with a range of \$533.88 to \$1,779.60.

Government-sponsored and commercial insurance payers may experience cost savings because the availability of nonprescription drug products with an ACNU may decrease

insurance claims and, potentially, future medical costs. For example, access to drug products under this new paradigm will allow consumers to treat medical conditions using nonprescription drug

products with ACNUs without the supervision of a practitioner licensed by law to administer such drug. We do not estimate such cost savings due to lack of data.

TABLE 1—SUMMARY OF BENEFITS, COSTS, AND DISTRIBUTIONAL EFFECTS OF THE FINAL RULE
[Millions 2023 dollars]

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered	
Benefits:							
Annualized Monetized (\$millions/year)				2023			Quantified reduction in access costs per consumer purchase range from \$0.0 to \$67.23, and a primary estimate of \$33.62.
Annualized Quantified				2023			
Qualitative							Quantified reduction in meetings between FDA and applicants range from \$56,332.65 to \$81,763.56 per applicant, and a primary estimate of \$68,773.11.
Costs:							
Annualized	\$0.0	\$0.0	\$0.0	2023	7	10 years	The reading and understanding one-time costs primary estimate is \$1,156.74 and ranges from \$533.88 to \$1,779.60 per interested party.
Monetized (\$millions/year)	\$0.0	\$0.0	\$0.0	2023	3	10 years	
Annualized Quantified							
Qualitative	Interested firms will incur costs to develop and submit applications						
Transfers:							
Federal					7		
Annualized Monetized (\$millions/year)					3		
From/To	From:			To:			
Other					7		
Annualized Monetized (\$millions/year)					3		
From/To	From:			To:			Potential cost savings to government and commercial insurers if coverage cost of medications decline.

Effects:

State, Local, or Tribal Government: No estimated effect.

Small Business: The estimated costs to very small potential applicants in this industry range from 0.04 percent to 0.12 percent of gross receipts.

Wages: No estimated effect.

Growth: No estimated effect.

We have developed a Final Economic Analysis of Impacts that assesses the impacts of the final rule. The full analysis of economic impacts is available in the docket for this final rule (Ref. 13) and at <https://www.fda.gov/about-fda/economics-staff/regulatory-impact-analyses-ria>.

VIII. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) and (k) that this action is of a type that does not individually or

cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The title, description, and

respondent description of the information collection provisions are shown in the following paragraphs with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Premarket applications, postmarketing reports and

recordkeeping, and labeling for Nonprescription Drug Products With an Additional Condition for Nonprescription Use—OMB Control Numbers 0910–0001 and 0910–0340—Revision.

Description: The final rule will modify information collections applicable to regulations in part 314 governing new and abbreviated new drug application submissions and drug labeling provisions in part 201 pertaining to nonprescription drug products.

Description of Respondents: The respondents are: (1) for NDA and ANDA submissions, an applicant who submits an NDA (including a 505(b)(2) application) or an ANDA under part 314 to obtain FDA approval of a nonprescription drug product with an

ACNU; (2) for ACNU failure reporting and recordkeeping, any person who holds an approved NDA (including a 505(b)(2) application) or an approved ANDA that includes an ACNU; and (3) for labeling, any person who holds an approved NDA (including a 505(b)(2) application) or an approved ANDA that includes an ACNU.

In the proposed rule, we sought comments on this analysis. We did not receive any comments that were specific to our numeric hour burden estimates. However, we received numerous comments on the provisions of the proposed rule having to do with proposed requirements for applications, postmarketing reports, and labeling. This final rule contains comment summaries and responses for these comments in section V. E and F, and I

through M. Additionally, we received comments that the preliminary regulatory impact analysis does not adequately account for the costs of quality assurance systems or implementing the reporting requirements. We understand concerns about the potential costs of establishing and maintaining quality assurance systems. However, due to the uncertainty about the nature of ACNU failures that could occur, the likelihood, the number, and the cost, any estimate would be characterized by a substantial degree of uncertainty.

FDA estimates the burden of existing information collection 0910–0001 will be increased by the information collections in this rule this information collection as follows:

NDA and ANDA Submissions

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN INCREASE; OMB CONTROL NO. 0910–0001 ¹

Activity; 21 CFR part 314	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (hours)	Total Hours
Submission of separate application for nonprescription drug product with an ACNU (§ 314.56(b) and (c))	6	1	6	320	1,920
Other postmarketing reports; submission of each individual consumer affected by an ACNU failure; § 314.81	6	25	150	40	6,000
Total			156		7,920

¹ There are no capital or operating or maintenance costs associated with the information collection.

Based on our experience with information collection associated with current NDA and ANDA submissions, we estimate six applications for a nonprescription drug product with an ACNU will be submitted annually. Based on Broad Agency Announcement proposals that set forth the number of hours anticipated to produce study reports for submission to us, we assume it will take an average of 320 hours per application for both NDA and ANDA applicants to prepare and submit the

information required for applications for nonprescription drug products with an ACNU (in addition to meeting the general NDA or ANDA requirements under §§ 314.50 and 314.94, already approved in OMB Control Number 0910–0001). The 320 hours would include scientific studies and experimentation such as developing new technology to aid consumers in self-selection, advancing statistical methods for analyzing complex data, developing innovative clinical trial

designs, or research on new drug delivery systems for both NDA and ANDA applications.

Reports of ACNU Failure

We estimate six respondents will submit 25 reports each to FDA for an individual ACNU failure under § 314.81(b)(3)(v). We assume an average of 40 hours per response for each applicant, for a total of 6,000 hours annually.

TABLE 3—ESTIMATED ANNUAL RECORDKEEPING BURDEN; OMB CONTROL NO. 0910–0001 ¹

Activity; 21 CFR part 314	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (hours)	Total hours
Requirements for reports of ACNU failure for a non-prescription drug product with an ACNU (§ 314.81(b)(3)(v)(D))	6	25	150	8	1,200

¹ There are no capital or operating or maintenance costs associated with the information collection.

Based on our experience with postmarket recordkeeping requirements, we assume an average burden of 8 hours of recordkeeping for each report and

therefore have calculated 1,200 hours annually.

FDA estimates the burden of existing information collection 0910–0340 will

be increased by the information collections in this rule, as follows:

Labeling for Nonprescription Drugs with an ACNU

TABLE 4—THIRD-PARTY DISCLOSURE BURDEN; THIRD-PARTY DISCLOSURE BURDEN; OMB CONTROL NO. 0910–0340¹

Activity; 21 CFR part 201, subpart C	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Disclosure of information on the principal display panel or within Drug Facts Labeling; § 201.66 (including) statements specified in § 201.130(a)(1) and (2)	6	1	6	15	90
ACNU Statement; (§ 201.67)	6	1	6	9	54
Total			12		144

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on our experience with NDA and ANDA submissions, we estimate six respondents will each submit an application for a nonprescription drug product with an ACNU, each becoming subject to all nonprescription labeling regulations in 21 CFR part 201, subpart C, including the requirements for statements of identity and net contents (§§ 201.61 and 201.62) which appear on the principal display panel (PDP) (defined by § 201.60), and the Drug Facts labeling (DFL) requirements of § 201.66, as part of which the respondents must also include (where applicable) labeling to satisfy sodium, calcium, magnesium, and potassium labeling requirements (§§ 201.64, 201.70, 201.71, and 201.72), and the statements required by § 201.130(a)(1) and (2). These products may also have additional labeling beyond the DFL requirements (§ 201.67(c)(2)).

Estimating six respondents will expend 1 hour annually to comply with PDP and DFL labeling requirements under § 201.67(c)(1), and assuming each disclosure will require 15 hours, we calculate a total of 90 hours annually. Additionally, we estimate six respondents will each submit one application for a nonprescription drug product with an ACNU that contains additional labeling requirements, for a total of six annual responses. Based on our experience with nonprescription labeling requirements, we assume an average burden per response of 9 hours, for a total of 54 hours annually.

The information collection provisions in this final rule have been submitted to OMB for review as required by section 3507(d) of the Paperwork Reduction Act of 1995.

Before the effective date of this final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. 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.

X. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies that 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. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

XI. Consultation and Coordination With Indian Tribal Governments

We have analyzed this rule in accordance with the principles set forth in Executive Order 13175. We have determined that the rule does not contain policies that have substantial direct effects 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. Accordingly, we conclude that the rule does not contain policies that have Tribal implications as defined in the Executive order and, consequently, a Tribal summary impact statement is not required.

XII. References

The following references are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m. Monday through Friday; they are also available electronically at <https://www.regulations.gov/>. Although FDA verified the website addresses in this document, please note that websites are subject to change over time.

1. FDA, Guidance for Industry, “Label Comprehension Studies for Nonprescription Drug Products,” August 2010 (available at <https://www.fda.gov/media/75626/download>).

2. FDA, Guidance for Industry, “Self-Selection Studies for Nonprescription Drug Products,” April 2013 (available at <https://www.fda.gov/media/81141/download>).

3. FDA, Guidance for Industry, “Application of Human Factors Engineering Principles for Combination Products: Questions and Answers,” September 2023 (available at <https://www.fda.gov/media/171855/download>).

4. FDA, Guidance for Industry and FDA Staff, “Policy for Device Software Functions and Mobile Medical Applications,” September 2013 (updated September 2019 and September 2022) (available at <https://www.fda.gov/media/80958/download>).

5. FDA, Medwatch: The FDA Safety Information and Adverse Event Reporting Program, (available at <https://www.fda.gov/safety/medwatch-fda-safety-information-and-adverse-event-reporting-program>). Accessed November 27, 2023.

6. FDA, Consumer Complaint Coordinators, web page, (available at <https://www.fda.gov/safety/report-problem-fda/consumer-complaint-coordinators>). Accessed November 27, 2023.

7. National Patient Safety Agency, “Information Design for Patient Safety: A Guide to the Graphic Design of Medication Packaging,” 2nd edition, 2007 (available at https://web.archive.nationalarchives.gov.uk/ukgwa/20080727044055mp_/http://www.npsa.nhs.uk/EasySiteWeb/GatewayLink.aspx?allId=5599); National Patient Safety Agency, “Design for Patient Safety: A Guide to Labelling and Packaging of Injectable Medicines,” 1st edition, 2008 (available at https://www.intmedsafe.net/wp-content/uploads/2014/01/0592-InjectablesBookV9_Web1.pdf).

8. United States Pharmacopeia, Recommendations to the Safe Medication Use Expert Committee by the Health Literacy and Prescription Container Labeling Advisory Panel, May and November 2009, posted April 2010 (available at https://www.uspnf.com/sites/default/files/usp_pdf/EN/USPNF/recommendContainerLabeling.pdf).

9. FDA, eCTD Resources, web page (available at <https://www.fda.gov/drugs/electronic-regulatory-submission-and-review/ectd-resources>). Accessed November 27, 2023.

10. FDA, Combination Products, web page (available at <https://www.fda.gov/combination-products>). November 27, 2023.

11. Memorandum of Understanding Between the Federal Trade Commission and the Food and Drug Administration Concerning the Exchange of Information (FDA-225-71-8003), April 1971 (available at <https://www.fda.gov/about-fda/domestic-mous/mou-225-71-8003>). Accessed November 27, 2023.

12. FDA, Prescription to Over-the-Counter (OTC) Switch List, web page (available at <https://www.fda.gov/about-fda/center-drug-evaluation-and-research-cder/prescription-over-counter-otc-switch-list>). Accessed November 27, 2023.

13. FDA, Final Regulatory Impact Analysis; Final Regulatory Flexibility Analysis; Unfunded Mandates Reform Act Analysis, Nonprescription Drug Product With an Additional Condition for Nonprescription Use; Final Rule (available at <https://www.fda.gov/about-fda/economics-staff/regulatory-impact-analyses-ria>).

List of Subjects

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 201 and 314 are amended as follows:

PART 201—LABELING

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

Authority: 21 U.S.C. 321, 331, 343, 351, 352, 353, 355, 358, 360, 360b, 360ccc, 360ccc-1, 360ee, 360gg-360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

■ 2. Add § 201.67 to subpart C to read as follows:

§ 201.67 Labeling requirements for a nonprescription drug product with an additional condition for nonprescription use (ACNU).

(a) *Scope.* This section sets forth labeling requirements for a nonprescription drug product with an ACNU.

(b) *Definition.* The following definition applies to this section:

(1) *Additional condition for nonprescription use (ACNU)* means one or more FDA-approved conditions that an applicant of a nonprescription drug product must implement to ensure consumers' appropriate self-selection or appropriate actual use, or both, of the nonprescription drug product without

the supervision of a practitioner licensed by law to administer such drug, if the applicant demonstrates and FDA determines that labeling alone is insufficient to ensure appropriate self-selection or appropriate actual use, or both.

(2) [Reserved]

(c) *General labeling requirements.* (1) A nonprescription drug product with an ACNU must comply with applicable labeling requirements for nonprescription drug products under this part, including the format and content requirements for nonprescription drug product labeling under § 201.66 and the statements specified in § 201.130(a) and (b).

(2) A nonprescription drug product with an ACNU may also be approved with additional labeling that supplements the format and content requirements for nonprescription drug product labeling under § 201.66.

(d) *Format requirements for the required statement about the ACNU.* The statement about the ACNU specified in § 201.130(b)(1) must meet all format requirements as follows:

(1) The statement about the ACNU must appear on the principal display panel (see § 201.60) and the immediate container surface that the consumer is most likely to view when seeking information about the drug product. If the immediate container is a bottle, the statement about the ACNU must appear on the surface that the consumer is most likely to consider the front of the bottle. If the immediate container is a blister card (including a card that contains more than one blister unit), the statement about the ACNU must appear on the blister card surface that the consumer would most likely view when removing the drug product from the blister card. If the blister card contains more than one blister unit (e.g., perforated blister card where individual blister units can be separated from one another), the statement about the ACNU does not need to be included on each blister unit of a blister card. However, the statement about the ACNU must remain intact and be readable on the blister card when the drug product is removed from each blister unit.

(2) The statement about the ACNU must appear in boldface and black type.

(3) The statement about the ACNU must appear in a yellow background banner. No other information or statements may be included within the yellow background banner.

(4) The statement about the ACNU must be in one of the following font sizes, whichever is greater:

(i) At least 25 percent as large as the font size of the largest printed words on

the principal display panel and immediate container; or

(ii) At least 12-point font (1 point = 0.0138 inches).

(5) An applicant may request an exception to the minimum font size requirement specified in paragraph (d)(4) of this section for containers where its size would render compliance with this requirement impractical. FDA may allow such an exception upon request by an applicant if FDA determines an exception is warranted.

(e) *Misbranding.* A nonprescription drug product with an ACNU is misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352) if—

(1) It does not comply with the labeling requirements specified in paragraphs (c) and (d) of this section and § 201.130(a) through (c); or

(2) The ACNU is not implemented by the applicant in accordance with the following, as approved by FDA in the application:

(i) The key elements of the ACNU under § 314.56(c)(1)(iv) of this chapter for NDAs or § 314.56(c)(2)(ii) of this chapter for ANDAs; or

(ii) The operationalization of the ACNU under § 314.56(c)(1)(vii) of this chapter for NDAs or § 314.56(c)(2)(iii) of this chapter for ANDAs.

■ 3. Add § 201.130 to subpart D to read as follows:

§ 201.130 Exemption from adequate directions for use for a nonprescription drug product with an additional condition for nonprescription use (ACNU).

A nonprescription drug product approved under section 505(c) or 505(j) of the Federal Food, Drug, and Cosmetic Act with an ACNU as defined in § 201.67(b)(1) is exempt from section 502(f)(1) only if all the following conditions are met:

(a) The label of the drug must include instructions for the ACNU as follows:

(1) Content of instructions for the ACNU must either be:

(i) ACNU Instructions, which read as follows: "To check if this drug is safe for you, go to [insert where or how consumers can find information about the ACNU; for example, applicant's website, applicant's phone number, or specific retail location] and [insert action to be taken by consumer]. Do not take this drug without completing this step"; or

(ii) Alternative ACNU Instructions: FDA may approve an NDA applicant's revisions to the ACNU Instructions when the revisions are appropriate for a specific drug product and the applicant supports the revisions with adequate data or other information that

demonstrate sufficient consumer understanding of the revised statement.

(2) The locations of instructions for the ACNU are as follows:

(i) If the purpose of the ACNU is for self-selection, the instructions for the ACNU must appear under the “Use” or “Uses” heading required in § 201.66(c)(4) as the first statement, followed by the other information required in § 201.66(c)(4);

(ii) If the purpose of the ACNU is for actual use, the instructions for the ACNU must appear under the “Directions” heading required in § 201.66(c)(6) as the first direction, followed by the other information required in § 201.66(c)(6); or

(iii) If the purpose of the ACNU is for both self-selection and actual use, the instructions for the ACNU must appear under the “Use” or “Uses” heading as the first statement, followed by the other information required in § 201.66(c)(4) and may also appear under the “Directions” heading as the first direction, followed by the other information required in § 201.66(c)(6).

(b) The label of the drug must include a statement about the ACNU as follows:

(1) The content of the statement about the ACNU must either be:

(i) The ACNU Statement, which reads as follows: “You must complete an extra step to see if this drug is safe for you before you use it. Do not take this drug without completing this step. See the Drug Facts Labeling for more information”; or

(ii) An Alternative ACNU Statement: FDA may approve an NDA applicant’s revisions to the ACNU Statement when the revisions are appropriate for a specific drug product and the applicant supports the revisions with adequate data or other information that demonstrate sufficient consumer understanding of the revised statement.

(2) The statement about the ACNU must be in the form and manner required by § 201.67(c).

(c) The labeling of the drug must comply with other applicable labeling requirements for nonprescription drug products under this part, including the format and content requirements for nonprescription drug product labeling under § 201.66.

(d) The ACNU must be implemented by the applicant in accordance with the following, as approved by FDA in the application:

(1) The key elements of the ACNU under § 314.56(c)(1)(iv) of this chapter for NDAs or § 314.56(c)(2)(ii) of this chapter for ANDAs; and

(2) The operationalization of the ACNU under § 314.56(c)(1)(vii) of this

chapter for NDAs or § 314.56(c)(2)(iii) of this chapter for ANDAs.

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

■ 4. The authority citation for part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 355a, 355f, 356, 356a, 356b, 356c, 356e, 360cc, 371, 374, 379e, 379k–1.

■ 5. Add § 314.56 to subpart B to read as follows:

§ 314.56 Nonprescription drug product with an additional condition for nonprescription use (ACNU).

(a) *Definition.* The following definition applies to this section:

(1) *Additional condition for nonprescription use (ACNU)* means one or more FDA-approved conditions that an applicant of a nonprescription drug product must implement to ensure consumers’ appropriate self-selection or appropriate actual use, or both, of the nonprescription drug product without the supervision of a practitioner licensed by law to administer such drug if an applicant demonstrates and FDA determines that labeling alone is insufficient to ensure appropriate self-selection or appropriate actual use, or both.

(2) [Reserved]

(b) *Separate application required for a nonprescription drug product with an ACNU.* Notwithstanding § 310.200(b) of this chapter, an applicant must submit a separate application for a nonprescription drug product with an ACNU. Initial approval for a nonprescription drug product with an ACNU cannot be obtained through a supplement to an approved application.

(c) *Specific requirements for an application for a nonprescription drug product with an ACNU.* The applicant must submit an application that complies with the following requirements:

(1) *New drug application (NDA).* When fulfilling the content and format requirements under § 314.50, an NDA for a nonprescription drug product with an ACNU must include—

(i) A statement regarding whether the purpose of the ACNU is to ensure appropriate self-selection or appropriate actual use, or both, by consumers of the nonprescription drug product with an ACNU without the supervision of a practitioner licensed by law to administer such drug;

(ii) A statement regarding the necessity of the ACNU;

(iii) A description of how the ACNU ensures appropriate self-selection or appropriate actual use, or both;

(iv) A description of the key elements of the ACNU, including:

(A) The additional condition implemented by the applicant to be fulfilled by the consumer to obtain the nonprescription drug product with an ACNU;

(B) The labeling specifically associated with the ACNU; and

(C) The criteria by which the consumer would successfully fulfill the ACNU, including a description of the specific actions to be taken by a consumer or required responses to be provided by a consumer;

(v) Adequate data or other information that demonstrates the necessity of the ACNU to ensure appropriate self-selection or appropriate actual use, or both;

(vi) Adequate data or other information that demonstrates the effect of the ACNU on the appropriate self-selection or appropriate actual use, or both; and

(vii) A description of the specific way(s) the ACNU is operationalized.

(2) *Abbreviated new drug application (ANDA).* When fulfilling the content and format requirements under § 314.94, an ANDA for a nonprescription drug product with an ACNU must include:

(i) A statement regarding whether the purpose of the ACNU is to ensure appropriate self-selection or appropriate actual use, or both, by consumers of the nonprescription drug product with an ACNU without the supervision of a practitioner licensed by law to administer such drug, which must be the same as the purpose of the ACNU for its reference listed drug (RLD);

(ii) Information demonstrating that the key elements of the ACNU are the same as the key elements of the ACNU for its RLD; and

(iii) A description of the specific way(s) the ACNU is operationalized. If an applicant believes the ACNU is operationalized in the same way as the RLD, include information demonstrating that the ACNU is operationalized in the same way as the RLD. If a different way to operationalize the proposed ACNU is used, include information to show that this different way to operationalize the proposed ACNU achieves the same purpose as the ACNU for its RLD and that the differences from the RLD are otherwise acceptable in an ANDA.

(d) *Simultaneous marketing of nonprescription and prescription drug products.* An ACNU constitutes a meaningful difference between a nonprescription drug product and a prescription drug product, such that a prescription drug product and a nonprescription drug product with an ACNU may be simultaneously marketed

even if there is not another meaningful difference between the two products that makes the nonprescription drug product safe and effective for use without the supervision of a healthcare practitioner licensed by law to administer such drug (e.g., a different active ingredient, indication, strength, route of administration, dosage form, or patient population).

■ 6. Amend § 314.81 by adding paragraph (b)(3)(v) to read as follows:

§ 314.81 Other postmarketing reports.

* * * * *

(b) * * *

(3) * * *

(v) *Report of an additional condition for nonprescription use (ACNU) failure for a nonprescription drug product with an ACNU—(A) ACNU failure.* An ACNU failure occurs upon either of the following events:

(1) A failure associated with the implementation of a key element of an ACNU under § 314.56(c)(1)(iv) or (c)(2)(ii); or

(2) A failure associated with the operationalization of an ACNU under § 314.56(c)(1)(vii) or (c)(2)(iii).

(B) *Review of ACNU failure.* The applicant must develop written procedures for the surveillance, receipt, evaluation, and reporting of ACNU failures to FDA.

(C) *Report of ACNU failure.* If an applicant receives or otherwise obtains information regarding an adverse drug experience associated with an ACNU failure before the submission of a report of an ACNU failure, an applicant must submit a report in the form of an individual case safety report (ICSR) that describes both the adverse drug experience and the associated ACNU failure. The ICSR must contain the information required in § 314.80(f) and paragraph (b)(3)(v)(A) of this section. If a previously submitted report of ACNU failure reports only an ACNU failure or if a previously submitted ICSR reports only an adverse drug experience, and the applicant subsequently receives or otherwise obtains information regarding an associated adverse drug experience or associated ACNU failure, the applicant must submit a follow up report to the previously submitted report with the new information. The follow-up report must include the information required in § 314.80(f) or

paragraph (b)(3)(v)(A) of this section, as applicable.

(D) *Content of Report of ACNU failure.* The report of an ACNU failure must include the following:

(1) *Required information.* The name, address, email, and telephone number of the applicant; an identifiable reporter; the drug product name; and the description of the ACNU failure.

(2) *Additional information if available to the applicant.* In addition, the report must include the following information, if known:

(i) Drug product strength; National Drug Code (NDC); lot number; and NDA or ANDA number.

(ii) Initial reporter information including name, address, and telephone number of the initial reporter.

(iii) Unique case identification number, which must be the same in the initial report and any subsequent follow-up report(s), if applicable.

(iv) ACNU failure term(s).

(v) Date of ACNU failure (or best estimate).

(vi) Date the ACNU failure was reported to the applicant.

(vii) Location of the ACNU failure, including business name and contact information.

(viii) Concise narrative summary of the ACNU failure including whether any of the following circumstances occurred: the consumer accessed or used the drug product without successfully fulfilling the ACNU; the consumer successfully fulfilled the ACNU but could not access or use the drug product; or the consumer was unable to make an attempt to fulfill the ACNU.

(ix) Description of the remedial action initiated or completed to address the ACNU failure, including the type of remedial action initiated or completed (for example, repair, replace, recall, inspection, modification, or adjustment).

(x) Description of the corrective action to prevent reoccurrence of an ACNU failure of the same nature.

(E) *Submission.* (1) The applicant must submit the report of an ACNU failure as soon as possible but no later than 15 calendar days from the date when the applicant has acquired the minimum dataset for an ACNU failure.

(2) The applicant must also investigate any new information it

receives or otherwise obtains about a previously submitted report of an ACNU failure and assess the relationship or impact of the new information on the initial report. The applicant must submit any follow-up report of an ACNU failure as soon as possible but no later than 15 calendar days after obtaining the new information.

(F) *Electronic format for submissions.*

(1) The report of an ACNU failure must be submitted to FDA in accordance with § 314.80(g).

(2) An applicant may request, in writing, a waiver of the requirements in paragraph (b)(3)(v)(F)(1) of this section in accordance with § 314.90 or § 314.99.

(G) *Recordkeeping.* The applicant must maintain for a period of 10 years, the records of all reports of ACNU failures and associated adverse drug experiences known to the applicant, including raw data and any correspondence relating to a report of an ACNU failure.

* * * * *

■ 7. Amend § 314.125 by adding paragraph (b)(20) to read as follows:

§ 314.125 Refusal to approve an NDA.

* * * * *

(b) * * *

(20) For an NDA for a nonprescription drug product with an additional condition for nonprescription use under § 314.56, if FDA has determined the application failed to meet the requirements in § 314.56 applicable to NDAs.

* * * * *

■ 8. Amend § 314.127 by adding paragraph (a)(15) to read as follows:

§ 314.127 Refusal to approve an ANDA.

(a) * * *

(15) For an ANDA for a nonprescription drug product with an additional condition for nonprescription use under § 314.56, if FDA has determined the application failed to meet the requirements in § 314.56 applicable to ANDAs.

* * * * *

Dated: December 13, 2024.

Robert M. Califf,

Commissioner of Food and Drugs.

[FR Doc. 2024–30261 Filed 12–23–24; 8:45 am]

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